

CITY COUNCIL

1520 AVENUE K



DATE: 6/27/2011
 CALL TO ORDER: 7:00 p.m.
 INVOCATION: Pastor Amy McClane
 Northpointe Church
 PLEDGE OF ALLEGIANCE: Jr. Girl Scout Troop 1714
 Shepard Elementary

ITEM NO.	EXPLANATION	ACTION TAKEN
(a)	<p>THE MISSION OF THE CITY OF PLANO IS TO PROVIDE OUTSTANDING SERVICES AND FACILITIES, THROUGH COOPERATIVE EFFORTS WITH OUR CITIZENS THAT CONTRIBUTE TO THE QUALITY OF LIFE IN OUR COMMUNITY.</p> <p>The City Council may convene into Executive Session to discuss posted items in the regular meeting as allowed by law.</p> <p><u>PROCLAMATIONS & SPECIAL RECOGNITION</u> Presentation: Sharon Kotwitz - 20 Year Anniversary</p> <p><u>COMMENTS OF PUBLIC INTEREST</u> <u>This portion of the meeting is to allow up to five (5) minutes per speaker with thirty (30) total minutes on items of interest or concern and not on items that are on the current agenda. The Council may not discuss these items, but may respond with factual or policy information. The Council may choose to place the item on a future agenda.</u></p> <p><u>CONSENT AGENDA</u> <u>The Consent Agenda will be acted upon in one motion and contains items which are routine and typically noncontroversial. Items may be removed from this agenda for individual discussion by a Council Member, the City Manager or any citizen. Citizens are limited to two (2) items and discussion time of three (3) minutes each.</u></p> <p><u>Approval of Minutes</u> June 8, 2011 June 13, 2011</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
	<p><u>Approval of Expenditures</u></p> <p>Award/Rejection of Bid/Proposal: (Purchase of products/services through formal procurement process by this agency)</p>	
(b)	Bid No. 2011-164-G for Parking Lot Lighting Upgrades at Various Locations - Project No. 6051, line item 1, 2, and 4 to Essential Energy Services, Inc. in the amount of \$72,965 and line item 3 to Lumetech Group in the amount of \$70,920 for a total of \$143,885 and authorizing the City Manager to execute all necessary documents.	
(c)	RFQ No. 2010-228-B for Waste to Fuel Study for the Sustainability Department for American Recovery & Reinvestment Act, Federal Grant Funding from the Department of Energy (DOE) to Gershman, Brickner & Bratton, Inc. in the amount of \$210,000 and authorizing the City Manager to execute all necessary documents.	
(d)	Bid No. 2011-165-B, for Liberty Recreation Center Roof Replacement - Project No. 6108, to Roof Tex Inc., in the amount of \$287,250 and authorizing the City Manager to execute all necessary documents.	
	<p>Approval of Contract: (Purchase of products/services exempt from State of Texas Competitive Bid Laws)</p>	
(e)	To approve an Engineering Services Agreement by and between the City of Plano and Transystems Corporation in the amount of \$79,100 for the SH 289 at PGBT Intersection Improvements project and authorizing the City Manager to execute all necessary documents.	
(f)	To approve an Engineering Services Agreement by and between the City of Plano and Burgess & Niple, Inc. in the amount of \$137,720 for Pittman Creek Basin I/I Evaluation Basins 01,7N,7S,10 & 12 and authorizing the City Manager to execute all necessary documents.	
	<p>Approval of Contract Modification</p>	
(g)	To approve and authorize Contract Modification No. 1 for the purchase of Engineering Services for Windhaven Parkway (Spring Creek Parkway to West City Limit) in the amount of \$62,000 from Teague, Nall and Perkins, Inc. This modification will provide for expenses related to changing the project scope from a six (6) lane road to a four (4) lane road from Spring Creek Parkway to Parkwood Boulevard.	
	<p>Approval of Change Order</p>	
(h)	To McMahon Contracting, L.P., increasing the contract by \$30,064 for the 14th Street – Avenue K to Ridgewood Drive project, Change Order No. 3. Original Bid No. 2010-14-B.	
	<p><u>Adoption of Resolutions</u></p>	
(i)	To authorize continued participation with the Steering Committee of Cities Served by Oncor; authorizing the payment of 10 cents per capita to the Steering Committee to fund regulatory and related activities related to Oncor Electric Delivery Company LLC; and providing an effective date.	

ITEM NO.	EXPLANATION	ACTION TAKEN
(j)	<p>To authorize the purchase of the Mobile Command Post Vehicle Technology Upgrade from LDV, Inc., a sole-source provider, in the amount of \$154,847 for use by the Plano Police Department; authorizing the City Manager to take such action and execute such documents as necessary to effectuate the purchase; and providing an effective date.</p>	
(k)	<p><u>Adoption of Ordinances</u></p> <p>To abandon all right, title and interest of the City, in and to that certain 20-foot wide Temporary Drainage Easement recorded in Volume 4531, Page 245, of the Land Records of Collin County, Texas and being situated in the Samuel H. Brown Survey, Abstract No. 108, which is located within the city limits of Plano, Collin County, Texas; quitclaiming all right, title and interest of the City in such easement to the abutting property owner, Legacy North PT MFA IV, L.P., to the extent of its interest; authorizing the City Manager to execute any documents deemed necessary; and providing an effective date.</p>	
(l)	<p>To amend Section 3-3 of Chapter 3 Alcoholic Beverages, of the Code of Ordinances of the City of Plano providing an exception for a winery where authorized by the City of Plano Zoning Ordinance to the prohibition against manufacturing, distilling, brewing, transporting, storing for purposes of sale, distributing or selling alcoholic beverages in any residentially zoned district; providing a repealer clause, a savings clause, a severability clause, a penalty clause, a publication clause and an effective date.</p>	
	<p><u>ITEMS FOR INDIVIDUAL CONSIDERATION:</u></p> <p><u>Public Hearing Items: Applicants are limited to fifteen (15) minutes presentation time with a five (5) minute rebuttal, if needed. Remaining speakers are limited to thirty (30) total minutes of testimony time, with three (3) minutes assigned per speaker. The presiding officer may extend these times as deemed necessary.</u></p> <p><u>Non-Public Hearing Items: The Presiding Officer may permit limited public comment for items on the agenda not posted for a Public Hearing. The Presiding Officer will establish time limits based upon the number of speaker requests, length of the agenda, and to ensure meeting efficiency, and may include a cumulative time limit. Speakers will be called in the order cards are received until the cumulative time is exhausted.</u></p>	
(1)	<p>Public Hearing and consideration of a Resolution to adopt the 2011-2012 Action Plan, including the final statement of Community Development Block Grant and HOME programs objectives and proposed use of funds for program year 2011-2012; and declaring an effective date.</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
(2)	Consideration of a Resolution to authorize the filing of applications for Federal Funds in an amount not to exceed \$1,593,213 under the Housing and Community Development Act and the HOME Investment Partnership Act; designating Bruce D. Glasscock as Chief Executive Officer and authorized representative of the City for the purpose of giving required assurances and acting in connection with said application and providing required information; and declaring an effective date.	
(3)	Public Hearing and consideration of an Ordinance to designate a certain area within the City of Plano, Texas, as Reinvestment Zone No. 123 for tax abatement consisting of a 7.255 acre tract of land located in the Martha McBride Survey, Abstract No. 553, Collin County in the City of Plano, Texas, establishing the boundaries of such zone; ordaining other matters related thereto; and providing an effective date.	
(4)	Consideration of a Resolution to approve the terms and conditions of an Agreement by and between the City of Plano, Texas, Internap Network Services Corporation and Behringer Harvard 1221 Coit, LP, a Texas Limited Partnership; providing for a business personal property and real property improvement tax abatement; and authorizing its execution by the City Manager; and providing an effective date.	
(5)	Consideration of a Resolution to approve the terms and conditions of an Economic Development Incentive Agreement by and between Internap Network Services Corporation and the City of Plano; authorizing its execution by the City Manager; and providing an effective date.	
(6)	Consideration of a Resolution to approve the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano and Aimbridge Hospitality, L.P., a Texas limited liability company; authorizing its execution by the City Manager; and providing an effective date.	
(7)	Consideration of a Resolution to approve the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano and Ambit Holdings LLC, a Texas limited liability corporation; authorizing its execution by the City Manager; and providing an effective date.	
(8)	<p>Consideration of a Resolution to approve the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano and Masergy Communications, Inc., a Delaware corporation; authorizing its execution by the City Manager; and providing an effective date.</p> <p><u>Municipal Center is wheelchair accessible. A sloped curb entry is available at the main entrance facing Municipal Avenue, with specially marked parking spaces nearby. Access and special parking are also available on the north side of the building. Training Room A/Building Inspections Training Room are located on the first floor. Requests for sign interpreters or special services must be received forty-eight (48) hours prior to the meeting time by calling the City Secretary at 972-941-7120.</u></p>	



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		06/27/2011		
Department:		City Manager's Office		
Department Head		Bruce Glasscock		
Agenda Coordinator (include phone #): Melinda White X7548, Cindy Pierce X5161				
CAPTION				
Presentation: Sharon Kotwitz 20 Year Anniversary				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S):				
COMMENTS:				
SUMMARY OF ITEM				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	

**PLANO CITY COUNCIL
SPECIAL CALLED SESSION
June 8, 2011**

COUNCIL MEMBERS

Phil Dyer, Mayor
Pat Miner, Mayor Pro Tem
Lissa Smith, Deputy Mayor Pro Tem
Ben Harris
André Davidson
James Duggan
Jean Callison
Lee Dunlap

STAFF

Bruce Glasscock, City Manager
Frank Turner, Deputy City Manager
LaShon Ross, Deputy City Manager
Diane C. Wetherbee, City Attorney
Luke Williams, Assistant City Attorney
Diane Zucco, City Secretary

Mayor Dyer called the meeting to order at 6:03 p.m., Wednesday, June 8, 2011, in the Council Chambers of the Municipal Center, 1520 K Avenue. All Council Members were present. Council Member Duggan arrived at 6:29 p.m.

Opening Remarks

City Manager Glasscock introduced Deputy City Manager Ross.

Human Resources Department Overview

Ms. Ross spoke to the department maintaining its staffing levels below the national averages while managing all aspects of the City's 1,963 full-time and 921 part-time employees. She spoke to efficiencies in the department's operations, customer service, review of pay for performance measures and use of technology. Ms. Ross spoke to Human Resources as the mid-point for communications, utilizing strategic direction from Council in daily decisions and working with applicants, employees and retirees. She reviewed the department's divisions including Compensation and Benefits, Civil Service and Retirement and Employee Relations/Training/Risk Management. Ms. Ross reviewed management of contracts related to human resource needs and the resulting cost savings; the use of technology including online applications, laserfiche and self-service benefit enrollment; and advised regarding succession planning. She advised that over the last year, the City handled 13,301 applicants, 7 civil service exams, 199 training classes and 145 disciplinary actions.

Ms. Ross spoke to future challenges and opportunities including implementation of the Health Care Reform Act; balancing benefit offerings with the available budget and employee expectations; creating more data-driven processes for operational decisions; managing time to allow for comprehensive responses to requests for assistance; and providing appropriate training and encouraging attendance. She spoke to cooperative partnerships between the City and other entities and responded to the Council regarding services provided by The Hay Group as benefits consultants including review of legislation, projections, and oversight and advised that this contract runs through 2012.

Sustainability and Environmental Services Department Overview

Sustainability and Environmental Services Director Nevil spoke to the 92 full-time and 8 part-time employees, three divisions and the six facilities. She advised that the department is operated in a business-like manner through an enterprise fund and spoke to revenues from residential and commercial fees, disposal reimbursement and sales of compost. Ms. Nevil spoke to operating expenses including salaries/wages, materials/supplies and contractual items. She advised regarding development of the department's business plan; mission/vision; and goals focused on customer service, maintaining competitive costs, employee satisfaction, opportunities for waste diversion, incorporating public awareness and implementation of sustainability programs. Ms. Nevil spoke to the department's staffing plan, employee recognition, customer surveys and benchmarking. She reviewed activities of each division, advising that Environmental Education & Community Outreach manages the *Live Green in Plano Expo*, works with organizations and business to promote recycling and has received numerous recognitions; Compost Operations & Marketing works with the North Texas Municipal Water District to operate a compost facility; and Environmental Waste Services handles collections while promoting diversion and residential recycling. Ms. Nevil responded to the Council regarding the value of the *Expo* in providing information to the community, spoke to the Environmental Education Center developed with departmental and water/sewer funds, the goal of maintaining employee satisfaction, and budget reductions including travel and adjustments in staffing. Ms. Nevil spoke to potential impacts of reductions including: not meeting scheduled collections for yard trimmings; increased overtime; violating water district contractual agreements by exceeding transfers; and impacts on Staff morale. She responded to the Council regarding positive citizen input, commercial recycling efforts, and gain-sharing programs.

Conclusion/Next Steps

City Manager Glasscock spoke to the presentations providing an overview of operations, impact of reductions and the relationships between departments. He spoke to the effect upcoming decisions will have on the organization and the City including its financial stability, reputation, quality of service delivery, citizen satisfaction and employees. Mr. Glasscock advised that Staff remains focused on citizen satisfaction and quality of services. He spoke to controlling expenditures and the Council's mission/values of providing outstanding service and facilities through cooperative efforts with citizens contributing to the quality of life.

Mr. Glasscock spoke to considering whether Plano will continue as an All-America city, maintaining the AAA bond rating, maintaining reserves to offset additional debt or maintaining tax rates knowing there will be an impact on services and potential delays in capital improvement projects. Mr. Glasscock spoke to considering the avoidance of debt issuance, potential gradual tax rate changes to offset costs, and spoke to concerns related to employee retention. He reviewed upcoming dates related to the budget cycle, and advised regarding increases in sales tax revenues and court fines, a franchise fee award settlement and the impact of legislation related to retirement system funding.

Nothing further was discussed. Mayor Dyer adjourned the Session at 7:40 p.m.

Phil Dyer, Mayor

ATTEST:

Diane Zucco, City Secretary

**PLANO CITY COUNCIL
PRELIMINARY OPEN MEETING
June 13, 2011**

COUNCIL MEMBERS

Phil Dyer, Mayor
Pat Miner, Mayor Pro Tem
Lissa Smith, Deputy Mayor Pro Tem
Ben Harris
André Davidson
James Duggan
Jean Callison
Lee Dunlap

STAFF

Bruce Glasscock, City Manager
Frank Turner, Deputy City Manager
LaShon Ross, Deputy City Manager
Diane C. Wetherbee, City Attorney
Diane Zucco, City Secretary

Mayor Dyer called the meeting to order at 5:03 p.m., Monday, June 13, 2011, in Training Room A of the Municipal Center, 1520 K Avenue. All Council Members were present. Mayor Dyer then stated that the Council would retire into Executive Session in compliance with Chapter 551, Government Code, Vernon's Texas Codes, Annotated, in order to consult with an attorney and receive Legal Advice, Section 551.071; discuss Real Estate, Section 551.072; and to receive information regarding Economic Development, Section 551.087 for which a certified agenda will be kept in the office of the City Secretary for a period of two years as required.

Mayor Dyer reconvened the meeting back into the Preliminary Open Meeting at 6:00 p.m. Deputy Mayor Pro Tem Smith was not present for the following.

Consideration and action resulting from Executive Session discussion:

No items were considered.

North Texas Municipal Water District Board Report

North Texas Municipal Water District Board Member Yancey spoke to the presence of zebra mussels in a tributary of the East Fork of the Trinity River used by the district to transfer water from Lake Texoma and the resultant cessation of pumping from the lake. He spoke to the mussel's attaching to facilities and pipes and causing issues of maintenance. Mr. Yancey spoke to the cessation causing a loss of more than 20% of the total water supply and the resultant water restrictions. He advised regarding other resources and efforts to mitigate the issue.

He spoke to the district rates 15-20% below those of Dallas, impact of an ozonation process mandated by federal requirements which will address taste/odor concerns, and moving forward on additional projects. Mr. Yancey spoke to benefits of expanding waste water treatment and adherence to water quality standards.

***Love Where You Live* Activities in the Village Creek North Neighborhood**

Community Services Manager Day spoke to addressing Council's goal of *First Choice – Great Neighborhoods* through the *Love Where You Live* program and the 629 volunteers in the Village Creek North Neighborhood project. She spoke to assessing the program through a Neighborhood Enhancement Tool measuring the changes in property standards concerns, housing values and crime. Ms. Day spoke to additional use of a Housing Assessment Process in which volunteers/staff review property elements (fencing, landscape, roofs/gutters, etc.) prior to the project and following implementation and the 12.3% overall improvement noted. Ms. Day spoke to partnerships between City departments, community groups and residents. Mayor Pro Tem Miner thanked Staff for their efforts and spoke to the positive impact on revitalization through cooperation between faith-based and community partners.

Discussion/Direction on Community Relations Commission Grant Recommendations

Community Relations Commission Chair Grady spoke to the history of grant funding, reductions in the number of agencies receiving United Way monies, applications received, and advised that agencies received approximately 49% of the requested funding. He spoke to increased poverty, high unemployment rates, and the continued impact on non-profit agencies in the area. Mr. Grady spoke to encouraging agencies to diversify their funding sources and responded to the Council regarding the Commission's consideration of other sources when reviewing applications and the Council concurred in accepting the recommendations.

Discussion and Direction re SB 100 - Changes to the Election Code

The Council deferred discussion of this item.

Customer Response Management (CRM) System and Mobile Application Tool

Technology Services Director Stephens spoke to CRM as an organization-wide strategy to allow for additional citizen input regarding the need for services in the community. He spoke to a one-year trial of software allowing for customization and a mobile application used to identify locations, attach photos, and provide workflows. Council Member Dunlap spoke to the potential for increased communications and Mr. Stephens spoke to the system as a portal with departmental practices of project prioritization remaining in place. Public Information Director Conklin spoke to the terms of the trial period and possible future integration of additional features.

Comprehensive Monthly Financial Report

Director of Finance Tacke advised that for the Month of April 2011, General, Water/Sewer, and Civic Center were up slightly. She spoke to actual General Fund revenues being down \$3.8 million due to the decrease in ad valorem taxes. Ms. Tacke advised that General and Water/Sewer Fund expenditures are down slightly and spoke to an increase in the unemployment rate to 7.2% and an increase in sales tax.

Council Items for discussion/action on future agendas

No items were discussed.

Consent and Regular Agenda

Mayor Dyer requested that Consent Agenda Item "B," Bid No. 2011-175-B for Communications Parkway from Spring Creek Parkway to Tennyson Parkway to Mario Sinacola & Sons Excavating, Inc. in the amount of \$2,020,795 be removed for individual consideration due to a possible conflict of interest.

Nothing further was discussed. Mayor Dyer adjourned the Preliminary Meeting at 6:59 p.m.

Phil Dyer, Mayor

ATTEST

Diane Zucco, City Secretary

PLANO CITY COUNCIL
June 13, 2011

COUNCIL MEMBERS

Phil Dyer, Mayor
Pat Miner, Mayor Pro Tem
Lissa Smith, Deputy Mayor Pro Tem
Ben Harris
André Davidson
James Duggan
Jean Callison
Lee Dunlap

STAFF

Bruce Glasscock, City Manager
Frank Turner, Deputy City Manager
LaShon Ross, Deputy City Manager
Diane C. Wetherbee, City Attorney
Diane Zucco, City Secretary

Mayor Dyer convened the Council into the Regular Session on Monday, June 13, 2011, at 7:04 p.m. in the Council Chamber of the Plano Municipal Center, 1520 K Avenue. All Council Members were present with the exception of Deputy Mayor Pro Tem Smith.

The invocation was led by Dr. Leon Aduddell of First Baptist Church-Plano, and the Pledge of Allegiance was led by the Plano Chapter of The Sons of the American Revolution and The Daughters of the American Revolution.

Mayor Dyer received presentations of the USA Neighborhood Program Award - 3rd Place Neighborhoods and Outstanding Achievement in Local Government Innovation Award. He further presented a proclamation for Motorcycle Safety and Awareness Month Presented and recognized Ann Tucker, "Planning a City" Team Sponsor and Diane Zucco, Lone Star Chapter Clerk of the Year.

COMMENTS OF PUBLIC INTEREST

Dallas Resident Mike Rutter spoke to the importance of signage encouraging motorists to be aware of motorcycles and City Manager Glasscock advised that Staff would review information.

CONSENT AGENDA

Upon the request of Mayor Dyer, Consent Agenda Item "B" was removed for individual consideration due to a possible conflict of interest.

Upon a motion made by Mayor Pro Tem Miner and seconded by Council Member Harris, the Council voted 7-0 to approve and adopt all remaining items on the Consent Agenda as recommended and as follows:

Approval of Minutes (Consent Agenda Item “A”)

May 18, 2011

May 19, 2011

May 23, 2011

May 31, 2011

Approval of Expenditures

Award/Rejection of Bid/Proposal: (Purchase of products/services through formal procurement process by this agency)

Bid No. 2011-121-B for the purchase of Installation of Anti-Freezing Drinking Fountains for the Parks and Recreation Department to R & S Commercial Services, LP in the amount of \$70,939 and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “C”)

CSP No. 2011-108-C for a one (1) year revenue generating contract with four (4) City optional renewals for Collection Services and Verification of Financial Responsibility Services for the Municipal Court Department to Municipal Services Bureau in the estimated amount of \$113,445 and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “D”)

RFP No. 2011-157-C for a one (1) year contract with five (5) City optional renewals for Fleet Fuel Card & Related Services to Mansfield Oil Company in the estimated amount of \$4,215,000 and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “E”)

Approval of Contract: (Purchase of products/services exempt from State of Texas Competitive Bid Laws)

RFQ 2010-179-B for New Technology Services Data Center Phase I & II Design, Project No. 6119, Bldg. No. 3, for Public Works to Alliance Architects, Inc., in the amount of \$447,814; and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “F”)

To approve a contract for the purchase of professional services to KEDAR Information Technologies, Inc., for a Business Process Mapping (BPM) Project for the Building Inspection, Property Standards and Planning Departments, in the amount not to exceed \$137,632 and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “G”)

To approve a contract made and entered into by and between the City of Plano and Sharon Rowe, the Elections Administrator of Collin County, Texas, pursuant to the authority in Subchapter D, Section 31.092, of Chapter 31, of the Texas Election Code, regarding the coordination, supervision, and running of the City's June 18, 2011 Runoff Election in the estimated amount of \$59,155. (Consent Agenda Item “H”)

Approval of Change Order

To TDI International dba TDI Golf increasing the contract by \$87,973 for the Pecan Hollow Golf Course Renovation, Project 5922, Change Order No. 8. Original Bid No. 2010-169-B. (Consent Agenda Item “I”)

Adoption of Resolutions

Resolution No. 2011-6-1(R): To certify that the City is eligible to receive financial assistance under the Collin County Parks and Open Space Matching Grant Program as provided by the Collin County Commissioners Court; certifying that the City’s matching share is readily available; designating the Director of Parks and Recreation as being responsible for acting for and on behalf of the City of Plano in dealing with the Collin County Commissioners Court for the purpose of participating in the Collin County Parks and Open Space Matching Grant Program; certifying that Chisholm Trail has been dedicated for public park and recreational uses; and providing an effective date. (Consent Agenda Item “J”)

Resolution No. 2011-6-2(R): To certify that the City is eligible to receive financial assistance under the Collin County Parks and Open Space Matching Grant Program as provided by the Collin County Commissioners Court; certifying that the City’s matching share is readily available; designating the Director of Parks and Recreation as being responsible for acting for and on behalf of the City of Plano in dealing with the Collin County Commissioners Court for the purpose of participating in the Collin County Parks and Open Space Matching Grant Program; certifying that Legacy Trail has been dedicated for public park and recreational uses; and providing an effective date. (Consent Agenda Item “K”)

Resolution No. 2011-6-3(R): To certify that the City is eligible to receive financial assistance under the Collin County Parks and Open Space Matching Grant Program as provided by the Collin County Commissioners Court; certifying that the City’s matching share is readily available; designating the Director of Parks and Recreation as being responsible for acting for and on behalf of the City of Plano in dealing with the Collin County Commissioners Court for the purpose of participating in the Collin County Parks and Open Space Matching Grant Program; certifying that Oak Point Park and Nature Preserve has been dedicated for public park and recreational uses; and providing an effective date. (Consent Agenda Item “L”)

Resolution No. 2011-6-4(R): To certify that the City is eligible to receive financial assistance under the Collin County Parks and Open Space Matching Grant Program as provided by the Collin County Commissioners Court; certifying that the City’s matching share is readily available; designating the Director of Parks and Recreation as being responsible for acting for and on behalf of the City of Plano in dealing with the Collin County Commissioners Court for the purpose of participating in the Collin County Parks and Open Space Matching Grant Program; certifying that Preston Ridge Trail has been dedicated for public park and recreational uses; and providing an effective date. Consent Agenda Item “M”)

Resolution No. 2011-6-5(R): To approve the Investment Portfolio Summary for the quarter ending March 31, 2011 and providing an effective date. (Consent Agenda Item “N”)

Resolution No. 2011-6-6(R): To approve the execution of a waiver releasing the allocation of Qualified Energy Conservation Bond (QECB) to the State of Texas for reallocation; and providing an effective date. (Consent Agenda Item “O”)

Resolution No. 2011-6-7(R): To rescind the prior action by the City Council on January 24, 2011 approving the First Amended Tax Abatement Agreement between City of Plano and Air System Components, Inc. and Plano Tech Partners, LP; adopting a revised First Amended Tax Abatement between the same parties and authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item “P”)

Resolution No. 2011-6-8(R): To approve the terms and conditions of a First Amendment of the Economic Development Incentive Agreement by and between the City of Plano, Texas and MedAssets Net Revenue Systems, LLC., a Delaware limited liability company; authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item “Q”)

Resolution No. 2011-6-9(R): To find Officer Paul Malcom is entitled to defense representation pursuant to City Code of Ordinances in connection with the matter of Michelle Lucille Spikin v. City of Plano, Texas and Paul Malcom ; and providing an effective date. (Consent Agenda Item “R”)

Resolution No. 2011-6-10(R): To find that Thomas Muehlenbeck, Bruce D. Glasscock, Mark Israelson, Scott Neumeyer, Douglas Angle, Chad Beougher, Jamal Murray, Courtney Perot, Pete Gabriel, Jennifer Day, Gregory W. Rushin, Paul McNulty, Richard Perez, Joseph Claggett, Earnest Oldham, Eddie DeLeon and Glen Kaletta are entitled to defense representation pursuant to City Code of Ordinances in connection with the matter of Jay S. Cooper v. City of Plano, Texas, et al. and providing an effective date. (Consent Agenda Item “S”)

Adoption of Ordinances

Ordinance No. 2011-6-11: To transfer the sum of \$72,951 from the General Fund unappropriated fund balance to the General Fund operating appropriation for fiscal year 2010-11 for the purpose of providing additional funds for the estimated costs associated with conducting a Runoff Election on June 18, 2011 to fill the Place 7 City Council position; amending the budget of the City and Ordinance 2010-9-8; declaring this action to be a case of public necessity; and providing an effective date. (Consent Agenda Item “T”)

END OF CONSENT

Due to a possible conflict of interest, Mayor Dyer stepped down from the bench on the following item.

Bid No. 2011-175-B for Communications Parkway from Spring Creek Parkway to Tennyson Parkway to Mario Sinacola & Sons Excavating, Inc. in the amount of \$2,020,795 and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “B”)

Upon a motion made by Council Member Callison and seconded by Council Member Dunlap, the Council voted 6-0 to approve Bid No. 2011-175-B for Communications Parkway from Spring Creek Parkway to Tennyson Parkway to Mario Sinacola & Sons Excavating, Inc. in the amount of \$2,020,795.

Mayor Dyer resumed his place at the bench.

Discussion and Direction regarding Code of Ordinances Amendment Pertaining to Sale of Alcohol (Regular Agenda “1”) Tabled to June 27

Planning Manager Firgens advised that Staff has not fully vetted all issues and unintended consequences of this item and requested it be tabled.

Upon a motion made by Council Member Dunlap and seconded by Council Member Harris, the Council voted 7-0 to table the request until June 27, 2011.

Resolution No. 2011-6-12(R): To approve the terms and conditions of an Economic Development Incentive Agreement by and between Interactive TKO, Inc., a Delaware corporation, and the City of Plano; authorizing its execution by the City Manager; and providing an effective date. (Regular Agenda “2”)

Director of Finance Tacke advised that the agreement in the amount of \$9,625 provides for occupancy of not less than 17,000 square feet of existing space; retention, transfer or creation of up to 45 full-time jobs by May 1, 2011, with a possible additional 10 by December 31, 2012; business personal property in the amount of no less than \$260,000; and real property in the amount of \$10,000.

Upon a motion made by Council Member Harris and seconded by Council Member Davidson, the Council voted 7-0 to approve the terms and conditions of an Economic Development Incentive Agreement by and between Interactive TKO, Inc. and the City of Plano; and further to adopt Resolution No. 2011-6-12(R).

Public Hearing and adoption of Ordinance No. 2011-6-13 as requested in Zoning Case 2011-12, amending the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, granting Specific Use Permit No. 610 so as to allow for a Trade/Commercial School on 0.1± acre of land located 575± feet west of Custer Road and 300± feet south of Parker Road, in the City of Plano, Collin County, Texas, presently zoned Planned Development-90-Retail; directing a change accordingly in the official zoning map of the City; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, a publication clause, and an effective date. Applicant: Weingarten Realty, Inc. (Regular Agenda “3”)

Ordinance No. 2011-6-13 (cont'd)

Planning Manager Firgens advised the Council that the applicant is proposing a 4,000 square-foot beauty school and spoke to review by the Planning and Zoning Commission and their recommendation to approve the item as submitted.

Mayor Dyer opened the Public Hearing. No one spoke either for or against the item. The Public Hearing was closed.

Upon a motion made by Council Member Callison and seconded by Council Member Davidson, the Council voted 7-0 to the Comprehensive Zoning Ordinance of the City, granting Specific Use Permit No. 610 so as to allow for a Trade/Commercial School located 575± feet west of Custer Road and 300± feet south of Parker Road; as recommended by the Planning and Zoning Commission and as requested in Zoning Case 2011-12.

Public Hearing and adoption of Ordinance No. 2011-6-14 as requested in Zoning Case 2011-13 to amend Section 1.600 (Definitions) of Article 1 (General Regulations) and Subsection 2.502 (Schedule of Permitted Uses) of Section 2.500 (Permitted Uses) of Article 2 (Zoning Districts and Uses), and related sections of the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, pertaining to a religious facility operated or sponsored onsite homeless shelter; and providing a publication clause, a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date. Applicant: City of Plano (Regular Agenda "4")

Planning Manager Firgens spoke to consideration of regulations related to religious facilities by the Council and Planning and Zoning Commission and advised regarding restrictions associated with household care facilities and institutions including permitting and the number of residents. She spoke to the use of variances from the Board of Adjustment and Staff's position that temporary shelters be allowed in all zoning districts by right as an accessory use to religious uses only and to the Commission's recommendation of approval amending Section 1.600 (Definitions) of Article 1 (General Regulations) to include the following:

Temporary accessory housing shelter - A not-for-profit housing shelter operated as an accessory use to a religious facility only, providing temporary free lodging for indigent individuals or families with no regular home or residential address. A temporary accessory housing shelter shall house a maximum of 14 individuals at one time, and shall operate for a maximum of 30 days per calendar year. This definition shall not include household care facility and household care institutions.

Amend Subsection 2.502 (Schedule of Permitted Uses) of Section 2.500 (Permitted Uses) of Article 2 (Zoning Districts and Uses) to allow temporary accessory housing shelter by right in all zoning districts and adding End Note 45 as follows:

End Note 45: Permitted as an accessory use to a religious facility; see Section 1.600 (Definitions).

Ordinance No. 2011-6-14 (cont'd)

Mayor Dyer opened the Public Hearing. Family Promise of Collin County Board Member Gary Rodenbaugh spoke to the need for services in the area and provided information regarding the Family Promise Day Program, advising that participants would be sheltered at area churches in the evening. He responded to the Council regarding participant screenings, length of stay and the requirement that children are served. Rebecca Williams of West Plano Presbyterian Church spoke to the need for homeless services and the church's participation as part of a network serving temporarily homeless families. Melissa Hatch of First United Methodist Church of Plano spoke to need in the community. No one else spoke for or against the request. The Public Hearing was closed.

Council Member Harris stated concern that there may be facilities established outside the regulations of Family Promise. City Manager Glasscock advised that Staff will provide Council with current information on the number of homeless in the community when it becomes available. Mayor Dyer spoke to giving religious facilities an opportunity to provide services and stated that adjustments can be made on an as-needed basis to address concerns.

Upon a motion made by Council Member Harris and seconded by Mayor Pro Tem Miner, the Council voted 7-0 to amend Section 1.600 of Article 1 and Subsection 2.502 of Section 2.500 of Article 2, and related sections of the Comprehensive Zoning Ordinance of the City, pertaining to a religious facility operated or sponsored onsite homeless shelter; as requested in Zoning Case 2011-13 and as recommended by the Planning and Zoning Commission; and further to adopt Ordinance No. 2011-6-14.

Discussion and Direction regarding Arts of Collin County (Regular Agenda "5")

Arts of Collin County Executive Director Mike Simpson spoke to discussions held in the City of Frisco and advised that no action was taken. He spoke to prior meetings held with mayors and city managers and advised that an additional meeting has been planned to discuss options. Mr. Simpson spoke to the history of work on the project, advising that from 2004-08 the foundation gained 53 supporters during the silent fundraiser stage and that since 2008 the number has been raised to 500 people and 74 businesses. He spoke to having \$2.8 million in cash with additional pledges, and to difficulties in raising monies in 2009-10 due to the City of Frisco's inability to selling bonds and uncertainty regarding their participation. Mr. Simpson advised he would make an additional presentation to the Council following discussions related to operations/maintenance costs. Citizen Jack Lagos spoke to dividing the \$2.8 current cash fund among cities, ceasing provision of operations/maintenance funds and the disproportionate amount of funding being provided by the City of Plano. Resident Robbie Robinson spoke to the opportunities at hand, location of the property as the future population center of Collin County, design of the facility, and monies already raised. City Manager Glasscock advised that current budget projections do not include funding after September 30, 2011. Mayor Dyer requested additional information be provided following the city managers' meeting.

Nothing further was discussed and Mayor Dyer adjourned the meeting at 8:12 p.m.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, City Secretary



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		6/27/2011		
Department:		Purchasing		
Department Head		Diane Palmer-Boeck		
Agenda Coordinator (include phone #): Dianna Wike x7549				
CAPTION				
Bid No. 2011-164-G, for Parking Lot Lighting Upgrades at Various Locations - Project No. 6051, line item 1, 2, and 4 to Essential Energy Services, Inc. in the amount of \$72,965 and line item 3 to Lumetech Group in the amount of \$70,920 for a total of \$143,885, and authorizing the City Manager to execute all necessary documents.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: 2010-11	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	32,290	545,000	0	577,290
Encumbered/Expended Amount	-32,290	-53,398	0	-85,688
This Item	0	-143,885	0	-143,885
BALANCE	0	347,717	0	347,717
FUND(S): CAPITAL RESERVE CIP & ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT PROGRAM (EECBG)				
<p>COMMENTS: Funds are included in the Capital Reserve CIP & Energy Efficiency and Conservation Block Grant Program funded by the American Recovery and Reinvestment Act. This item, in the amount of \$143,885 will leave a current year balance of \$0 for the Replace Parking Lot Lighting with LED portion of the Energy Efficiency and Conservation Block Grant Program & \$347,717 in the Capital Reserve CIP for the Equipment and Fleet Services Bldg. 04 project.</p> <p>STRATEGIC PLAN GOAL: Parking lot lighting upgrades relate to the City's Goal of Financially Strong City with Service Excellence.</p>				
SUMMARY OF ITEM				
Staff recommends line item 1, 2, and 4 to be awarded to Essential Energy Services, Inc. in the amount of \$72,965 and line item 3 to Lumetech Group in the amount of \$70,920 for a total of \$143,885, be accepted as the lowest responsive, responsible bids, and conditioned upon timely execution of any necessary contract documents. This is for Parking Lot Lighting Upgrades at Various Locations - Project No. 6051. Fixtures are being replaced to reduce energy costs and improve lighting levels to reduce safety and security concerns at the buildings.				
List of Supporting Documents: Memorandum, Bid Recap			Other Departments, Boards, Commissions or Agencies	



Phil Dyer
Mayor

Pat Miner
Mayor Pro Tem

Lissa Smith
Deputy Mayor Pro Tem

Ben Harris
Place 2

André Davidson
Place 3

Jim Duggan
Place 5

Jean Callison
Place 7

Lee Dunlap
Place 8

Bruce D. Glasscock
City Manager

MEMORANDUM

DATE: May 31, 2011

TO: Dianna Wike, Buyer Supervisor

FROM: Richard Medlen, Facilities Maintenance Superintendent

SUBJECT: **2011-164-G Parking Lot Lighting Upgrades at Various Locations - Project No. 6051**

I have reviewed the bids submitted and recommend award to the vendors who provided the lowest responsive responsible bid that meets bid specifications by line item. Therefore awarding lines 1,2 and 4 to Essential Energy Services, Inc., for a total of \$72,965 and award line 3 to Lumetech Group for \$ 70,920. The lowest bid for line 1 was provided by the Lumetech Group for \$ 35,077 but was deemed non responsive due it not meeting bid specifications therefore the lowest bid for line item 1 that meets bid specifications was provided by Essential Energy Services for \$ 37,248. The funding for the project is in grant funds from the EECBG of \$ 100,000 and \$ 43,885 in the Capital Reserve Fund .

Please let me know if you have any questions.

/lcp

Xc: Jim Razinha
Yarcus Lewis

CITY OF PLANO

Bid No. 2011-164-G

Parking Lot Lighting Upgrades at Various Locations – Project No. 6051

Bid Recap

Bid opening Date/Time: May 10, 2011 @ 2:00 PM

Number of Vendors Notified: 1121

Vendors Submitting “No Bids”: 2

Number of Bids Submitted: 7

Vendor Name	Base Bid
Lumetech Group	\$143,800.00
Essential Energy Services, Inc	\$155,223.00
STF Design & Build	\$176,900.00
All-Fair Electric, Inc	\$238,663.00
SFG Electric	\$239,130.00
Groves Electric	\$281,138.00
Humphrey & Associates, Inc	\$797,518.00

Bids Evaluated Non-Responsive to Specification:

Lumetech Group	Line item 1	\$ 35,077
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Recommended Vendor(s):

Essential Energy Services, Inc.	Line item 1, 2, and 4	\$ 72,965
Lumetech Group	Line item 3	\$ 70,920
Total Award Amount		\$143,885

Heather Parkerson

June 3, 2011

Heather Parkerson, Buyer

Date



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY					
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory					
Council Meeting Date:		6-27-2011			
Department:		Purchasing			
Department Head		Diane Palmer-Boeck			
Agenda Coordinator (include phone #): Nancy Corwin x7137					
CAPTION					
RFQ No. 2010-228-B for Waste to Fuel Study for the Sustainability Department for American Recovery & Reinvestment Act, Federal Grant Funding from the Department of Energy (DOE) to Gershman, Brickner & Bratton, Inc. in the amount of \$210,000 and authorizing the City Manager or his designee to execute all necessary documents.					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	2010-11, 2011-12	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	2,545,400	0	2,545,400
Encumbered/Expended Amount		0	-444,955	0	-444,955
This Item		0	-105,000	-105,000	-210,000
BALANCE		0	1,995,445	0	1,890,445
FUND(S): AMERICAN RECOVERY & REINVESTMENT ACT GRANT					
<p>COMMENTS: Federal Grant funding (American Recovery & Reinvestment Act) has been awarded to the City to pay for a study to examine the potential of converting waste collected by Sustainability and Environmental Services into fuel. The remaining balance of the grant award will be used for similar projects throughout the City of Plano.</p> <p>STRATEGIC PLAN GOAL: Examining potential methods to divert or utilize waste to save on energy costs or generate revenue relates to the City's goal of a "Financially Strong City with Service Excellence"</p>					
SUMMARY OF ITEM					
Staff recommends the Request for Qualifications to Gershman, Brickner & Bratton, Inc, in the amount of \$210,000.00 be accepted as the most qualified for the Waste to Fuel Study, and conditioned upon timely execution of any necessary contract documents. This study is under the terms of the American Recovery & Reinvestment Act, Federal Grant Funding from the Department of Energy (DOE) - 2010-228-B					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		
Recommendation Memo, Bid Recap					

Memo

To: Nancy Corwin, Buyer

From: Yarcus Lewis, SES Project Manager

CC: Robert Smouse, SES Manager

Date: 6/7/2011

Re: Vendor Recommendation for Waste-to-Fuel Feasibility Study \ 2010-228-B

Based on the evaluation team's recommendation, Gershman, Brickner & Bratton, Inc (GBB) was selected to conduct the study. The total project costs are \$210,000 from Department of Energy (DOE) funds with approximately \$105,000 expended in both FY2011 and FY2012. As a Request for Qualifications (RFQ), only the vendor's qualifications were considered before the negotiated amount was determined. GBB was determined to be the most qualified vendor to negotiate pricing with. There were no non-responsible vendors. If this study is not awarded, the funds will be used for other energy-related projects as required by the DOE.

Request For Qualifications Recap

CITY OF PLANO

**RFQ NO. 2010-228-B
RFQ for Waste-to-Fuel Study**

RFQ RECAP

RFQ opening Date/Time: January 10, 2011 @ 3:00 PM

Number of Vendors Notified: 7

Vendors Submitting "No Bids": 0

Qualification Statements Evaluated Non-Responsive to Specifications: 0

Number of Qualification Statements Submitted: 7

ARUP Texas, Inc.
Black & Veatch Corp.
CP & Y, Inc.
Gershman, Brickner, & Bratton, Inc.
Halcrow, Inc.
Houston Advanced Research Center (HARC)
Steans Conrad and Schmidt, Inc.

Recommended Vendor(s):

Gershman, Brickner & Bratton, Inc. \$ 210,000.00

Nancy Corwin

January 10, 2011

Nancy Corwin, Buyer



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		6/27/2011		
Department:		Purchasing		
Department Head		Diane Palmer-Boeck		
Agenda Coordinator (include phone #): Dianna Wike x7549				
CAPTION				
Bid No. 2011-165-B, for Liberty Rec Center Roof Replacement - Project No. 6108, to Roof Tex Inc., in the amount of \$287,250, and authorizing the City Manager to execute all necessary documents.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: 2010-11	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	22,785	396,000	0	418,785
Encumbered/Expended Amount	-22,785	-31,408	0	-54,193
This Item	0	-287,250	0	-287,250
BALANCE	0	77,342	0	77,342
FUND(s): CAPITAL RESERVE CIP				
COMMENTS: Funds are included in the FY 2010-11 Capital Reserve CIP. This item, in the amount of \$287,250 will leave a current year balance of \$77,342.				
STRATEGIC PLAN GOAL: Replacing the roof relates to the City's goal of Great Neighborhoods - 1st Choice to Live.				
SUMMARY OF ITEM				
Staff recommends bid of Roof Tex Inc., in the amount of \$287,250, be accepted as the lowest responsive, responsible bid, and conditioned upon timely execution of any necessary contract documents. This is for Liberty Rec Center Roof Replacement - Project No. 6108. Replacement is necessary due to the deteriorated condition of the existing roof.				
List of Supporting Documents: Memorandum Bid Recap			Other Departments, Boards, Commissions or Agencies	



Phil Dyer
Mayor

Pat Miner
Mayor Pro Tem

Lissa Smith
Deputy Mayor Pro Tem

Ben Harris
Place 2

André Davidson
Place 3

Jim Duggan
Place 5

Jean Callison
Place 7

Lee Dunlap
Place 8

Bruce D. Glasscock
City Manager

MEMORANDUM

DATE: June 3, 2011
TO: Dianna Wike, Buyer Supervisor
FROM: Richard Medlen, Facilities Maintenance Superintendent
SUBJECT: **2011-165-B Liberty Park Recreation Center
Roof Replacement - Project No. 6108**

I have reviewed the bids submitted for the replacement of the deteriorated roof at Liberty Recreation Center and recommend award to Roof Tex Inc. for \$ 287,250. They provided the lowest responsive responsible bid that also meets bid specifications. The funding for the project is in Capital Reserve account number 54479 and the bid amount is within the approved budget for the project. Please let me know if you have any questions.

Thanks

/lcp

Xc: Jim Razinha

CITY OF PLANO

Bid No. 2011-165-B

Liberty Rec Center Roof Replacement – Project 6108

Bid Recap

Bid opening Date/Time: May 9, 2011 @ 2:00 PM

Number of Vendors Notified: 457

Vendors Submitting “No Bids”: 0

Number of Bids Submitted: 8

Vendor Name	Base Bid
Roof Tex Inc	\$287,250.00
Roof Management Services, Inc.	\$312,704.00
Supreme Systems, Inc.	\$328,595.00
Paragon Roofing, Inc	\$336,000.00
Texas Roof Management, Inc.	\$340,448.00
CS Advantage USAA Inc.	\$350,000.00
Tice Enterprises, Ltd	\$372,000.00
K Post Company	\$409,564.00

Bids Evaluated Non-Responsive to Specification: 0

Recommended Vendor(s):

Roof Tex Inc

Heather Parkerson

Heather Parkerson, Buyer

May 9, 2011

Date



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY	
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory	
Council Meeting Date:	6/27/2011
Department:	Public Works
Department Head	Gerald Cosgrove
Agenda Coordinator (include phone #): Irene Pegues (7198) Project No. 5928	

CAPTION

To approve an Engineering Services Agreement by and between the City of Plano and Transystems Corporation in the amount of \$79,100 for the SH 289 at PGBT Intersection Improvements project and authorizing the City Manager to execute all necessary documents.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR: 2010-11	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	20,000	80,000	100,000
Encumbered/Expended Amount	0	0	0	0
This Item	0	-79,100	0	-79,100
BALANCE	0	-59,100	80,000	20,900

FUND(S): STREET IMPROVEMENT CIP

COMMENTS: Funds are included in the 2010-11 Street Improvement CIP. This item, in the amount of \$79,100, will be encumbered during the current fiscal year and carry forward into the cash allocations of FY 2011-12.

STRATEGIC PLAN GOAL: Intersection improvements relates to the City's Goal of Financially Strong City with Service Excellence.

SUMMARY OF ITEM

This agreement with Transystem Corporation is for schematic engineering design of improvements to the intersection between SH 289 and President George Bush Tollway (PGBT). This project includes the evaluation of potential improvements to the intersection by adding an additional left turn lane that will convey traffic from southbound SH 289 to eastbound PGBT and adding a right turn lane that will convey traffic from southbound SH 289 to westbound PGBT. This project represents the first step in that process and consists of preparation of a schematic engineering design which will be based upon aerial mapping. The project will include evaluating a maximum of two (2) alternative alignments, including the preparation of a preliminary estimate of probable cost. The contract fee of \$79,100.00 is detailed as follows:

Preliminary Surveying	\$8,735.00
Evaluate Existing Railroad Bridge	\$9,660.00
Schematic Design	\$51,335.00
Coordination with Governing Agencies	\$8,520.00
Reimbursable Expenditures	\$850.00
TOTAL	\$79,100.00



CITY OF PLANO COUNCIL AGENDA ITEM

Funding is available from the 2010-11 Street Improvement Community Investment Program. Staff feels the fee is reasonable for the project.

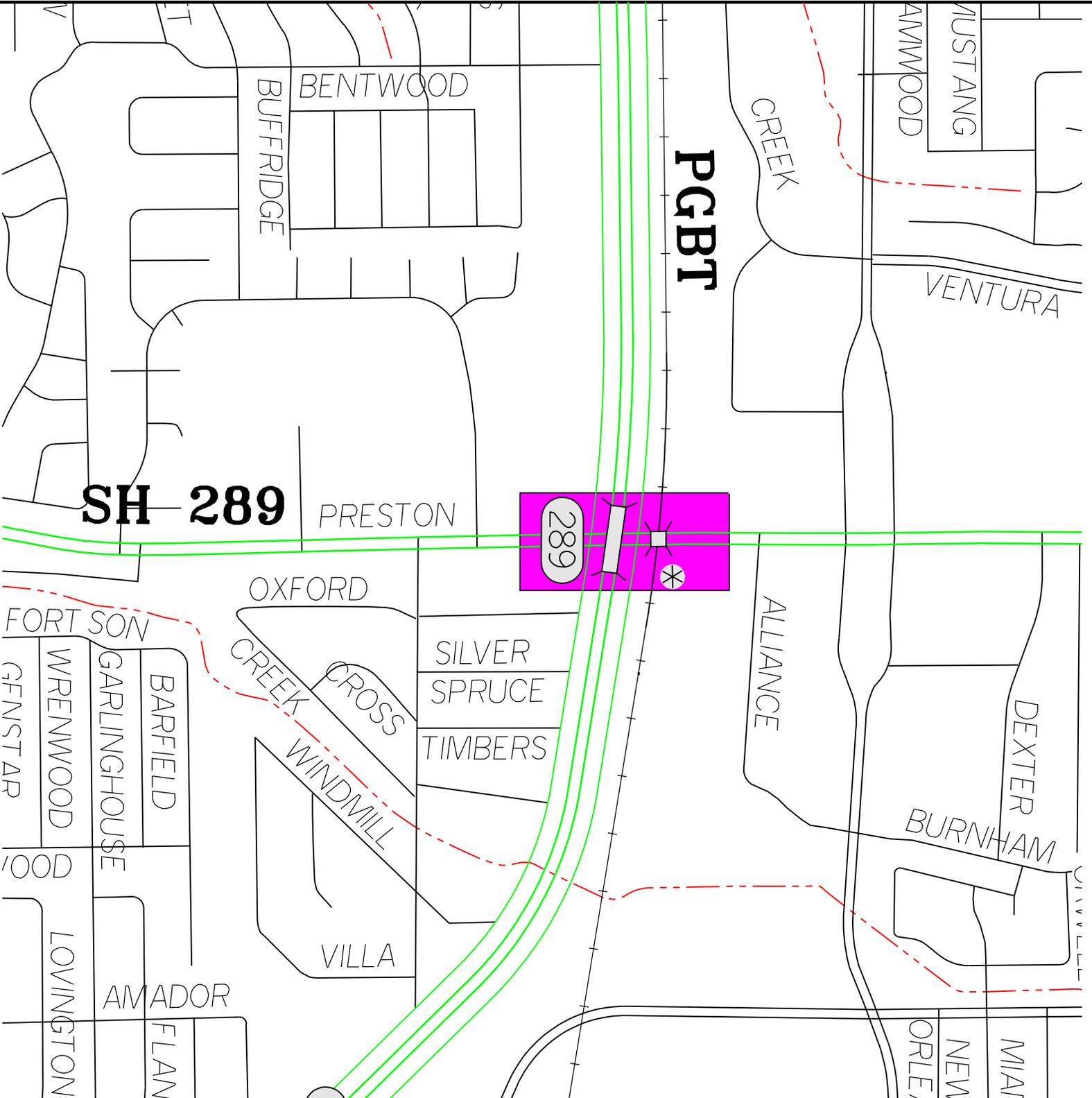
List of Supporting Documents:

Other Departments, Boards, Commissions or Agencies

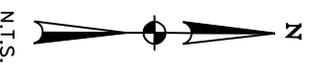
Location Map; Engineering Services Agreement

None

SH 289 AT PGBT INTERSECTION IMPROVEMENTS



CITY OF PLANO PROJECT NO. 5928



SH 289 AT PGBT INTERSECTION IMPROVEMENTS

PROJECT NO. 5928

ENGINEERING SERVICES AGREEMENT

THIS AGREEMENT is made and entered by and between the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, hereinafter referred to as "City", and **TRANSYSTEMS CORPORATION DBA TRANSYSTEMS CORPORATION CONSULTANTS**, a **MISSOURI** Corporation, licensed to do business in the State of Texas, hereinafter referred to as "Engineer", to be effective from and after the date as provided herein.

WITNESSETH:

WHEREAS, the City desires to engage the services of the Engineer to prepare construction plans, specifications, details and special provisions and to perform other related engineering services in connection with the **SH 289 AT PGBT INTERSECTION IMPROVEMENTS** project located in the City of Plano, Collin County, Texas, hereinafter referred to as the "Project"; and

WHEREAS, the Engineer desires to render such engineering services for the City upon the terms and conditions provided herein.

NOW, THEREFORE, for and in consideration of the covenants contained herein, and for the mutual benefits to be obtained hereby, the parties hereto agree as follows:

I. Employment of the Engineer

The City hereby agrees to retain the Engineer to perform professional engineering services in connection with the Project. Engineer agrees to perform such services in accordance with the terms and conditions of this Agreement.

II. Scope of Services

The parties agree that Engineer shall perform such services as are set forth and described in Exhibit "A", which is attached hereto and thereby made a part of this Agreement. The parties understand and agree that deviations or modifications in the form of written contract modifications may be authorized from time to time by the City.

III. Schedule of Work

The Engineer agrees to commence work immediately upon execution of this Agreement, and to proceed diligently with said work, except for delays beyond the reasonable control of Engineer, to completion as described in the Completion Schedule, attached hereto as Exhibit "B" and thereby made a part of this Agreement.

IV. Compensation and Method of Payment

The parties agree that Engineer shall be compensated for all services provided pursuant to this Agreement in the amount and manner described and set forth in the Payment Schedule attached hereto and incorporated herein as Exhibit "C". The contract amount specified in Exhibit "C" shall not be exceeded without the written permission of the City.

V. Information to be Provided by the City

The City agrees to furnish, prior to commencement of work, all that information requested by Engineer and available in City's files.

VI. Insurance

Engineer agrees to meet all insurance requirements, and to require all consultants who perform work for Engineer to meet all insurance requirements, as set forth on Exhibit "D", which is attached hereto and thereby made a part of this Agreement.

Engineer agrees to notify the City of any changes in insurance policy coverage, including but not limited to changes in limits and cancellation. The Engineer shall notify the City in writing of any changes within forty-eight (48) hours of the change. The Engineer's notice shall include a description of the changes and how those changes vary from the insurance requirements of the contract/agreement.

VII. INDEMNITY

THE ENGINEER AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY ENGINEER'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY

NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE ENGINEER, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE ENGINEER IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE ENGINEERS. THE CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

ENGINEER AT ITS OWN EXPENSE IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF ENGINEER'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF ENGINEER'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. ENGINEER SHALL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF ENGINEER FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND ENGINEER SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY.

VIII. Independent Contractor

Engineer covenants and agrees that Engineer is an independent contractor and not an officer, agent, servant or employee of City; that Engineer shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between City and Engineer, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Engineer.

IX. Assignment and Subletting

The Engineer agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of the City. The Engineer further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the Engineer from its full obligations to the City as provided by this Agreement.

X. Audits and Records/Prohibited Interest

The Engineer agrees that at any time during normal business hours and as often as City may deem necessary, Engineer shall make available to representatives of the City for examination all of its records with respect to all matters covered by this Agreement, and will permit such representatives of the City to audit, examine, copy and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement, all for a period of one (1) year from the date of final settlement of this Agreement or for such other or longer period, if any, as may be required by applicable statute or other lawful requirement.

The Engineer agrees that it is aware of the prohibited interest requirements of the City Charter and Code of Conduct and will abide by the same. Further, a lawful representative of Engineer shall execute the affidavit shown in Exhibit "E". Engineer understands and agrees that the existence of a prohibited interest during the term of this contract will render the contract voidable.

XI. Contract Termination

The parties agree that City shall have the right to terminate this Agreement with or without cause upon thirty (30) days written notice to Engineer. In the event of such termination, Engineer shall deliver to City all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items prepared by Engineer in connection with this Agreement. Engineer shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to termination.

XII. Engineer's Opinion of Probable Construction Costs

The parties recognize and agree that any and all opinions of probable construction costs prepared by Engineer in connection with the Project represent the best judgment of Engineer as a design professional familiar with the construction industry, but that the Engineer does not guarantee that any bids solicited or received in connection with the Project will not vary from opinions prepared by Engineer.

XIII. Ownership of Documents

Original drawings and specifications are the property of the Engineer; however, the Project is the property of the City and Engineer may not use the drawings and specifications therefor for any purpose not relating to the Project without City's consent. City shall be furnished with such reproductions of drawings and specifications as City may reasonably require. Upon completion of the work or any earlier termination of this Agreement under Article XI, Engineer will revise drawings to reflect changes made during construction and he will promptly furnish the City with one (1) complete set of reproducible record prints. Prints shall be furnished, as an additional service, at any other time requested by City. All such reproductions shall be the property of the City who may use them without Engineer's permission for any proper purpose including, but not limited to, additions to or completion of the Project. However, use of the documents for other than their intended purpose shall be at the sole risk of the City.

XIV. Complete Contract

This Agreement, including the Exhibits lettered "A" through "E", constitute the entire agreement by and between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous written or oral understandings. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument.

XV. Mailing of Notices

Unless instructed otherwise in writing, Engineer agrees that all notices or communications to City permitted or required under this Agreement shall be addressed to City at the following address:

City of Plano
Public Works Department – Suite 250
P.O. Box 860358
Plano, TX 75086-0358
Attn: Tom Barone

City agrees that all notices or communications to Engineer permitted or required under this Agreement shall be addressed to Engineer at the following address:

TranSystems Corporation DBA
TranSystems Corporation Consultants
3030 LBJ Freeway, Suite 900
Dallas, TX 75234
Attn: Garry Kraus

All notices or communications required to be given in writing by one party or the other shall be considered as having been given to the addressee on the date such notice or communication is posted by the sending party.

XVI. Miscellaneous

A. Paragraph Headings:

The paragraph headings contained herein are for convenience only and are not intended to define or limit the scope of any provision in this Agreement.

B. Contract Interpretation:

Although this Agreement is drafted by the City, should any part be in dispute, the parties agree that the Agreement shall not be construed more favorably for either party.

C. Venue/Governing Law:

The parties agree that the laws of the State of Texas shall govern this Agreement, and that it is performable in Collin County, Texas. Exclusive venue shall lie in Collin County, Texas.

D. Successors and Assigns:

City and Engineer, and their partners, successors, subcontractors, executors, legal representatives, and administrators are hereby bound to the terms and conditions of this Agreement.

E. Severability:

In the event a term, condition, or provision of this Agreement is determined to be void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect.

F. Effective Date:

This Agreement shall be effective from and after execution by both parties hereto.

G. Authority to Sign:

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto.

SIGNED on the date indicated below.

**TRANSYSTEMS CORPORATION DBA
TRANSYSTEMS CORPORATION
CONSULTANTS**

A Missouri Corporation licensed to do
business in the State of Texas

DATE: _____

BY: _____
Garry Kraus
VICE PRESIDENT

CITY OF PLANO, TEXAS

DATE: _____

BY: _____
Bruce D. Glasscock
CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee
CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS §
§
COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of _____, 2011, by **GARRY KRAUS, VICE PRESIDENT**, of **TRANSYSTEMS CORPORATION DBA TRANSYSTEMS CORPORATION CONSULTANTS**, a **MISSOURI** corporation licensed to do business in Texas, on behalf of said corporation.

Notary Public, State of Texas

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2011, by **BRUCE D. GLASSCOCK, CITY MANAGER**, of the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

Notary Public, State of Texas

**EXHIBIT A
SCOPE OF SERVICES**

**SH 289 AT PGBT
INTERSECTION IMPROVEMENTS**

PROJECT DESCRIPTION:

The city of Plano proposes to initiate improvements at the SH 289/PGBT intersection. These improvements are to generally consist of adding an additional left turn lane from southbound SH 289 to eastbound PGBT and adding a right turn lane on southbound SH 289 from north of the railroad tracks to westbound PGBT. This project represents the first step in that process and consists of preparation of a schematic based upon aerial mapping, property ownership and right of way mapping based on records. It will include coordination with appropriate stakeholders, and utility research. In addition to the schematic, a cost estimate will be prepared.

SURVEYS:

Complete an aerial mapping of the project area which generally consists of a 300 feet wide strip extending from Alliance Blvd on the north to approximately 200 feet south of the PGBT/SH 289 ramps on the south side of the intersection. Complete property ownership and right of way research based upon records search only for this project area.

BASIC DESIGN SERVICES –

A. Schematic Design

Prepare a base map from the survey investigations. Complete a schematic of the proposed improvements including horizontal geometrics. Evaluate up to 2 alternative alignments and determine preliminary right of way requirements. Review findings with the city of Plano and revise based upon comments. Submit five (5) copies of the schematic. Prepare a report of findings.

Schematic shall include the following:

1. General project information including project limits, design speed, and functional classification.
2. Existing and proposed profiles and horizontal alignments of roadway.
3. An explanation of the sequence and methods of construction.
4. The tentative right of way limits.
5. Bridge and bridge class culverts alignment; type of structure; and structure lengths shall be shown.
6. The geometrics (pavement cross slope, super-elevation, lane and shoulder widths, slope ratio for fills and cuts) of the typical sections of the proposed roadway.
7. The existing and proposed traffic volumes (Based on traffic counts provided by Plano)
8. The direction of traffic flow
9. Design speed.
10. Existing structures to be removed.

11. Develop right-of-way requirements
12. Typical Sections
13. Prepare cost estimates

B. Stakeholder Coordination

Meet and coordinate with TxDOT, NTTA, city of Dallas, KCS Railroad, and Utility Companies regarding the proposed project. Review the schematic with these entities in arriving at a final schematic alignment for improvements.

C. Utility Research

Complete a Level D subsurface utility investigation to include Records Research: contacting utility owners, collecting records, site recon, scanning/compiling records.
Prepare a SUE CADD file compiling utility information, within the project limits, into a single CADD file that can be overlaid on the site topo.

D. Bridge Analysis/Layout

Based upon existing plans and field observations, evaluate vertical clearance issues related to the bridge.
Based upon existing topographic information, the aerial imagery and the schematic design prepare a conceptual bridge layout with horizontal and vertical geometry .

E. Opinions of Probable Construction Costs

Prepare an Opinion of Probable Cost for the projects

F. Deliverables

- Schematic plan (1"=50')
- Preliminary plan of construction costs
- Identification of ROW requirements
- Level 'D' SUE analysis and CADD file
- Conceptual Bridge Layout

ASSUMPTIONS

- No field surveys will be completed
- No environmental assessments are included,
- City of Plano to supply traffic counts
- ROW mapping will be based upon records, not field surveys.
- No topography or vertical grades are to be determined
- No public involvement is included
- No final bridge layouts or structural analysis is included
- No railroad exhibits are included
- No approval / permitting by the city of Dallas or TxDOT will be obtained
- No traffic projections or traffic analysis is included

**CITY OF PLANO
SH 289 at PGBT
EXHIBIT B**

Activity	Duration (Working days)
Notice to Proceed	1
Surveys	15
Schematic Plan Preparation	45
City Review	5
Bridge Analysis/Layout	10
Stakeholder Coordination	30 (Concurrent with Schemati c)
City Review	5
Cost Estimate	5

A working day is defined as Monday through Friday, excluding City of Plano Holidays.

**CITY OF PLANO
SH 289 at PGBT
EXHIBIT C**

Project: SH 289 at PGBT									
Design Services									
WORK TASK DESCRIPTION	HOURLY RATE WORK								Total Cost Estimate (\$)
	Estimated Manhours								
	Project Manager 185.00	Senior Traffic Eng 180.00	Senior Engr. 150.00	Design Engr. 130.00	RPLS 115.00	Tech 85.00	Survey Crew 120.00	Clerical 50.00	
Surveys									
Property Ownership					4	8		4	1,340.00
Right-of-Way Mapping (based on Records only)					3	12			1,365.00
Aerial Mapping support					2	2	10		1,600.00
Aerial Mapping (no topography) Performed by Sub-consultant - ADS									4,430.00
							Total Survey		8,735.00
Basic Design Services									
Bridge Design / Layout - Not a final layout for approval									
Review vertical clearances	2			8				1	1,460.00
Prepare Layout with Horizontal Geom & Vertical Profile	18			24		20		1	8,200.00
							sub-total		9,660.00
Schematic									
Meetings	20		20					6	7,000.00
Research and Data Collection						16		4	1,560.00
Utility Research (level D-record search) Performed by Sub-consultant - Gorrondonna and Associates									5,850.00
Base map for schematic	2		4			40			4,370.00
Horizontal Geometrics	12		28			24			8,460.00
Alternatives	12		28			24			8,460.00
Preliminary ROW requirements	1		6			6			1,595.00
Comments and Revisions	12		24			40		4	9,420.00
Opinion of Probable Cost	12		16						4,620.00
							sub-total		51,335.00
Stakeholder coordination									
TxDOT	8		4					1	2,130.00
Railroad	8		4					1	2,130.00
Dallas	8		4					1	2,130.00
NTTA	8		4					1	2,130.00
							sub-total		8,520.00
							Total Basic Services		69,515.00
Other Services									
Traffic counts (by City)									
Reimbursables									250.00
Printing									100.00
Mileage									500.00
Mounted Exhibit									850.00
							sub-total		850.00
							Total Other Services		850.00
							TOTAL PROJECT		\$ 79,100.00

EXHIBIT "D"
ENGINEERING
INSURANCE

INSURANCE: (Review this section carefully with your insurance agent prior to bid or proposal submission. See "Insurance Checklist" on the last page or specific coverages applicable to this contract).

1. General Insurance Requirements:

- 1.1 The Engineer (hereinafter called "Engineer") shall not start work under this contract until the Engineer has obtained at his own expense all of the insurance called for here under and such insurance has been approved by the City. Approval of insurance required of the Engineer will be granted only after submission to the Purchasing Agent of original, signed certificates of insurance or, alternately, at the City's request, certified copies of the required insurance policies.
- 1.2 All insurance policies required hereunder shall be endorsed to include the following provision: "It is agreed that this policy is not subject to cancellation, non-renewal, without first providing the Risk Manager, City of Plano, at least ten (10) days prior written notice."

NOTE: The words "endeavor to" and "but failure to mail such notice shall impose no obligation to liability of any kind upon the company, its agents or representatives" are to be eliminated from the cancellation provision of standard ACORD certificates of insurance.

- 1.3 No acceptance and/or approval of any insurance by the City shall be construed as relieving or excusing the Engineer from any liability or obligation imposed upon the provisions of the Contract.
- 1.4 The City of Plano (including its elected and appointed officials, agents, volunteers, and employees) is to be named as an additional insured under Engineer's General Liability Policy, and the certificate of insurance, or the certified policy, if requested, must so state. Coverage afforded under this paragraph shall be primary as respects the City, its elected and appointed officials, agents and employees.
 - 1.4.1 The following definition of the term "City" applies to all policies issued under the contract:

The City Council of the City of Plano and any affiliated or subsidiary Board, Commission Authority, Committee, or Independent Agency (including those newly constituted), provided that such affiliated or subsidiary Board Commission, Authority, Committee, or Independent Agency is either a Body Politic created by the City Council of the City of Plano, or one in which controlling interest is vested in the City of Plano; and City of Plano Constitutional Officers.
- 1.5 The Engineer shall provide insurance as specified in the "Insurance Checklist" (Checklist) found on the last page of the bid or proposal form. Full limits of insurance required in the Checklist of this agreement shall be available for claims arising out of this agreement with the City of Plano.

- 1.6 Engineer agrees to defend and indemnify the City of Plano, its officers, agents and employees as provided in Paragraph VII. of this contract.
- 1.7 Insurance coverage required in these specifications shall be in force throughout the Contract Term. Should the Engineer fail to provide acceptable evidence of current insurance within seven (7) days of written notice at any time during the Contract Term, the City shall have the absolute right to terminate the Contract without any further obligation to the Engineer, and the Engineer shall be liable to the City for the entire additional cost of procuring performance and the cost of performing the incomplete portion of the Contract at time of termination.
- 1.8 Written requests for consideration of alternate coverages must be received by the City Purchasing Manager at least ten (10) working days prior to the date set for receipt of bids or proposals. If the City denies the request for alternative coverages, the specified coverages will be required to be submitted.
- 1.9 All required insurance coverages must be acquired from insurers authorized to do business in the State of Texas and acceptable to the City. The City prefers that all insurers also have a policyholder's rating of "A-" or better, and a financial size of "Class VI" or better in the latest edition of A.M. Best, or A or better by Standard and Poors, unless the City grants specific approval for an exception.
- 1.10 Any deductibles shall be disclosed in the Checklist and all deductibles will be assumed by the Engineer. Engineer may be required to provide proof of financial ability to cover deductibles, or may be required to post a bond to cover deductibles.

2. Engineer's Insurance - "Occurrence" Basis:

- 2.1 The Engineer shall purchase the following insurance coverages, including the terms, provisions and limits shown in the Checklist.
 - 2.1.1 Commercial General Liability - Such Commercial General Liability policy shall include any or all of the following as indicated on the Checklist:
 - i. General aggregate limit is to apply per project;
 - ii. Premises/Operations;
 - iii. Actions of Independent Contractors;
 - iv. Contractual Liability including protection for the Engineer from claims arising out of liability assumed under this contract;
 - v. Personal Injury Liability including coverage for offenses related to employment;
 - vi. Explosion, Collapse, or Underground (XCU) hazards; if applicable. This coverage required for any and all work involving drilling, excavation, etc.
 - 2.1.2 Business Automobile Liability including coverage for any owned, hired, or non-owned motor vehicles and automobile contractual liability.

- 2.1.3 Workers' Compensation - statutory benefits as required by the State of Texas, or other laws as required by labor union agreements, including Employers' Liability coverage.

3.0 Engineer's Insurance – Claims Made

Professional Errors and Omissions

The Engineer shall carry Professional Liability insurance which will pay for injuries arising out of negligent errors or omissions in the rendering, or failure to render professional services under the contract, for the term of the Contract and up to three years after the contract is completed in the amount shown in the Checklist.

Professional Errors and Omissions, Limit \$1,000,000
per claim and aggregate of \$2,000,000

ENGINEERING

City of Plano - Insurance Checklist

("X" means the coverage is required.)

Coverages Required

Limits (Figures Denote Minimums)

<input checked="" type="checkbox"/> 1. Workers' Compensation & Employers' Liability	Statutory limits of State of Texas \$100,000 accident \$100,000 disease \$500,000 policy limit disease
<input type="checkbox"/> 2. For Future Use	
<input type="checkbox"/> 3. City Approved Alternative Workers' Comp. Program	\$150,000 medical, safety program
<input checked="" type="checkbox"/> 4. General Liability	Complete entry No. 26 Minimum \$500,000 each occurrence \$1,000,000 general aggregate
<input checked="" type="checkbox"/> 5. General aggregate applies per project (CGL)	
<input checked="" type="checkbox"/> 6. Premises/Operations	(Items No. 3-10 & 12 require)
<input checked="" type="checkbox"/> 7. Independent Contractors	<u>\$500,000</u> combined single limit for bodily injury and property damage
<input type="checkbox"/> 8. Products	damage each occurrence with
<input type="checkbox"/> 9. Completed Operations	\$1,000,000 general aggregate that applies to project under contract
<input checked="" type="checkbox"/> 10. Contractual Liability	
<input checked="" type="checkbox"/> 11. Personal Injury Liability	\$500,000 each offense & aggregate
<input type="checkbox"/> 12. XCU Coverages	
<input checked="" type="checkbox"/> 13. Automobile Liability	\$500,000 Bodily Injury & Property
<input checked="" type="checkbox"/> 14. Owned, Hired & Non-owned	Damage each accident
<input type="checkbox"/> 15. Motor Carrier Act Endorsement	
<input checked="" type="checkbox"/> 16. Professional Liability	\$1,000,000 each claim \$2,000,000 aggregate
<input type="checkbox"/> 17. Garage Liability	\$_____ BI & PD each occurrence

EXHIBIT "E"

AFFIDAVIT OF NO PROHIBITED INTEREST

I, the undersigned declare that I am authorized to make this statement on behalf of TransSystems Corporation DBA TranSystems Corporation Consultants and I have made a reasonable inquiry and, to the best of my knowledge, no person or officer of TranSystems Corporation DBA TranSystems Corporation Consultants is employed by the City of Plano or is an elected or appointed official of the City of Plano within the restrictions of the Plano City Charter.

I am aware that Section 11.02 of the City Charter states:

“No officer or employee of the city shall have a financial interest, direct or indirect, in any contract with the city, nor shall be financially interested, directly or indirectly, in the sale to the city of any land, or rights or interest in any land, materials, supplies or service. The above provision shall not apply where the interest is represented by ownership of stock in a corporation involved, provided such stock ownership amounts to less than one (1) per cent of the corporation stock. Any violation of this section shall constitute malfeasance in office, and any officer or employee of the city found guilty thereof shall thereby forfeit his office or position. Any violation of this section with the knowledge, express or implied, of the persons or corporation contracting with the city shall render the contract voidable by the city manager or the city council.”

I further understand and acknowledge that a violation of Section 11.02 of the City Charter at anytime during the term of this contract will render the contract voidable by the City.

Name of Contractor

By: _____
Signature

Print Name

Title

Date

STATE OF TEXAS §
§
COUNTY OF DALLAS §

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2011.

Notary Public, State of Texas



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY	
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory	
Council Meeting Date:	06/27/2011
Department:	Public Works
Department Head:	Gerald P. Cosgrove
Agenda Coordinator (include phone #): Irene Pegues (7198)	
Project No. 6000.1	

CAPTION

To approve an engineering services agreement by and between the City of Plano and Burgess & Niple, Inc. in the amount of \$137,720 for Pittman Creek Basin I/I Evaluation Basins 01,7N,7S,10 &12 and authorizing the City Manager to execute all necessary documents.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR: 2010-11	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	301,000	0	301,000
Encumbered/Expended Amount	0	-162,485	0	-162,485
This Item	0	-137,720	0	-137,720
BALANCE	0	795	0	795

FUND(S): SEWER CIP

COMMENTS: Funds are included in the 2010-11 Sewer CIP. This item, in the amount of \$137,720, will leave a current year balance of \$795 for the Pittman Creek Basin I/I Evaluation project.

STRATEGIC PLAN GOAL: Sanitary sewer evaluation survey and study of inflow/infiltration in Pittman Creek Basin relates to the City's Goal of Financially Strong City with Service Excellence.

SUMMARY OF ITEM

This agreement with Burgess & Niple, Inc. is for a sanitary sewer evaluation survey and study of Inflow/Infiltration in Pittman Creek Basin. The evaluation and study will be conducted on five basins that were found to be the worst cases of infiltration during a previous evaluation of this basin. The purpose of this project is to investigate the source of infiltration and inflow storm water into sewer lines.

The contract fee is for \$137,720.00 and is detailed as follows:

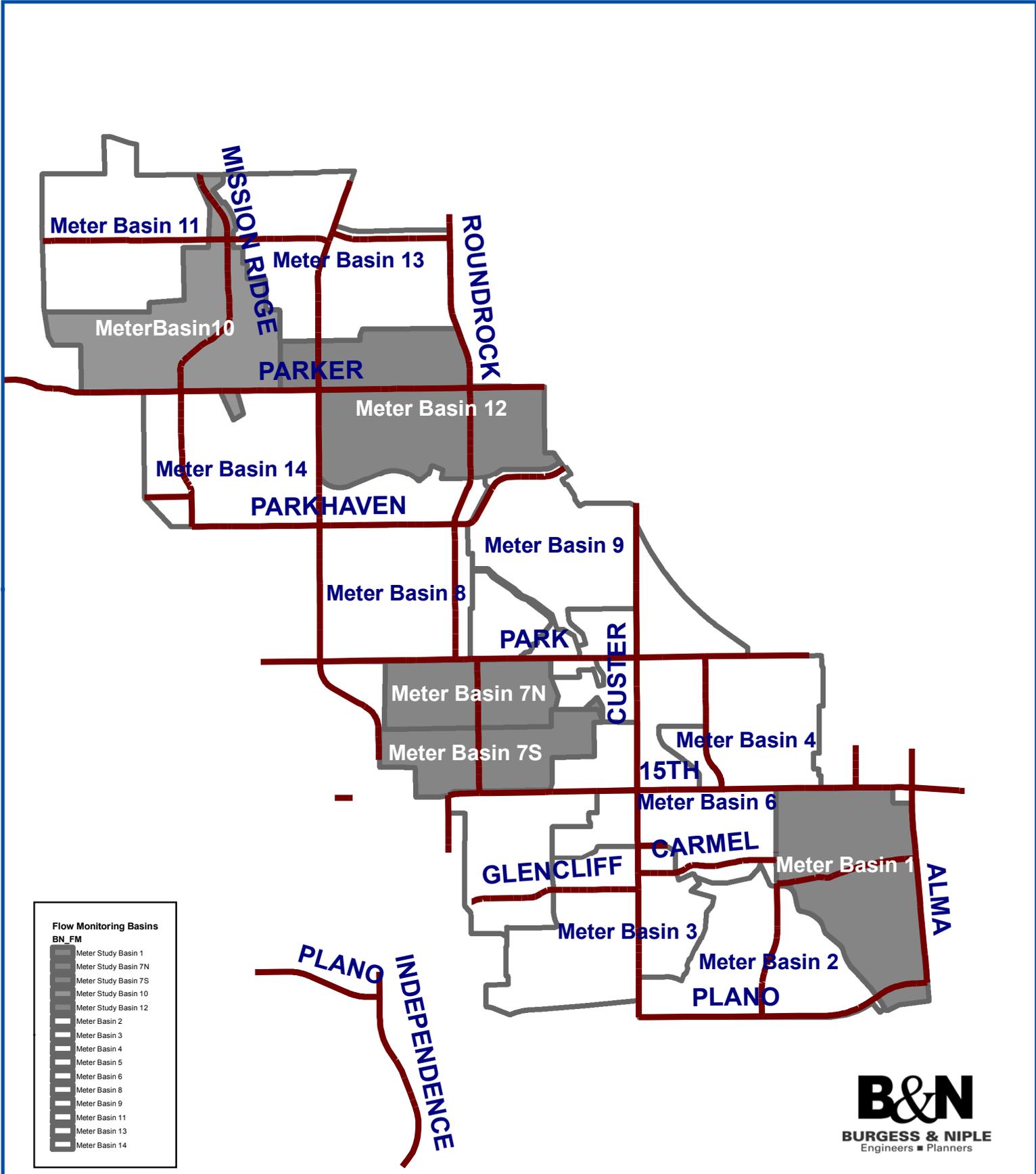
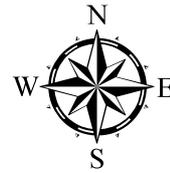
Smoke Testing	\$44,250.00
Dyed Water Flooding/Leak Quantification & Evaluation	\$3,600.00
Nigh Flow Isolation & Video I/I Documentation	\$9,450.00
Flushing and Stringing Sewer Lines for Electro-Scan Testing	\$14,760.00
Sewer Electro-Scan Leak Testing of Sewer Lines 12 inches and Smaller	\$19,665.00
Sewer Electro-Scan Leak Testing of Sewer Lines 15 – 21 inches	\$1,500.00
Sewer Electro-Scan Leak Testing of Sewer Lines 24 – 33 inches	\$5,655.00
Project Administration and Management, Supervision & QA/QC	\$14,890.00



CITY OF PLANO COUNCIL AGENDA ITEM

Data Evaluation, Analysis and Report	\$23,950.00
TOTAL	<u>\$137,720.00</u>
Funding is available from the Sewer Community Investment Program.	
List of Supporting Documents: Location Map; Engineering Services Agreement	Other Departments, Boards, Commissions or Agencies N/A

**Pittman Creek Project #
6000.1 Evaluation Basins
FM-01, FM-7N, FM-7S,
FM-10 and FM-12**



Flow Monitoring Basins
BN_FM

■	Meter Study Basin 1
■	Meter Study Basin 7N
■	Meter Study Basin 7S
■	Meter Study Basin 10
■	Meter Study Basin 12
■	Meter Basin 2
■	Meter Basin 3
■	Meter Basin 4
■	Meter Basin 5
■	Meter Basin 6
■	Meter Basin 8
■	Meter Basin 9
■	Meter Basin 11
■	Meter Basin 13
■	Meter Basin 14

**PITTMAN CREEK BASIN I/I EVALUATION BASINS 01, 7N, 7S, 10 AND 12
PROJECT NO. 6000.1**

ENGINEERING SERVICES AGREEMENT

THIS AGREEMENT is made and entered by and between the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, hereinafter referred to as "City", and **BURGESS & NIPLE, INC.**, an **OHIO** Corporation, licensed to do business in the State of Texas, hereinafter referred to as "Engineer", to be effective from and after the date as provided herein.

WITNESSETH:

WHEREAS, the City desires to engage the services of the Engineer to prepare construction plans, specifications, details and special provisions and to perform other related engineering services in connection with the **PITTMAN CREEK BASIN I/I EVALUATION BASINS 01, 7N, 7S, 10 AND 12** project located in the City of Plano, Collin County, Texas, hereinafter referred to as the "Project"; and

WHEREAS, the Engineer desires to render such engineering services for the City upon the terms and conditions provided herein.

NOW, THEREFORE, for and in consideration of the covenants contained herein, and for the mutual benefits to be obtained hereby, the parties hereto agree as follows:

I. Employment of the Engineer

The City hereby agrees to retain the Engineer to perform professional engineering services in connection with the Project. Engineer agrees to perform such services in accordance with the terms and conditions of this Agreement.

II. Scope of Services

The parties agree that Engineer shall perform such services as are set forth and described in Exhibit "A", which is attached hereto and thereby made a part of this Agreement. The parties understand and agree that deviations or modifications in the form of written contract modifications may be authorized from time to time by the City.

III. Schedule of Work

The Engineer agrees to commence work immediately upon execution of this Agreement, and to proceed diligently with said work, except for delays beyond the reasonable control of Engineer, to completion as described in the Completion Schedule, attached hereto as Exhibit "B" and thereby made a part of this Agreement.

IV. Compensation and Method of Payment

The parties agree that Engineer shall be compensated for all services provided pursuant to this Agreement in the amount and manner described and set forth in the Payment Schedule attached hereto and incorporated herein as Exhibit "C". The contract amount specified in Exhibit "C" shall not be exceeded without the written permission of the City.

V. Information to be Provided by the City

The City agrees to furnish, prior to commencement of work, all that information requested by Engineer and available in City's files.

VI. Insurance

Engineer agrees to meet all insurance requirements, and to require all consultants who perform work for Engineer to meet all insurance requirements, as set forth on Exhibit "D", which is attached hereto and thereby made a part of this Agreement.

Engineer agrees to notify the City of any changes in insurance policy coverage, including but not limited to changes in limits and cancellation. The Engineer shall notify the City in writing of any changes within forty-eight (48) hours of the change. The Engineer's notice shall include a description of the changes and how those changes vary from the insurance requirements of the contract/agreement.

VII. INDEMNITY

THE ENGINEER AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY ENGINEER'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY

NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE ENGINEER, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE ENGINEER IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE ENGINEERS. THE CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

ENGINEER AT ITS OWN EXPENSE IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF ENGINEER'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF ENGINEER'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. ENGINEER SHALL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF ENGINEER FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND ENGINEER SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY.

VIII. Independent Contractor

Engineer covenants and agrees that Engineer is an independent contractor and not an officer, agent, servant or employee of City; that Engineer shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between City and Engineer, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Engineer.

IX. Assignment and Subletting

The Engineer agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of the City. The Engineer further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the Engineer from its full obligations to the City as provided by this Agreement.

X. Audits and Records/Prohibited Interest

The Engineer agrees that at any time during normal business hours and as often as City may deem necessary, Engineer shall make available to representatives of the City for examination all of its records with respect to all matters covered by this Agreement, and will permit such representatives of the City to audit, examine, copy and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement, all for a period of one (1) year from the date of final settlement of this Agreement or for such other or longer period, if any, as may be required by applicable statute or other lawful requirement.

The Engineer agrees that it is aware of the prohibited interest requirements of the City Charter and Code of Conduct and will abide by the same. Further, a lawful representative of Engineer shall execute the affidavit shown in Exhibit "E". Engineer understands and agrees that the existence of a prohibited interest during the term of this contract will render the contract voidable.

XI. Contract Termination

The parties agree that City shall have the right to terminate this Agreement with or without cause upon thirty (30) days written notice to Engineer. In the event of such termination, Engineer shall deliver to City all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items prepared by Engineer in connection with this Agreement. Engineer shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to termination.

XII. Engineer's Opinion of Probable Construction Costs

The parties recognize and agree that any and all opinions of probable construction costs prepared by Engineer in connection with the Project represent the best judgment of Engineer as a design professional familiar with the construction industry, but that the Engineer does not guarantee that any bids solicited or received in connection with the Project will not vary from opinions prepared by Engineer.

XIII. Ownership of Documents

Original drawings and specifications are the property of the Engineer; however, the Project is the property of the City and Engineer may not use the drawings and specifications therefor for any purpose not relating to the Project without City's consent. City shall be furnished with such reproductions of drawings and specifications as City may reasonably require. Upon completion of the work or any earlier termination of this Agreement under Article XI, Engineer will revise drawings to reflect changes made during construction and he will promptly furnish the City with one (1) complete set of reproducible record prints. Prints shall be furnished, as an additional service, at any other time requested by City. All such reproductions shall be the property of the City who may use them without Engineer's permission for any proper purpose including, but not limited to, additions to or completion of the Project. However, use of the documents for other than their intended purpose shall be at the sole risk of the City.

XIV. Complete Contract

This Agreement, including the Exhibits lettered "A" through "E", constitute the entire agreement by and between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous written or oral understandings. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument.

XV. Mailing of Notices

Unless instructed otherwise in writing, Engineer agrees that all notices or communications to City permitted or required under this Agreement shall be addressed to City at the following address:

City of Plano
Public Works Department
P.O. Box 860358
Plano, TX 75086-0358
Attn:

City agrees that all notices or communications to Engineer permitted or required under this Agreement shall be addressed to Engineer at the following address:

Burgess & Niple, Inc.
1117 Shady Trail
Dallas, TX 75229
Attn: Charles Wilmut

All notices or communications required to be given in writing by one party or the other shall be considered as having been given to the addressee on the date such notice or communication is posted by the sending party.

XVI. Miscellaneous

A. Paragraph Headings:

The paragraph headings contained herein are for convenience only and are not intended to define or limit the scope of any provision in this Agreement.

B. Contract Interpretation:

Although this Agreement is drafted by the City, should any part be in dispute, the parties agree that the Agreement shall not be construed more favorably for either party.

C. Venue/Governing Law:

The parties agree that the laws of the State of Texas shall govern this Agreement, and that it is performable in Collin County, Texas. Exclusive venue shall lie in Collin County, Texas.

D. Successors and Assigns:

City and Engineer, and their partners, successors, subcontractors, executors, legal representatives, and administrators are hereby bound to the terms and conditions of this Agreement.

E. Severability:

In the event a term, condition, or provision of this Agreement is determined to be void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect.

F. Effective Date:

This Agreement shall be effective from and after execution by both parties hereto.

G. Authority to Sign:

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto.

SIGNED on the date indicated below.

BURGESS & NIPLE, INCL
An Ohio Corporation, licensed to do
business in the State of Texas

DATE: 06/13/2011

BY: Charles Wilmut
Charles Wilmut
VICE PRESIDENT

CITY OF PLANO, TEXAS

DATE: _____

BY: _____
Bruce D. Glasscock
CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee
CITY ATTORNEY

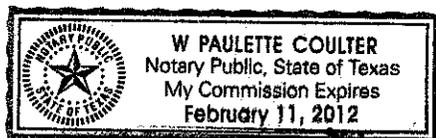
ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the 13th day of June, 2011, by **CHARLES WILMUT, VICE PRESIDENT**, of **BURGESS & NIPLE, INC.**, an **OHIO** corporation licensed to do business in the State of Texas, on behalf of said corporation.



Notary Public, State of Texas



STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2011, by **BRUCE D. GLASSCOCK, CITY MANAGER**, of the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

Notary Public, State of Texas

**EXHIBIT A
SCOPE OF SERVICES**

**PITTMAN CREEK BASIN I/I EVALUATION BASINS 01, 7N, 7S, 10 & 12
PROJECT NUMBER 6000.1
CIP NUMBER 34- 46614**

PROJECT DESCRIPTION

This project will consist of sewer system evaluation survey (SSES) for the Plano Pittman Creek basins FM-01, FM-7N, FM-7S, FM-10, and FM-12.

BASIC SERVICES

The investigation objectives and goals will be achieved through the performance of the following tasks.

Task 1 – Smoke Testing

Smoke will be introduced into the sewer system using a high capacity air blower testing two line segments at a time with partial plugging of 12 inch and smaller sewer lines. If smoke enters the building, flow through, mechanical or pneumatic plugs will be used on subsequent tests in the area to prevent reintroduction of smoke into the facility. The air blower will have a minimum capacity of 4,000 CFM. If any line segment is greater than 600 L.F. dual blowers will be used. Smoke testing will be performed under dry weather conditions to allow the maximum detection of inflow and rainfall responsive infiltration sources. The materials used for smoke testing shall be harmless to humans and domestic animals and relatively odorless. B&N will provide MSDS sheets on materials used.

This task, as described above, will be employed on the sewer lines within the study area. Above ground reconnaissance of the study area to determine proximity of storm sewers, creek crossings, drainage paths and ponding areas to the sanitary sewer system will be accomplished concurrently with smoke testing and the visual manhole/line inspection. Digital photographs and GPS shots of every smoke leak found will be taken and provided as a deliverable.

Smoke testing data collected in the field will include:

- Upstream/downstream manhole number
- Length of sewer line
- Ground cover over line segment
- Degree of smoke observed
- Leak drainage path/ponding area
- Storm sewer crossings or cross connections
- GPS shots of leaks
- Digital photographs of leaks
- Classifications of leaks as:
 - Main line
 - Manhole
 - Service line in public ROW
 - Service line on private property

The compensation for this task will be based on a “per linear foot” basis. Estimated length is approximately 122,929 linear feet that will be smoke tested.

Task 2 – Dyed Water Flooding/Leak Quantification and Evaluation

This task consists of pinpointing inflow sources and quantifying selected collection line, manhole and service line leaks that were identified from the results of other field tasks. Quantification estimates are based on field measurements and empirical values developed from past experience. Leak quantification will also be done by use of portable weirs or hydrostatic devices in conjunction with dye water flooding. This information is then used to evaluate I/I rates and compare to flow monitoring results to determine quantities of I/I. A portion of the dye flooding will be performed in conjunction with the internal (CCTV) inspection.

Approximately 18 collection line, manhole and service line leaks will require evaluation/quantification. The compensation for this task will be on a “per each” basis.

Task 3 – Flow Isolation and Time Lapse Video Recording of Rainfall Events

After meeting and discussion with the City, sub-basin will be divided into smaller areas (2,000-5,000 L.F.) and weir readings will be taken during minimum flow periods (11 p.m. – 6 a.m.) to determine if infiltration rates from groundwater require additional investigation.

Areas determined to require additional investigation will have weir readings taken using the City of Plano approved procedure to determine if infiltration rates from groundwater require further investigation.

The City approved procedure for manual night flow isolation is as follows:

- a. Check weir site and up-stream manhole for signs of active domestic or industrial waste, if there are no signs of active waste then dye should be introduced into the upstream manhole and all incoming lines should be plugged using pneumatic plugs.
- b. Once the dye has been observed at the weir site, the weir can be set. The weir is to remain in place until the flow has settled and a reading can be taken, (if any evidence of waste should show up while taking the reading then the weir and all plugs should be removed and the procedure should be restarted from the beginning.
- c. All readings should be taken in the manhole, unless alternative procedures are approved by the City.

We will install the time lapse video camera at a number of locations based on the results of previous task, to record rainfall event reactions with special attention to the trail-down indicative of rainfall dependent infiltration (RDI)

Approximately 54 tests are to be performed as required. The compensation for this task will be on a “per each” basis.

Task 4 – Preparatory Cleaning

This task will be performed by City Crews.

Approximately 12,300 linear feet (10%) of the sewer mains will be cleaned in preparation for internal inspection.

Task 5 – Closed Circuit Television (CCTV) Internal Inspection

This task will be performed by city crews to evaluate main line smoke leaks, storm sewer cross connections, and apparent infiltration leaks during high groundwater periods.

Approximately 12,300 linear feet (10%) of the sewer mains will be televised.

Task 6 – Flushing, Stringing and Flooding Sewer Lines for Electro-Scan Testing

This task consists of flushing sewer line and placing a string line through a section of sewer pipe from a manhole/co to another manhole/co for the purpose of pulling an Electro-Scan sonde and moving pipe plug through the sewer pipe. This task will be completed using either hydraulically or mechanically powered equipment specifically designed for this purpose. The hydraulically powered equipment may also be used for the placement of water upstream of the moving pipe plug and pulling the sonde through the pipe.

Approximately 24,600 linear feet (20%) of sewer mains will require flushing and stringing for Electro-Scan testing. The unit price for this task is established on a "Per Linear Foot" basis.

Task 7 – Sewer Electro-Scan Testing

Sewer Electro-Scan locates pipe defects and corrosion by measuring the electrical continuity of the pipe. Most sewer pipe materials are electrical insulators. A defect in the pipe that leaks water will also leak electrical current. For a constant applied voltage, the larger the defect means the greater the electric current that is displayed. This is also the case for water in that for given water pressure the larger the hole, the greater the I/I rate.

The Electro-Scan test is carried out by pulling a sonde, through the pipe and measuring the variation of electric current flow through the wall of the pipe. To obtain usable measurements the sonde is specially constructed so the electric current flows only through the pipe wall in a narrow band about an inch wide at the center of the sonde. The sonde also contains a microprocessor that controls the voltage, measures the electrical current flow, records the position of the sonde in the pipe, and transmits the data to the surface. The result, a trace of current versus distance, is displayed in real time on a notebook computer.

A computer program is used to grade the size and type of each leak, and structural anomalies, and graphically display the defect grade size, corrosion, type and frequency for each manhole-to-manhole pipe section. The Electro-Scan traces have a resolution of less than 0.1ft. This information can be readily used to qualitatively identify the corrosion problems, highest potential infiltration sections and assist with the selection of the most cost effective repair method.

This task, as described above, will be employed on the selected sewer lines within the study area.

Data collected in the field will include:

- Upstream/downstream manhole number
- Length of sewer line
- Manhole depths
- Pipe defect locations

- Classifications of defects as large, medium or small
- If CCTV inspection tapes are available, leaks can be classified as mainline, service tap or structural defect.

The compensation for this task will be on a "Per Linear Foot" basis. Approximately 24,600 linear feet (20%) of the sewer lines in study area will be electro-scanned and tested.

Task 8 – Project Administration and Management, Supervision & QA/QC

This task consists of supervision of field personnel, project administration and management, scheduling of field tasks, general management and supervision of field personnel, and quality assurance/control of field work and data management activities. Additionally, it will include:

1. Prepare agenda and attend a project start-up meeting.
2. Conduct general administration and periodic meetings as necessary with City's staff.
3. Prepare monthly status reports of progress.
4. Perform internal project control procedures on a monthly basis including schedule, budget, and quality control review.
5. If a sub-contractor is used, a representative of B&N is to be present at all times that work is being performed by the sub-contractors (no sub-contractors are planned at this time).
6. Public Relations
 - a. The City will provide B&N with a sample notice.
 - b. B&N will prepare and deliver notices necessary for the performance of smoke testing. Every reasonable effort will be made to distribute notices two (2) days prior to smoke testing, however, the City will allow B&N to distribute notices up to a minimum of one day in advance of smoke testing. If redistribution of smoke notices is required, testing may be performed within one (1) day of noticing.
 - c. B&N will fax daily information on smoke testing locations to the numbers specified by the City of Plano Engineering Project Manager. This would normally include the Engineering, Fire, and Police Departments and should result in notification of all entities that normally handle emergency calls from the public including 911 operators.

The compensation for this task will be on a "lump sum" basis.

Task 9 – Data Evaluation, Analysis, and Report

This task consists of evaluating and analyzing the data collected during smoke testing, reviewing Electro Scan data, run logs and electronic copies of the CCTV inspection (provided by city crews) and presenting the results in the form of a report. **Three (3) copies of the draft report** will be prepared for submittal to the City for review and comments including the following:

- a. Printouts of problems listed by priorities (rehabilitation ranked by cost effectiveness to eliminate I/I).

- b. Listing of structural and maintenance problems.
- c. Recommended rehabilitation work grouped and tabulated in three (3) major categories: collection lines; manholes, and; service lines. Service lines will be further categorized as work on public and private property. The tables will include estimated rehab costs and will provide information to facilitate the rehabilitation work by city crews or through the design/bid/build process.

B&N will coordinate with the City of Plano GIS department to ensure data compatibility.

Three (3) copies of the Final Report incorporating the City's comments from the review of the draft report will be furnished. One original copy of the field reports with photographs of the smoke leaks along with electronic recordings of the television inspection of sewer lines (provided by city crews) will also be provided with the final report. An electronic copy (i.e. CD-ROM) of the Final Report, with all B&N field data input into a Microsoft Access Database, will be included in Microsoft Office 2007 format. Sketches will be prepared showing any print corrections identified during the field work. New structures will be identified by the upstream manhole number with an alpha character identifier (A, B, C, etc.,) and a GPS shot. Updated graphical/mapping files will be furnished in the same format as provided by the City at the start of the project.

The compensation for this task will be on a "lump sum" basis.

INFORMATION AND SERVICES TO BE PROVIDED BY THE CITY OF PLANO.

The City shall provide the following information and services:

1. One GIS coverage of the existing sewer system showing sewer lines and manholes with ID numbers, streets, landbase information.
2. Liaison with City officials to provide effective coordination and cooperation between the fire, police, utility departments and the Engineer, as necessary during execution of field.
3. Access to manholes and lift stations.
4. Assistance by City personnel, knowledgeable of manhole and cleanout locations, in locating buried or hidden manholes or cleanouts.
5. Expose for entry, manholes that require excavation, cutting of pavement, and/or have lids fastened or frozen in place.
6. The necessary equipment and assistance as might be required to remove the specialized equipment (cleaning nozzle and hose, Electro Scan equipment, sewer plugs, etc.) from the sewer should the equipment become lodged during the course of the work, and to complete line repair and restoration of the area. However, the City will not be responsible for damage to Engineer's equipment.

City representative to be present during smoke testing, night flow isolation, Electro Scan testing, and dye watering flooding, or when B&N enters upon private property.

EXHIBIT "B"

SCHEDULE

The work will be initiated within two weeks of the receipt of Authorization to Proceed, and is estimated to be completed within nine (9) months. If uncooperative weather conditions are encountered during the study period (i.e. excessive rainfall preventing effective smoke testing or a total lack of rainfall preventing evaluation of groundwater infiltration) the project schedule can be extended at the City's option.

EXHIBIT "C"

COMPENSATION FOR SERVICES AND TERMS OF PAYMENT

The total price to cover all services described under the Scope of Work will be computed based on the unit prices shown in Table 1 and quantities of work authorized by the City's Project Manager and completed including the lump sum tasks amounts being established by percent of completion. Tasks listed as "per each" or "L.F." are estimated. Quantities found in field investigation may vary and will be performed and charged by the unit price shown in Table 1 in an amount not to exceed the total proposal cost. Work on these items exceeding the total proposal cost will not be performed without prior authorization by the City of Plano.

Invoices will be rendered monthly and are due within thirty (30) days of receipt. Table 1 delineates the unit price for each task.

Task	Task Description	Unit	Unit Price	Estimated Quantities	Total Price
1.	Smoke Testing	L.F.	\$0.36	122,929	\$44,250.00
2.	Dyed Water Flooding/Leak Quantification & Evaluation	Each	\$200.00	18	\$3,600.00
3.	High Flow Isolation & Video I/I Documentation	Each	\$175.00	54	\$9,450.00
4.	Preparatory Cleaning/Setup Inspection (by OWNER)	L.F.	---	12,300	0.00
5.	Internal Closed Circuit Television (CCTV) Inspection (by OWNER)	L.F.	---	12,300	0.00
6.	Flushing and Stringing Sewer Lines for Electro-Scan Testing	L.F.	\$0.60	24,600	\$14,760.00
7a.	Sewer Electro-Scan Leak Testing of Sewer Lines 12 inches and Smaller	L.F.	\$0.95	20,700	\$19,665.00
7b.	Sewer Electro-Scan Leak Testing of Sewer Lines 15 – 21 inches	L.F.	\$1.50	1,000	\$1,500.00
7c.	Sewer Electro-Scan Leak Testing of Sewer Lines 24 – 33 inches	L.F.	\$1.95	2,900	\$5,655.00
8.	Project Administration and Management, Supervision & QA/QC	Lump Sum	\$14,890.00	1	\$14,890.00
9.	Data Evaluation, Analysis and Report	Lump Sum	\$23,950.00	1	\$23,950.00
	TOTAL				\$137,720.00

EXHIBIT "D"
ENGINEERING
INSURANCE

INSURANCE: (Review this section carefully with your insurance agent prior to bid or proposal submission. See "Insurance Checklist" on the last page or specific coverages applicable to this contract).

1. General Insurance Requirements:

- 1.1 The Engineer (hereinafter called "Engineer") shall not start work under this contract until the Engineer has obtained at his own expense all of the insurance called for here under and such insurance has been approved by the City. Approval of insurance required of the Engineer will be granted only after submission to the Purchasing Agent of original, signed certificates of insurance or, alternately, at the City's request, certified copies of the required insurance policies.
- 1.2 All insurance policies required hereunder shall be endorsed to include the following provision: "It is agreed that this policy is not subject to cancellation, non-renewal, without first providing the Risk Manager, City of Plano, at least ten (10) days prior written notice."

NOTE: The words "endeavor to" and "but failure to mail such notice shall impose no obligation to liability of any kind upon the company, its agents or representatives" are to be eliminated from the cancellation provision of standard ACORD certificates of insurance.

- 1.3 No acceptance and/or approval of any insurance by the City shall be construed as relieving or excusing the Engineer from any liability or obligation imposed upon the provisions of the Contract.
- 1.4 The City of Plano (including its elected and appointed officials, agents, volunteers, and employees) is to be named as an additional insured under Engineer's General Liability Policy, and the certificate of insurance, or the certified policy, if requested, must so state. Coverage afforded under this paragraph shall be primary as respects the City, its elected and appointed officials, agents and employees.
 - 1.4.1 The following definition of the term "City" applies to all policies issued under the contract:

The City Council of the City of Plano and any affiliated or subsidiary Board, Commission Authority, Committee, or Independent Agency (including those newly constituted), provided that such affiliated or subsidiary Board Commission, Authority, Committee, or Independent Agency is either a Body Politic created by the City Council of the City of Plano, or one in which controlling interest is vested in the City of Plano; and City of Plano Constitutional Officers.
- 1.5 The Engineer shall provide insurance as specified in the "Insurance Checklist" (Checklist) found on the last page of the bid or proposal form. Full limits of insurance required in the Checklist of this agreement shall be available for claims arising out of this agreement with the City of Plano.

- 1.6 Engineer agrees to defend and indemnify the City of Plano, its officers, agents and employees as provided in Paragraph VII. of this contract.
- 1.7 Insurance coverage required in these specifications shall be in force throughout the Contract Term. Should the Engineer fail to provide acceptable evidence of current insurance within seven (7) days of written notice at any time during the Contract Term, the City shall have the absolute right to terminate the Contract without any further obligation to the Engineer, and the Engineer shall be liable to the City for the entire additional cost of procuring performance and the cost of performing the incomplete portion of the Contract at time of termination.
- 1.8 Written requests for consideration of alternate coverages must be received by the City Purchasing Manager at least ten (10) working days prior to the date set for receipt of bids or proposals. If the City denies the request for alternative coverages, the specified coverages will be required to be submitted.
- 1.9 All required insurance coverages must be acquired from insurers authorized to do business in the State of Texas and acceptable to the City. The City prefers that all insurers also have a policyholder's rating of "A-" or better, and a financial size of "Class VI" or better in the latest edition of A.M. Best, or A or better by Standard and Poors, unless the City grants specific approval for an exception.
- 1.10 Any deductibles shall be disclosed in the Checklist and all deductibles will be assumed by the Engineer. Engineer may be required to provide proof of financial ability to cover deductibles, or may be required to post a bond to cover deductibles.

2. Engineer's Insurance - "Occurrence" Basis:

- 2.1 The Engineer shall purchase the following insurance coverages, including the terms, provisions and limits shown in the Checklist.
 - 2.1.1 Commercial General Liability - Such Commercial General Liability policy shall include any or all of the following as indicated on the Checklist:
 - i. General aggregate limit is to apply per project;
 - ii. Premises/Operations;
 - iii. Actions of Independent Contractors;
 - iv. Contractual Liability including protection for the Engineer from claims arising out of liability assumed under this contract;
 - v. Personal Injury Liability including coverage for offenses related to employment;
 - vi. Explosion, Collapse, or Underground (XCU) hazards; if applicable. This coverage required for any and all work involving drilling, excavation, etc.
 - 2.1.2 Business Automobile Liability including coverage for any owned, hired, or non-owned motor vehicles and automobile contractual liability.

- 2.1.3 Workers' Compensation - statutory benefits as required by the State of Texas, or other laws as required by labor union agreements, including Employers' Liability coverage.

3.0 Engineer's Insurance – Claims Made

Professional Errors and Omissions

The Engineer shall carry Professional Liability insurance which will pay for injuries arising out of negligent errors or omissions in the rendering, or failure to render professional services under the contract, for the term of the Contract and up to three years after the contract is completed in the amount shown in the Checklist.

Professional Errors and Omissions, Limit \$1,000,000
per claim and aggregate of \$2,000,000

ENGINEERING

City of Plano - Insurance Checklist

("X" means the coverage is required.)

<u>Coverages Required</u>	<u>Limits (Figures Denote Minimums)</u>
<input checked="" type="checkbox"/> 1. Workers' Compensation & Employers' Liability	Statutory limits of State of Texas \$100,000 accident \$100,000 disease \$500,000 policy limit disease
<input type="checkbox"/> 2. For Future Use	
<input type="checkbox"/> 3. City Approved Alternative Workers' Comp. Program	\$150,000 medical, safety program
<input checked="" type="checkbox"/> 4. General Liability	Complete entry No. 26 Minimum \$500,000 each occurrence \$1,000,000 general aggregate
<input checked="" type="checkbox"/> 5. General aggregate applies per project (CGL)	
<input checked="" type="checkbox"/> 6. Premises/Operations	(Items No. 3-10 & 12 require)
<input checked="" type="checkbox"/> 7. Independent Contractors	<u>\$500,000</u> combined single limit for bodily injury and property damage
<input type="checkbox"/> 8. Products	damage each occurrence with
<input type="checkbox"/> 9. Completed Operations	\$1,000,000 general aggregate that applies to project under contract
<input checked="" type="checkbox"/> 10. Contractual Liability	
<input checked="" type="checkbox"/> 11. Personal Injury Liability	\$500,000 each offense & aggregate
<input type="checkbox"/> 12. XCU Coverages	
<input checked="" type="checkbox"/> 13. Automobile Liability	\$500,000 Bodily Injury & Property
<input checked="" type="checkbox"/> 14. Owned, Hired & Non-owned	Damage each accident
<input type="checkbox"/> 15. Motor Carrier Act Endorsement	
<input checked="" type="checkbox"/> 16. Professional Liability	\$1,000,000 each claim \$2,000,000 aggregate
<input type="checkbox"/> 17. Garage Liability	\$_____ BI & PD each occurrence

EXHIBIT "E"

AFFIDAVIT OF NO PROHIBITED INTEREST

I, the undersigned declare that I am authorized to make this statement on behalf of Burgess & Niple, Inc. and I have made a reasonable inquiry and, to the best of my knowledge, no person or officer of Burgess & Niple, Inc. is employed by the City of Plano or is an elected or appointed official of the City of Plano within the restrictions of the Plano City Charter.

I am aware that Section 11.02 of the City Charter states:

"No officer or employee of the city shall have a financial interest, direct or indirect, in any contract with the city, nor shall be financially interested, directly or indirectly, in the sale to the city of any land, or rights or interest in any land, materials, supplies or service. The above provision shall not apply where the interest is represented by ownership of stock in a corporation involved, provided such stock ownership amounts to less than one (1) per cent of the corporation stock. Any violation of this section shall constitute malfeasance in office, and any officer or employee of the city found guilty thereof shall thereby forfeit his office or position. Any violation of this section with the knowledge, express or implied, of the persons or corporation contracting with the city shall render the contract voidable by the city manager or the city council."

I further understand and acknowledge that a violation of Section 11.02 of the City Charter at anytime during the term of this contract will render the contract voidable by the City.

Burgess & Niple, Inc.
Name of Contractor

By: Charles Wilmut
Signature

Charles Wilmut
Print Name

Vice President
Title

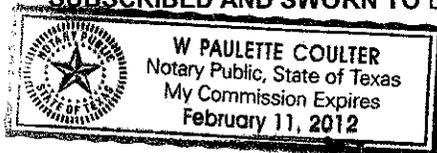
06/13/2011
Date

STATE OF TEXAS

§
§
§

COUNTY OF DALLAS

SUBSCRIBED AND SWORN TO before me this 13th day of June, 2011.



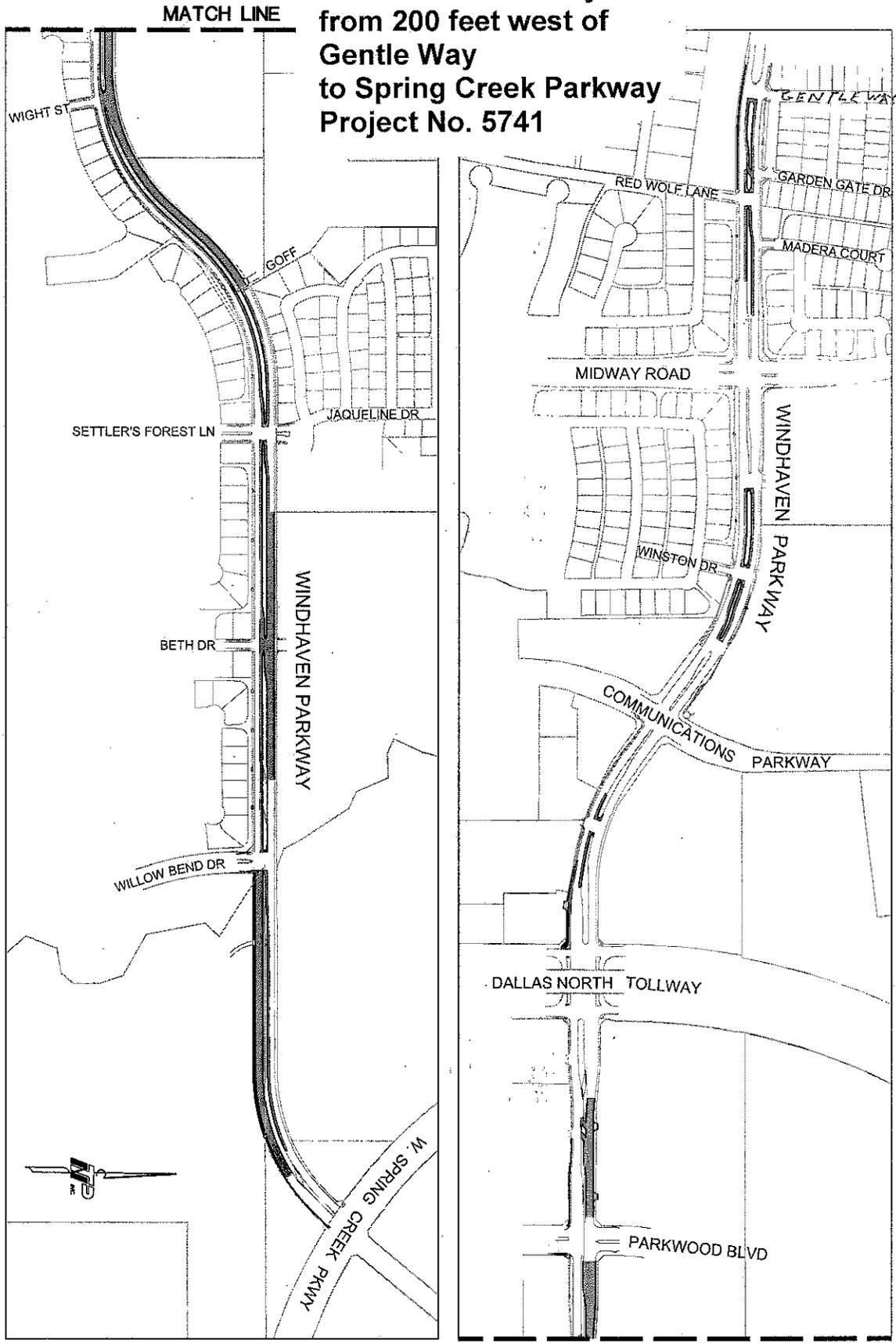
Paulette Coulter
Notary Public, State of Texas



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		6/27/11		
Department:		Public Works		
Department Head		Gerald P. Cosgrove, P.E.		
Agenda Coordinator (include phone #):			Irene Pegues (7198)	
			Project No. 5741	
CAPTION				
<p>To approve and authorize Contract Modification No. 1 for the purchase of engineering services for Windhaven Parkway (Spring Creek Parkway to West City Limit) in the amount of \$62,000 from Teague, Nall and Perkins, Inc. This modification will provide for expenses related to changing the project scope from a six (6) lane road to a four (4) lane road from Spring Creek Parkway to Parkwood Boulevard.</p>				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: 2010-11	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	69,961	317,000	100,000	486,961
Encumbered/Expended Amount	-69,961	-159,803	0	-229,764
This Item	0	-62,000	0	-62,000
BALANCE	0	95,197	100,000	195,197
FUND(S): STREET IMPROVEMENT CIP				
<p>COMMENTS: Funds are included in the 2010-11 Street Improvement CIP. This modification, in the amount of \$62,000, will leave a current year balance of \$95,197 for the Windhaven – City Limit to Spring Creek project.</p> <p>STRATEGIC PLAN GOAL: Modification to the engineering contract relates to the City's Goal of Financially Strong City with Service Excellence.</p>				
SUMMARY OF ITEM				
<p>Additional design services are required to revise the project scope from a six (6) lane road to a four (4) lane road from Spring Creek Parkway to Parkwood Boulevard.</p> <p>This revision is in response to a public hearing which was held on 12-2-2010, and subsequent City Council Action at their regular meeting on 12-7-2010.</p> <p>The original contract amount is \$397,472.00. The Public Works Department is seeking City Council approval of this first contract modification in the amount of \$62,000.00. The revised contract amount will be \$459,472.00; an increase of 15.6%.</p>				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Location Map			N/A	
Contract Modification				

**Windhaven Parkway-
from 200 feet west of
Gentle Way
to Spring Creek Parkway
Project No. 5741**



SCALE	
HORIZ.	N.T.S.
VERT.	N.T.S.
DATE	
NOV 2010	



TEAGUE NALL AND PERKINS
 12180 North Abrams Road, Suite 508
 Dallas, Texas 75243
 Phone: (214) 461-9887 • Fax: (214) 461-9864
 www.tnp-online.com

CITY OF PLANO, TEXAS
WINDHAVEN PARKWAY
PROJECT LAYOUT

THE PROJECT	PLA021933
SHEET	1
	OF 1

CONTRACT MODIFICATION
WINDHAVEN PARKWAY
(SPRING CREEK PARKWAY TO WEST CITY LIMIT)
PROJECT NO. 5741

PURCHASE ORDER NO. 103313
CIP NO. 31194

This shall serve as a First Modification to the Contract between the City of Plano, Texas (hereinafter "City") and Teague Nall and Perkins, Inc. (hereinafter "Consultant") dated July 28, 2007 for Professional Engineering Services for the referenced project (hereinafter "Project").

Services:

This Modification amends the scope of services as originally set forth in the contract. Changes to design elements previously approved and authorized, more specifically described as follows:

- Revise schematic to accommodate change in desired roadway section from full six-lane divided for the length of the project, to six-lane divided from the city limits to Parkwood Boulevard, and four-lane divided between Parkwood Boulevard and Spring Creek Parkway.
- Resubmit revised schematic to TxDOT for review; additional meetings and correspondence with TxDOT and City representatives.
- Update base drawings and design plans for newly constructed development improvements at Parkwood Boulevard, Communications Parkway, Avignon Windhaven subdivision, and other various locations.
- Revise Environmental Assessment to account for change in roadway sections and resubmit to TxDOT; address review comments on revised schematic; update information to be used at Public Hearing; additional meetings and correspondence with TxDOT and City representatives.
- Additional correspondence with TxDOT and City representatives regarding new design requirement for bike lanes. Prepare design exception request for not providing a shared use lane along the project length. Modify sidewalks and pedestrian crosswalks/median cut-throughs accordingly.
- Modifications to the 30% design plans resulting from directed revisions listed above. Modifications will be reflected in the 60% plan submittal.
- Increased costs due to extension of time frame for all remaining contractual elements through 2013.

Compensation:

For additional services provided pursuant to this Modification, City shall pay Consultant an amount not to exceed \$62,000. Such payment shall be made in accordance with the payment terms specified in the Contract.

In the event of any conflict or inconsistency between the provisions set forth in this Modification and the Contract, this Modification shall govern and control. For and in consideration of the covenants, duties and obligations herein contained, the parties do mutually agree that except as provided above, all other terms and conditions of the Contract shall remain unchanged and in full force and effect.

Original Contract Amount	<u>\$ 397,472.00</u>
Contract Amount (Including Previous Modifications)	<u>\$ 397,472.00</u>
Amount, Modification No. 1	<u>\$ 62,000.00</u>
Revised Contract Amount	<u>\$ 459,472.00</u>
Total Percent Increase Including Previous	<u>15.60%</u>

CITY OF PLANO
OWNER

TEAGUE NALL AND PERKINS, INC.
CONSULTANT

By: _____
(signature)

By: Mark J. Holliday
(signature)

Print
Name: Bruce D. Glasscock

Print
Name: Mark J. Holliday, P.E.

Print
Title: CITY MANAGER

Print
Title: PRINCIPAL

Date: _____

Date: 5-26-11

APPROVED AS TO FORM:

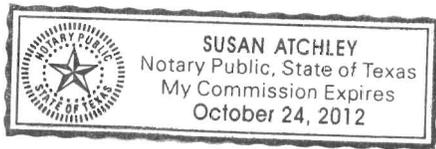
By: _____
Diane C. Wetherbee, City Attorney

ACKNOWLEDGMENTS

STATE OF TEXAS

COUNTY OF Dallas

This instrument was acknowledged before me on the 26th day of May, 2011, by **MARK J. HOLLIDAY, PRINCIPAL** of **TEAGUE NALL AND PERKINS, INC.**, a **TEXAS** corporation, on behalf of said corporation.



Susan Atchley
Notary Public, State of Texas

STATE OF TEXAS

COUNTY OF COLLIN

This instrument was acknowledged before me on the _____ day of _____, 2011, by **BRUCE D. GLASSCOCK, CITY MANAGER** of the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

Notary Public, State of Texas



**CITY OF PLANO
COUNCIL AGENDA ITEM**

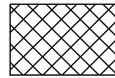
CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		6/27/11		
Department:		Public Works		
Department Head:		Gerald P. Cosgrove, P.E.		
Agenda Coordinator (include phone #):		Irene Pegues (7198)		Project No. 5838
CAPTION				
To McMahon Contracting, L.P., increasing the contract by \$30,064 for the 14 th Street – Avenue K to Ridgewood Drive project, Change Order No. 3. Original Bid No. 2010-14-B.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: 2010-11	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	979,969	3,621,000	0	4,600,969
Encumbered/Expended Amount	-979,969	-3,450,233	0	-4,430,202
This Item	0	-30,064	0	-30,064
BALANCE	0	140,703	0	140,703
FUND(S): STREET IMPROVEMENT CIP				
COMMENTS: Funds are included in the 2010-11 Street Improvement CIP. This change order, in the amount of \$30,064 will leave a current year balance of \$140,703 for the 14 th Street – K to Ridgewood project. STRATEGIC PLAN GOAL: Reconstruction of 14 th Street relates to the City's Goal of Financially Strong City with Service Excellence.				
SUMMARY OF ITEM				
This change order in the amount of \$30,064.14 is for the installation of high early strength concrete, placed at the intersection of 14 th Street and Jupiter Road, on three separate weekends. It will eliminate the current plan of extensive lane closures, lasting several weeks. The center of the intersection will be paved at night, which will greatly improve safety, and eliminate traffic congestion for that section of paving. Staff recommends approval of Change Order No. 3. The contract total will be \$5,572,351.72, which includes change orders of 1.70% of the original contract amount of \$5,479,272.10.				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Location Map			N/A	
Change Order No. 3				

**14th Street - K Avenue to
Ridgewood Drive
Project No. 5838**



Road

14th



Street

Jupiter

CHANGE ORDER NO. 3

**14TH STREET – AVENUE K TO RIDGEWOOD
PROJECT NO. 5838
PURCHASE ORDER NO. 103769
CIP NOS. 37581, 68161 and 48852
BID NO. 2010-14-B**

A. INTENT OF CHANGE ORDER

The intent of this change order is to modify the provisions of the contract entered into by the **CITY OF PLANO, TEXAS**, and **MCMAHON CONTRACTING, L.P.** for the **14TH STREET – AVENUE K TO RIDGEWOOD PROJECT**, dated December 22, 2009.

B. DESCRIPTION OF CHANGE

The items in this change order are related to a revision to the construction plans that will use high early strength concrete to pave the 14th Street at Jupiter Road intersection. This work will be conducted on three separate weekends. It will eliminate the current plan of extensive lane closures, lasting several weeks. The center of the intersection will be paved at night, which will greatly improve safety, and eliminate traffic congestion for that section of paving.

C. EFFECT OF CHANGE

This change order will have the following effect on the cost of this project:

<i>ITEM NO.</i>	<i>ITEM DESCRIPTION</i>	<i>ORIGINAL QUANTITY</i>	<i>REVISED QUANTITY</i>	<i>UNIT</i>	<i>UNIT PRICE</i>	<i>AMOUNT OF CHANGE</i>
105	Remove existing street paving	68,536	68,090	SY	\$6.12	-\$2,729.52
114	8" Concrete Street Paving	61,252	60,806	SY	\$25.09	-\$11,190.14
117	Lime Subgrade Prep	64,232	63,786	SY	\$1.50	-\$669.00
118	Lime	1,166	1,158	Tons	\$143.00	-\$1,144.00
181G	Remove existing concrete and install 10", 5,000 psi , High early strength concrete on 6" compacted subgrade	0	446	SY	\$85.80	+\$38,266.80
181H	Charge for night work	0	1	LS	\$7,530.00	+\$7,530.00
Total						\$30,064.14

Original Contract Amount	\$	<u>5,479,272.10</u>
Contract Amount (Including Previous Change Orders)	\$	<u>5,542,287.58</u>
Amount, Change Order No. 3	\$	<u>\$30,064.14</u>
Revised Contract Amount	\$	<u><u>5,572,351.72</u></u>
Total Percent Increase Including Previous Change Orders		<u>1.70%</u>

D. EFFECT OF CHANGE ON CONTRACT TIME

The work required under this change order will add **3** day(s) to this project:

Original Contract Time	<u>360 working days</u>
Amount (Including Previous Change Orders)	<u>379 working days</u>
Amount, Change Order No. 3	<u>3 working days</u>
Revised Contract Time	<u>382 working days</u>
Total Percent Increase Including Previous Change Orders	<u>6.11%</u>

E. AGREEMENT

By the signatures below, duly authorized agents of the **CITY OF PLANO, TEXAS**, and **MCMAHON CONTRACTING, L.P.**, do hereby agree to append this Change Order No. 3 to the original contract between themselves, dated December 22, 2009.

F. AUTHORITY TO SIGN

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto.

OWNER: CITY OF PLANO

**CONTRACTOR:
MCMAHON CONTRACTING, L.P.,
A TEXAS LIMITED PARTNERSHIP**

**BY: JSM MANAGEMENT COMPANY, LLC,
GENERAL PARTNER OF MCMAHON
CONTRACTING, L.P.**

By: _____
(signature)

Print
Name: **BRUCE D. GLASSCOCK**

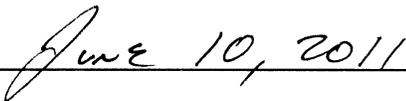
Print
Title: **CITY MANAGER**

Date: _____

By:  _____
(signature)

Print
Name: **SHAWN MCMAHON**

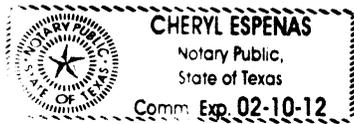
Print
Title: **MANAGING PARTNER, OF JSM
MANAGEMENT COMPANY, LLC,
GENERAL PARTNER OF
MCMAHON CONTRACTING, L.P.**

Date:  _____

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the 10th day of June, 2011, by **SHAWN MCMAHON, MANAGING PARTNER** of **JSM MANAGEMENT COMPANY, LLC, GENERAL PARTNER** of **MCMAHON CONTRACTING, L.P.**, a **TEXAS** limited partnership, on behalf of said partnership.



Cheryl Espenas
Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2011, by **BRUCE D. GLASSCOCK, CITY MANAGER** of the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

Notary Public, State of Texas



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		June 27, 2011		
Department:		Customer and Utility Services		
Department Head		Mark D. Israelson		
Agenda Coordinator (include phone #): Nancy Rodriguez X7510				
CAPTION				
A Resolution authorizing continued participation with the Steering Committee of Cities Served by Oncor; authorizing the payment of 10 cents per capita to the Steering Committee to fund regulatory and related activities related to Oncor Electric Delivery Company LLC; and providing an effective date.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 10/11	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	123,856	0	123,856
Encumbered/Expended Amount	0	-93,721	0	-93,721
This Item	0	-26,135	0	-26,135
BALANCE	0	4,000	0	4,000
FUND(S): GENERAL FUND				
COMMENTS: Funding for this item is included in the 2010-11 Non-Departmental Operating Re-Estimate Budget. The remaining balance will be used for other Association costs. STRATEGIC PLAN GOAL: Participation in Utility Steering Committees and Coalitions relates to the City's Goal of Financially Strong City with Service Excellence.				
SUMMARY OF ITEM				
This Resolution authorizes the payment of the annual assessment to the Steering Committee of Cities Served by Oncor.				
List of Supporting Documents: Memorandum			Other Departments, Boards, Commissions or Agencies	

MEMORANDUM

DATE: June 27, 2011

TO: City Council

THROUGH: Bruce D. Glasscock, City Manager

FROM: Mark D. Israelson, Assistant City Manager

RE: Assessment Resolution for Steering Committee of Cities Served by Oncor

Purpose of the Resolution

The City of Plano is a member of a 148-member city coalition known as the Steering Committee of Cities Served by Oncor. The resolution approves the assessment of a ten cent (\$0.10) *per capita* fee to fund the activities of the Steering Committee.

Why this Resolution is Necessary

The Steering Committee undertakes activities on behalf of municipalities for which it needs funding support from its members. Municipalities have original jurisdiction over the electric transmission and distribution rates and services within the city. The Steering Committee has been in existence since the late 1980s. It took on a formal structure in the early 1990s when cities served by TXU (since renamed as Oncor Electric Delivery Company) gave up their statutory right to rate case expense reimbursement in exchange for higher franchise fee payments. Empowered by city resolutions and funded by *per capita* assessments, the Steering Committee has been the primary public interest advocate before the Public Utility Commission, the Courts, and the Legislature on electric utility regulation matters for nearly two decades.

The Steering Committee is actively involved in rate cases, appeals, rulemakings, and legislative efforts impacting the rates charged by Oncor Electric Delivery Company within the City. It has recently analyzed and negotiated the settlement of the 2011 Oncor rate case. Steering Committee representation is also strong at ERCOT. It is possible that additional efforts will be necessary on new issues that arise during the year, and it is important that the Steering Committee be able to fund its participation on behalf of its member cities. A per capita assessment has historically been used, and is a fair method for the members to bear the burdens associated with the benefits received from that membership.

Explanation of “Be It Resolved” Paragraphs

1. The City is currently a member of the Steering Committee; this paragraph authorizes the continuation of the City’s membership.
2. This paragraph authorizes payment of the City’s assessment to the Steering Committee in the amount of ten cents (\$0.10) per capita, based on the population figure for the City as shown in the latest TML Directory of City Officials.

3. This paragraph requires notification to the Chair of the Steering Committee, Jay Doegey, that the City has adopted the Resolution.

Payment of Assessment

A copy of the resolution should be mailed with payment of the fee to Jay Doegey, Chair, Oncor Cities Steering Committee, c/o City Attorney's Office, Mail Stop 63-0300, P. O. Box 90231, Arlington, Texas 76004-3231. Checks should be made payable to: *Oncor Cities Steering Committee*.

A Resolution authorizing continued participation with the Steering Committee of Cities Served by Oncor; authorizing the payment of 10 cents per capita to the Steering Committee to fund regulatory and related activities related to Oncor Electric Delivery Company LLC; and providing an effective date.

WHEREAS, the City of Plano is a regulatory authority under the Public Utility Regulatory Act (PURA) and has exclusive original jurisdiction over the rates and services of Oncor Electric Delivery Company LLC (Oncor) within the municipal boundaries of the city; and

WHEREAS, the Steering Committee has historically intervened in Oncor (formerly known as TXU) rate proceedings and electric utility related rulemakings to protect the interests of municipalities and electric customers residing within municipal boundaries; and

WHEREAS, the Steering Committee is participating in Public Utility Commission dockets and projects, as well as court proceedings, affecting transmission and distribution utility rates; and

WHEREAS, the City is a member of the Steering Committee of Cities Served by Oncor; and

WHEREAS, in order for the Steering Committee to continue its participation in these activities which affects the provision of electric utility service and the rates to be charged, it must assess its members for such costs;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:

Section I. That the City is authorized to continue its membership with the Steering Committee of Cities Served by Oncor to protect the interests of the City of Plano and protect the interests of the customers of Oncor Electric Delivery Company LLC residing and conducting business within the City limits.

Section II. The City is further authorized to pay its assessment to the Steering Committee ten cents (\$0.10) per capita based on the population figures for the City shown in the latest TML Directory of City Officials.

Section III. A copy of this Resolution and the assessment payment check made payable to "Oncor Cities Steering Committee" shall be sent to Jay Doegey, Chair, Oncor Cities Steering Committee, c/o City Attorney's Office, Mail Stop 63-0300, P. O. Box 90231, Arlington, Texas 76004-3231.

Section IV. This Resolution shall become effective immediately.

DULY PASSED AND APPROVED this the 27th day of June, 2011.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		6/27/11		
Department:		Purchasing		
Department Head		Diane Palmer-Boeck		
Agenda Coordinator (include phone #): Aimee Storm Ext. 7248				
CAPTION				
A Resolution of the City Council of the City of Plano, Texas, authorizing the purchase of the Mobile Command Post Vehicle Technology Upgrade from LDV, Inc., a sole-source provider, in the amount of \$154,847 for use by the Plano Police Department; authorizing the City Manager or his authorized designee to take such action and execute such documents as necessary to effectuate the purchase; and providing an effective date.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2010-11	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	150,000	0	150,000
Encumbered/Expended Amount	0	0	0	0
This Item	0	-154,847	0	-154,847
BALANCE	0	-4,847	0	-4,847
FUND(s): GRANT FUND (2009 DFWA UASI LEAP GRANT) & GENERAL FUND				
COMMENTS: Funding for the Mobile Command Vehicle retrofit and technology upgrade is included in the 2009 DFWA UASI LEAP Grant in the amount of \$150,000. The overage amount of \$4,847 will be covered by the Police Department Operating Budget in the General Fund..				
STRATEGIC PLAN GOAL: The upgrade and retrofit of the Mobile Command Vehicle relates to the City's Goal of Safe Large City				
SUMMARY OF ITEM				
Approval of this request in the amount of \$154,847 is made for the purchase of the Mobile Command Post Vehicle Technology Upgrade. This is an approved project through the Urban Area Security Initiative Homeland Security Grant. LDV, Inc., is the sole-provider for the upgrade.				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Memorandum				
Resolution				



P.O. Box 860358
Plano, Texas 75086-0358
972-424-5678
Fax 972-424-0099
<http://www.planopolice.org>

MEMORANDUM

DATE: June 17, 2011
TO: Diane Palmer-Boeck, Chief Purchasing Officer, Plano Purchasing Department
FROM: Greg Rushin, Chief of Police, Plano Police Department
SUBJECT: Recommendation of Award for Command Post Technology Upgrade

The Plano Police Department recommends the purchase of a technology upgrade of the department's mobile command post vehicle, through the services provided by LDV, Inc. The proposed price to complete the upgrade is \$154,847. This is an approved project through the 2009 Urban Area Security Initiative (UASI) Homeland Security Grant. The UASI grant will provide \$150,000.00 towards this upgrade. The remaining \$4,847.00 will be funded by the police department.

The command post vehicle was originally purchased in the summer of 2000, totaling \$242,156, and equipped with technology that was current at that time. During the eleven years since the purchase of the vehicle, a number of major technological and interoperable communication changes have taken place. This upgrade will bridge that gap and provide command personnel with resources expected of the current technological environment.

LDV, Inc is the original manufacturer of this vehicle. The upgrades to be added will require an extensive amount of work be done to the vehicle, including the removal of interior cabinets and components, along with modifications to the body structure and vehicle fuel systems. There will also be changes to the AC electrical system, computer network, and audio/video systems. LDV has the CAD drawings, wiring schematics and legends that were used for the original production of the truck. This will ensure that we will be able to make the necessary modifications without affecting the integrity and safe operation of the vehicle.

LDV currently provides technical support for the command post and documents all modifications so they can continue to offer this service. LDV provides this service for the life of the vehicle at no charge. If an unauthorized vendor is chosen to complete the changes, LDV will no longer be able to provide technical support for the vehicle because they will not have documentation as to how the other vendor changed the trucks electrical systems and body structure.

Based on the information above, this purchase qualifies for general exemptions of the competitive bidding or competitive proposal requirement under Chapter 252 Purchasing and Contracting Authority of Municipalities of the Texas Local Government Code. This is a *procurement of items that are available from only one source includes captive replacement parts or components for equipment.*

If this recommended purchase is not approved, the police department and city will lose the approved \$150,000.00 funding provided through the Urban Area Security Initiative (UASI) Homeland Security grant.

Thank you for your consideration.

A Resolution of the City Council of the City of Plano, Texas, authorizing the purchase of the Mobile Command Post Vehicle Technology Upgrade from LDV, Inc., a sole-source provider, in the amount of \$154,847 for use by the Plano Police Department; authorizing the City Manager or his authorized designee to take such action and execute such documents as necessary to effectuate the purchase; and providing an effective date.

WHEREAS, the Plano Police Department uses the Mobile Command Post Vehicle to respond to emergency incidents, including but not limited to, multi-jurisdictional disasters, barricaded persons, hostage situations; and

WHEREAS, the Plano Police Department also uses the Mobile Command Post Vehicle for City of Plano special events, and any other event requiring the incident command system to be implemented; and

WHEREAS, LDV Inc., is the sole-provider for the Mobile Command Post Vehicle Technology Upgrade; and

WHEREAS, upon full review and consideration of the proposed purchase and all matters attendant and related thereto, the City Council is of the opinion that the purchase should be approved, and that the City Manager or his designee should be authorized to take such action and execute such documents as necessary to effectuate the purchase.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:

Section I. The City Council hereby finds and determines that LDV, Inc. is the sole source provider of the Mobile Command Post Vehicle Technology Upgrade to be purchased by the City, and thus, the purchase is exempt from competitive bid as provided for in V.T.C.A., Local Government Code, Section 252.022 (a) (7).

Section II. The City Manager or his authorized designee is hereby authorized to take such action and execute such documents as necessary to effectuate the purchase of the Mobile Command Post Vehicle Technology Upgrade in the amount of \$154,847 from LDV, Inc..

Section III. This Resolution shall become effective upon its passage.

DULY PASSED AND APPROVED this 27th day of June, 2011.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

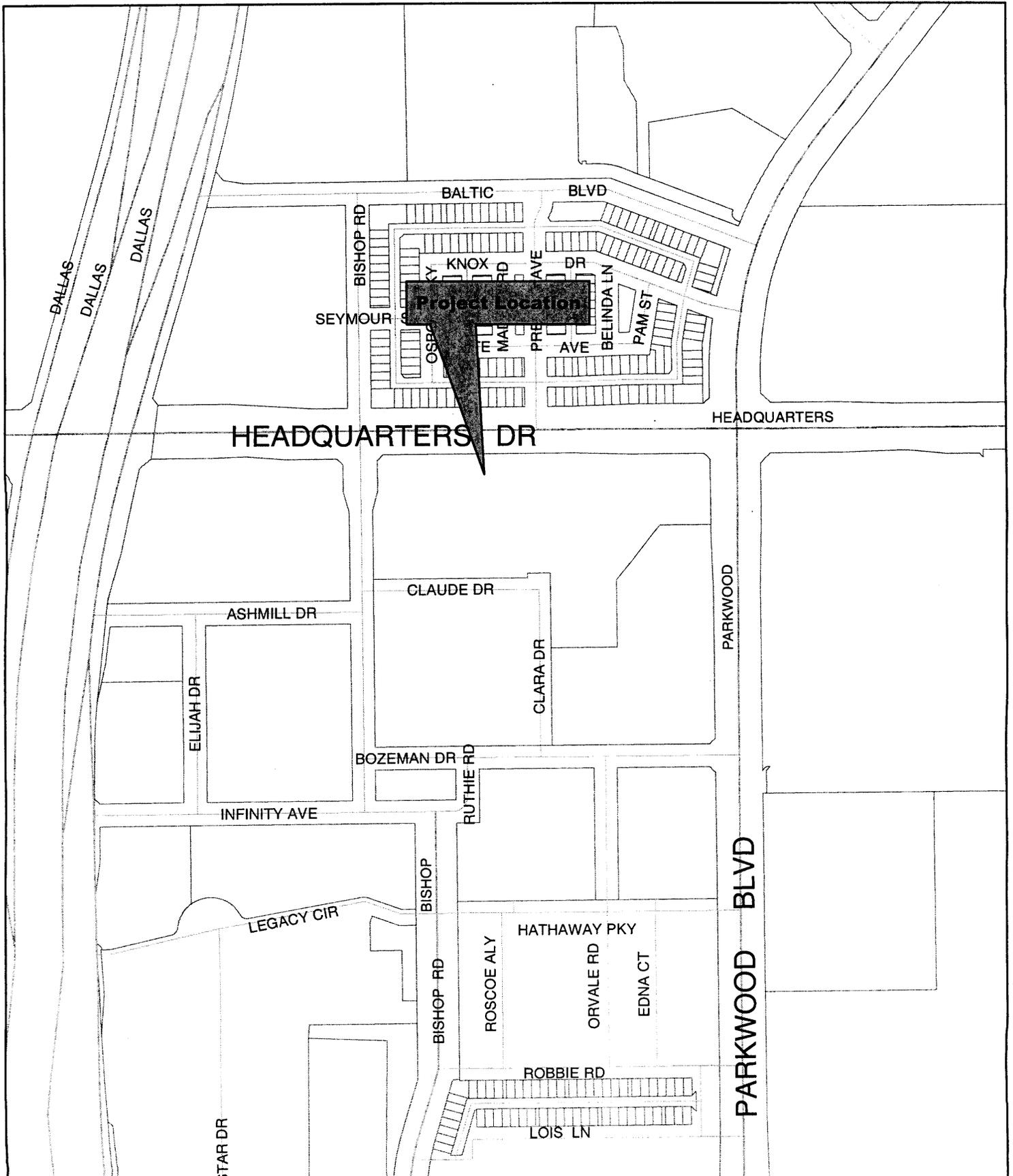
Diane C. Wetherbee, CITY ATTORNEY



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY					
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory					
Council Meeting Date:		6/27/2011			
Department:	Public Works				
Department Head	Gerald Cosgrove				
Agenda Coordinator (include phone #): Irene Pegues (X-7152) Proj. #5537-10					
CAPTION					
<p>An ordinance of the City of Plano, Texas, abandoning all right, title and interest of the City, in and to that certain 20-foot wide Temporary Drainage Easement recorded in Volume 4531, Page 245, of the Land Records of Collin County, Texas and being situated in the Samuel H. Brown Survey, Abstract No. 108, which is located within the city limits of Plano, Collin County, Texas; quitclaiming all right, title and interest of the City in such easement to the abutting property owner, Legacy North PT MFA IV, L.P., to the extent of its interest; authorizing the City Manager or his authorized designee, to execute any documents deemed necessary; and providing an effective date.</p>					
FINANCIAL SUMMARY					
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	2010-11	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	0	0	0
Encumbered/Expended Amount		0	0	0	0
This Item		0	0	0	0
BALANCE		0	0	0	0
FUND(S): N/A					
<p>COMMENTS: Approval of this ordinance will allow the City to abandon all rights, title and interest to a 20-foot wide Temporary Drainage Easement.</p> <p>STRATEGIC PLAN GOAL: Temporary Drainage Easement relates to the City's Goal of Financially Strong City with Service Excellence.</p>					
SUMMARY OF ITEM					
<p>This Temporary Drainage Easement is replaced by the dedication of a permanent Drainage Easement at Legacy Town Center North, Lot 8R, Block A, Project #5537-10.</p>					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		
Location Map			N/A		

Easement Abandonment



Location Map

An ordinance of the City of Plano, Texas, abandoning all right, title and interest of the City, in and to that certain 20-foot wide Temporary Drainage Easement recorded in Volume 4531, Page 245, of the Land Records of Collin County, Texas and being situated in the Samuel H. Brown Survey, Abstract No. 108, which is located within the city limits of Plano, Collin County, Texas; quitclaiming all right, title and interest of the City in such easement to the abutting property owner, Legacy North PT MFA IV, L.P., to the extent of its interest; authorizing the City Manager or his authorized designee, to execute any documents deemed necessary; and providing an effective date.

WHEREAS, the City Council of the City of Plano has been requested to abandon all right, title and interest of the City in and to that certain 20-foot wide Temporary Drainage Easement recorded in Volume 4531, Page 245, of the Land Records of Collin County, Texas (hereinafter called "Easement") being situated in the Samuel H. Brown Survey, Abstract No. 108 which is located within the city limits of Plano, Collin County, Texas, and which is more particularly described in Exhibit "A" attached hereto and incorporated herein by reference; and

WHEREAS, the Property Owner has filed with the City a Petition for Abandonment, a copy of which is attached hereto as Exhibit "B" and made a part hereof by reference; and

WHEREAS, the Engineering Department has determined that there will be no detrimental effect on the City if the Easement is abandoned and quitclaimed to the abutting Property Owner; and has advised that the Easement should be abandoned;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:

Section I. All the right, title and interest of the City of Plano, Texas, in and to the Easement is hereby abandoned, and all right, title and interest of the City in and to the Easement is hereby quitclaimed to the abutting Property Owner in accordance with its respective interest. A certified copy of this Ordinance may be recorded in the Collin County Land Records to reflect this abandonment and quitclaim. The City Manager or his authorized designee, is hereby authorized to execute on behalf of the City of Plano, Texas, any instruments necessary to complete the abandonment and quitclaim of the Easement by the City of Plano.

Section II. The abandonment and quitclaim is without prejudice to any and all improvements, facilities, equipment or lines of any public utility, municipal or otherwise, if any, which are presently located within any portion of the Easement. Any such utility shall have the continued right to locate, maintain, repair, reconstruct, preserve or relocate improvements, facilities, equipment or lines in such portion of the Easement.

Section III. The City Council hereby finds and determines that the abandonment of the Easement is in the public interest of the City of Plano, Texas, and its citizens, and will inure to the benefit of the public generally.

Section IV. This Ordinance shall become effective immediately upon its passage as set forth below.

DULY PASSED AND APPROVED this the 27th day of June, 2011.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

**EXHIBIT A
LEGAL DESCRIPTION
DRAINAGE EASEMENT ABANDONMENT
0.010 ACRE**

BEING a tract of land out of the Samuel H. Brown Survey, Abstract No. 108, in the City of Plano, Collin County, Texas, being part of Lot 8R Block A of Legacy Town Center (North), Lots 6R and 8R, Block A, an addition to the City of Plano according to the plat thereof recorded in Cabinet 2010, Page 134 of the Map Records of Collin County, Texas, being all of a Temporary Drainage Easement described as Parcel No. 3 recorded in Volume 4531, Page 245 of the Land Records of Collin County, Texas and being more particularly described as follows:

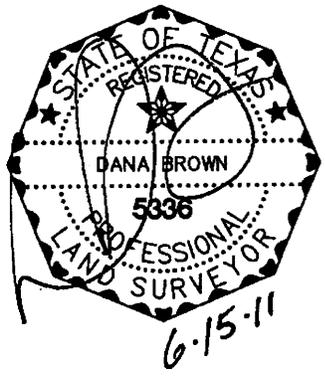
BEGINNING at a point in the south right-of-way line of Headquarters Drive (variable width ROW) from which a 5/8" iron rod found with a plastic cap stamped "KHA" for the north end of a corner clip at the intersection of the east right-of-way line of Bishop Road (variable width ROW at this point) and the south right-of-way line of said Headquarters Drive bears South 89°32'39" West, a distance of 321.37 feet ;

THENCE with said south right-of-way line, North 89°32'39" East, a distance of 23.09 feet to a point for corner;

THENCE leaving said south right-of-way line, the following courses and distances to wit:
 South 29°32'39" West, a distance of 27.84 feet to a point for corner;
 North 60°27'21" West, a distance of 20.00 feet to a point for corner;
 North 29°32'29" East, a distance of 16.29 feet to the **POINT OF BEGINNING** and containing 441 square feet or 0.010 acre of land.

Bearing system based on the monuments found in the south line of Headquarters Drive according to the plat of Legacy Town Center (North), Lots 6R and 8R, Block A, an addition to the City of Plano according to the plat thereof recorded in Cabinet 2010, Page 134 of the Map Records of Collin County, Texas.

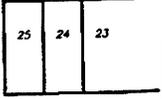
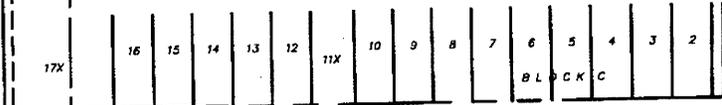
Dana Brown
 Registered Professional Land Surveyor No. 5336
 Kimley-Horn and Associates, Inc.
 12700 Park Central Drive, Suite 1800
 Dallas, Texas 75251
 972-770-1300



**DRAINAGE EASEMENT ABANDONMENT
LEGACY TOWN CENTER (NORTH)
SAMUEL H. BROWN SURVEY, ABSTRACT NO. 108
CITY OF PLANO, COLLIN COUNTY, TEXAS**

			Kimley-Horn and Associates, Inc. 12700 Park Central Drive, Suite 1800 Dallas, Texas 75251 Tel. No. (972) 770-1300 Fax No. (972) 239-3820		
Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = ###'	DAB	MBM	06/14/2011	64316005	1 OF 2

LOT 2, BLOCK A
 LEGACY TOWN
 CENTER NORTH NO. 2
 CAB. 2007, PG. 211
 P.R.C.C.T.
 VST.# 20070418010001360
 O.P.R.C.C.T.



HEADQUARTERS DRIVE
 VARIABLE WIDTH ROW

20' TEMP.
 DRAINAGE ESMT.
 PARCEL NO. 3
 VOL. 4531 PG. 245
 L.R.C.C.T.

POINT OF BEGINNING

$S89^{\circ}32'39''W$ 321.37'
 $N89^{\circ}32'39''E$ 23.09'

BISHOP ROAD
 VARIABLE WIDTH ROW
 CAB. 2008, PG. 148
 M.R.C.C.T.

STANDARD CITY OF
 PLANO CONC MON SET

15' SWBT ESMT.
 VOL. 2278 PG. 77
 L.R.C.C.T.

10' WATER LINE ESMT.
 VOL. 5944 PG. 616
 L.R.C.C.T.

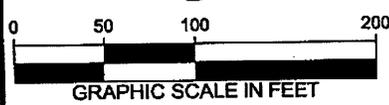
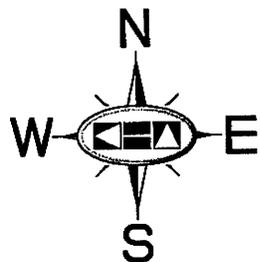
16.29'
 $N29^{\circ}32'39''E$
 20.00'
 $N60^{\circ}27'21''W$
 27.84'
 $S29^{\circ}32'39''W$

CLARA DRIVE
 60' STREET ESMT.
 CAB. 2010 PG. 134
 M.R.C.C.T.

LOT 8R, BLOCK A
 LEGACY TOWN CENTER (NORTH)
 LOTS 6R AND 8R
 BLOCK A
 CABINET 2010, PAGE 134
 M.R.C.C.T.

LOT 7, BLOCK C
 LEGACY TOWN CENTER (NORTH)
 VOLUME 2006, PAGE 440
 M.R.C.C.T.

**DRAINAGE EASEMENT ABANDONMENT
 LEGACY TOWN CENTER (NORTH)
 SAMUEL H. BROWN SURVEY, ABSTRACT NO. 108
 CITY OF PLANO, COLLIN COUNTY, TEXAS**



			Kimley-Horn and Associates, Inc.		
12700 Park Central Drive, Suite 1800 Dallas, Texas 75251			Tel. No. (972) 770-1300 Fax No. (972) 239-3820		
Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 100'	DAB	MBM	06/14/2011	64316005	2 OF 2

EXHIBIT "B"

PETITION FOR ABANDONMENT

[For Easement Abandonment]

We, the undersigned, (hereinafter "Owners"), being all of the owners of real property abutting a Temporary Drainage Easement created by instrument recorded at Volume 4531, Page 245 of the Real Property Records of Collin County, Texas (hereinafter called "Easement"), more particularly described by metes and bounds in the field note description attached hereto and incorporated herein as **Exhibit "A"** do hereby request that the City of Plano, Texas (called "City") abandon the Easement.

1. The Owners are requesting the abandonment of the Easement for the following reasons:
Permanent drainage facilities have been installed in conjunction with the development of adjacent property and the Temporary Drainage Easement is no longer necessary.
2. The following public interest will be served as a result of the abandonment:
Termination of an unnecessary and unused easement.
3. Unless the City determines that this abandonment is exempt from payment of fair market value, the Owners agree to pay to the City the fair market value of the Easement as determined by an appraisal obtained by the City (called "Price"). The appraisal shall be conclusive as to the fair market value. The Owners shall reimburse the City for the cost of the appraisal and other costs incident to the abandonment (called "Costs"). The Price and Costs shall be paid to the City prior to the abandonment. Should the Plano City Council decide not to abandon the Easement, the Price shall be returned to the Owners, but the Costs shall be retained by the City. Each Owner's share of the Price and Costs shall be in the same proportion as their abutting ownership as hereinafter defined.
4. If the Owners are providing a replacement easement for the Easement requested to be abandoned herein, Owners will attach a metes and bounds description or plat identifying the replacement easement and attach same to this Petition as **Exhibit "B"**.
5. The Owners hereby represent and affirm to the City that no other property owner, lessee, tenant or easement or license holder uses the Easement to access or to serve their property.
6. **The Owners further agree to release, defend, indemnify and hold the City, its officers, agents and employees harmless from and against any and all claims, losses, demands, suits, judgments and costs, including reasonable and necessary attorney's fees and expenses, arising out of, related to or resulting from the abandonment of the Easement by City.**

7. The Owners understand and agree that the abandonment is in the sole discretion of the Plano City Council. The Owners also understand and agree that the Easement will be abandoned to them in proportion to their abutting ownership. The abutting ownership will be determined by the number of linear feet of frontage adjacent to the Easement owned by each property owner. Based on the foregoing, the Owners hereby represent and affirm that they have searched the public land records and determined that the abutting ownership is in the following proportions:

Legacy North PT MFA IV, L.P., a Delaware limited partnership – 100%

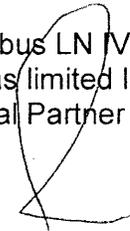
[Remainder of page blank]

10. The undersigned officers and/or agents of the Owners hereby represent and affirm that they have the necessary authority to execute this Petition for Abandonment on behalf of the Owners.

LEGACY NORTH PT MFA IV, L.P.,
a Delaware limited partnership

By: Columbus LN IV GP, LLC,
a Texas limited liability company,
General Partner

Dated: June 15, 2011

By: 

Robert L. Shaw

Contact Person for Property Owners:

Name: Robert L. Shaw

Phone No: 214-635-4730



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		06/27/11		
Department:		Planning		
Department Head		Phyllis Jarrell		
Agenda Coordinator (include phone #): Doris Carter, ext. 5350				
CAPTION				
Consideration of an Ordinance of the City of Plano, Texas, amending Section 3-3 of Chapter 3 Alcoholic Beverages, of the Code of Ordinances of the City of Plano providing an exception for a winery where authorized by the City of Plano Zoning Ordinance to the prohibition against manufacturing, distilling, brewing, transporting, storing for purposes of sale, distributing or selling alcoholic beverages in any residentially zoned district; providing a repealer clause, a savings clause, a severability clause, a penalty clause, a publication clause and an effective date.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S):				
COMMENTS: This item has no fiscal impact.				
STRATEGIC PLAN GOAL: Code of Ordinance Amendment relates to the City's goal of Financially Strong City with Service Excellence.				
SUMMARY OF ITEM				
An Ordinance amending Section 3-3 of Chapter 3 Alcoholic Beverages of the Code of Ordinances. This ordinance is a companion agenda item to an item on the City Council's Preliminary Open Meeting, regarding the Code of Ordinances amendment pertaining to the sale of alcohol.				
List of Supporting Documents: Ordinance		Other Departments, Boards, Commissions or Agencies N/A		

An Ordinance of the City of Plano, Texas, amending Section 3-3 of Chapter 3 Alcoholic Beverages, of the Code of Ordinances of the City of Plano providing an exception for a winery where authorized by the City of Plano Zoning Ordinance to the prohibition against manufacturing, distilling, brewing, transporting, storing for purposes of sale, distributing or selling alcoholic beverages in any residentially zoned district; providing a repealer clause, a savings clause, a severability clause, a penalty clause, a publication clause and an effective date.

WHEREAS, Section 3-3 of the City of Plano Code of Ordinances prohibits manufacturing, distilling, brewing, importing, transporting, storing for purposes of sale, distributing or selling any alcoholic beverages in any residentially zoned district within the City of Plano; and

WHEREAS, the City Council deems it necessary to amend its Code of Ordinances at Section 3-3 in order to provide an exception for a winery where authorized by the City of Plano Zoning Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:

Section I. Section 3-3 of Chapter 3 Alcoholic Beverages of the Code of Ordinances of the City of Plano is hereby amended to read in its entirety as follows:

**“Sec. 3-3. Manufacturing, importing, transporting, selling, etc.-
Unlawful in districts zoned residential.**

It shall be unlawful for any person to manufacture, distill, brew, import, transport, store for purpose of sale, distribute or sell any alcoholic beverages in any residentially zoned district within the City of Plano except for a winery where authorized by the City of Plano Zoning Ordinance.”

Section II. All provisions of the Ordinances of the City of Plano codified or uncoded, in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the Ordinances of the City of Plano, codified or uncoded, not in conflict with the provisions of this Ordinance shall remain in full force and effect.

Section III. The repeal of any Ordinance or part of Ordinances effectuated by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such Ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provision of any Ordinances at the time of passage of this Ordinance.

Section IV. It is the intention of the City Council that this Ordinance, and every provision hereof, shall be considered severable, and the invalidity or unconstitutionality of any section, clause, provision or portion of this Ordinance shall not affect the validity or unconstitutionality of any other portion of this Ordinance.

Section V. A violation of any provision of this ordinance shall be deemed a misdemeanor punishable as provided by Section 1-4(a) of the Code of Ordinances of the City of Plano, Texas.

Section VI. This Ordinance shall become effective immediately upon its passage and publication as required by law.

DULY PASSED AND APPROVED this the **27th** day of **June, 2011**.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, City Secretary

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		6/27/11		
Department:		Planning/Community Services		
Department Head		Phyllis Jarrell		
Agenda Coordinator (include phone #): Karen Suiter ext. 7566				
CAPTION				
A Resolution of the City Council of the City of Plano, Texas, adopting the 2011-2012 Action Plan, including the final statement of Community Development Block Grant and HOME program objectives and proposed uses of funds for program year 2011-2012; and declaring an effective date.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2011-2012	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(s): CDBG & HOME GRANT FUNDS				
COMMENTS: This item has no fiscal impact.				
STRATEGIC PLAN GOAL: Adopting the 2011-12 Action Plan relates to the City's goal of Partnering for Community Benefit, Great Neighborhoods - 1st Choice to Live, and Financially Strong City with Service Excellence.				
SUMMARY OF ITEM				
This resolution formally adopts the 2011-12 Action Plan, which includes the final statement of Community Development Block Grant and HOME Program objectives, thereby setting the budget for the use of these funds in 2011-12. If, as a result of the public hearing, any of the proposed projects are changed, this resolution will need to be amended prior to its approval.				
List of Supporting Documents: Resolution, Staff Summary, Action Plan			Other Departments, Boards, Commissions or Agencies Community Relations Commission Approved 7-0	

CITY OF PLANO
COMMUNITY RELATIONS COMMISSION

June 27, 2011

Report on 2011-2012 Federal Grant Recommendations

SUMMARY OF RECOMMENDATIONS:

The Community Services Division has a total of \$1,705,413 in federal funds and program income to be allocated for 2011-12. This amount is derived as follows:

New 2011-12 CDBG Grant amount:	\$1,169,726
New 2011-12 HOME Grant amount:	\$ 423,487
Estimated CDBG Program Income for 2011-12:	\$ 102,000
<u>Estimated HOME Program Income for 2011-12:</u>	<u>\$ 10,200</u>
Total Amount:	\$1,705,413

Each year projected program income must be included in the allocations. For 2011-12, staff has estimated \$112,200 in program income; therefore, must include the additional funds in the year's total. The estimate includes \$102,000 in CDBG program income and \$10,200 in HOME program income, although the actual amount collected may be substantially less or more.

Because there is uncertainty about the actual amount of program income the City will collect and because nearly all of the income is generated by the housing rehabilitation program's loans, program income is typically allocated to the housing rehabilitation program rather than to a particular agency. If there is a shortfall, the housing rehabilitation program is best able to absorb the loss because of the large amount of funding it receives. This year, the rehabilitation program did not receive HOME funds, so HOME program income was allocated to the first-time homebuyer assistance program as part of that program's funding recommendation.

Public services can be funded through CDBG, but are limited to 15% of the total of CDBG entitlement funds and program income. Public services are defined as activities directed toward improving community services, including employment, crime prevention, child care, health, drug abuse, education, fair housing counseling, energy conservation, welfare, or recreational needs, and which do not fall under any other CDBG category. The 2011-12 CDBG public service grant amount is calculated to be \$190,755, at the maximum 15%. The City received \$440,085 in public service requests from agencies considered for CDBG funds. Any change in the recommendations should take the public service cap (15% limit) into account.

Of CDBG construction funds and HOME dollars, there are \$1,514,658 to allocate and \$2,042,672 in requests. Prior direction from the City Council has been to use CDBG funds primarily to fund housing and neighborhood projects. Housing is a great concern for the City because deteriorating housing results in high crime rates, lower property taxes, and higher tax rates to pay the cost of dealing with problems. In addition, the lack of affordable housing under \$110,000 is a major focus. Since it is illegal to spend City tax funds on private property, federal funds are the primary source the City has to address housing concerns such as rehabilitation needs. For these reasons, CDBG is targeted toward housing and neighborhoods, and 73% of CDBG funds are directed to these areas within the following recommendations. All HOME

funds impact affordable housing, with the exception of grant administration funds. Additionally, 17% of CDBG and 9% of HOME funds are dedicated to grant administration, as is allowed by the grants. The 10% in remaining CDBG funds are directed toward social services which are not directly related to housing or neighborhoods.

HUD expects the City to use CDBG and HOME funds to meet the goals expressed in the Five-Year Consolidated Plan, which are included in the Action Plan. In our annual report to HUD and the community, we are expected to explain our progress in meeting these goals, using our available resources.

The following are the Commission's recommendations for the use of the 2011-12 grants. The chart shown below demonstrates how the recommendations are distributed between the two sources of funds. Please note that, for comparison purposes, the last column on the right shows the total amount the agency received in 2010.

2011 Applicant	CDBG	HOME	2011 Total Grant	2011 Request	2010 Funding
Boys and Girls Clubs of Collin County	\$ 22,000	\$ -	\$ 22,000	\$ 50,000	\$ 17,000
Christ United Methodist Church	\$ -	\$ 35,000	\$ 35,000	\$ 60,000	\$ 50,000
City of Plano – First Time Homebuyer Assistance	\$ 50,000	\$ 99,980	\$ 149,980	\$ 182,850	\$ 172,720
City of Plano – Grant Administration	\$ 215,685	\$ 40,000	\$ 255,685	\$ 255,685	\$ 324,700
City of Plano – Homelessness Prevention	\$ 43,755	\$ -	\$ 43,755	\$ 75,736	\$ 38,185
City of Plano – Helping Partners	\$ 20,000	\$ -	\$ 20,000	\$ 56,005	\$ 12,000
City of Plano – Housing Rehabilitation	\$ 795,025	\$ -	\$ 795,025	\$1,045,000	\$ 900,000
Communities in Schools Dallas Region	\$ 18,000	\$ -	\$ 18,000	\$ 40,000	\$ 30,000
Habitat for Humanity of South Collin County	\$-	\$ 120,000	\$ 120,000	\$ 190,000	\$ 162,000
Health Services of North Texas	\$ 10,000	\$ -	\$ 10,000	\$ 52,000	\$ 52,000
Jewish Family Service of Dallas	\$ 14,000	\$ -	\$ 14,000	\$ 34,375	\$ 14,000
LaunchAbility	\$ 10,000	\$ -	\$ 10,000	\$ 15,092	\$ 25,000
Maurice Barnett Geriatric Wellness Center – PHC	\$ 30,000	\$ -	\$ 30,000	\$ 50,000	\$ 30,000
Maurice Barnett Geriatric Wellness Center – Gatekeeper	\$ 23,000	\$ -	\$ 23,000	\$ 36,000	\$ 19,000
Plano Housing Corporation	\$ 20,261	\$138,707	\$ 158,968	\$ 240,500	\$ 143,493

2010 - 2014 CONSOLIDATED PLAN COMMUNITY DEVELOPMENT STRATEGIES AND OBJECTIVES AND OBJECTIVES

DECENT HOUSING

Strategy DH: Encourage the provision of decent, safe and affordable housing for low and moderate income and special needs residents.

Objective DH-1.1 (Affordability): Continue to preserve and enhance existing housing stock through home rehabilitation.

Objective DH-1.2 (Affordability): Continue to create affordable homeownership opportunities through homeownership assistance, new construction and/or acquisition and rehabilitation of land and properties for income qualifying households.

Objective DH-1.3 (Affordability): Increase and support affordable rental housing opportunities in Plano.

SUITABLE LIVING ENVIRONMENT

Strategy SL: Improve and maintain suitable living environments by supporting and enhancing public facilities, public services and infrastructure for low income persons, special needs populations and neighborhoods in need of revitalization.

Objective SL-2.1 (Availability/Accessibility): Develop and upgrade public facilities and infrastructure to help lower income persons, those with special needs and neighborhoods in need.

Objective SL-2.2 (Availability/Accessibility): Fund public service activities serving primarily lower income persons and those with special needs.

Objective SL-3 (Sustainability): Support the rehabilitation/revitalization of aging neighborhoods through a mixture of infrastructure improvements, home and business rehabilitation, code enforcement, and expanding economic opportunities.

ECONOMIC OPPORTUNITIES

Strategy EO: Encourage economic opportunities that promote private investment for low and moderate income persons and area workforce.

Objective EO-1 (Availability/Accessibility): Create and/or expand opportunities for small businesses and/or microenterprises.

REQUEST DETAILS:

Program: **SMART Moves** Request: \$ 50,000
Agency: **Boys and Girls Clubs of Collin County** Recommendation: **CDBG** \$ **22,000**

The Boys and Girls Clubs organization is requesting continuing financial assistance for the SMART Moves program, which is a comprehensive prevention and education program for at-risk youth run out of the Douglass Community Center. The program is designed to combat threats to children from engaging in risky behaviors including alcohol, tobacco, other drugs, teenage pregnancy, and gang violence.

This program relates to SL 2.2, Fund public service activities serving primarily lower income persons and those with special needs.

Program: **House on the Corner** Request: \$ 60,000
Agency: **Christ United Methodist Church** Recommendation: **HOME** \$ **35,000**

Christ United Methodist Church has built a new, affordable house each of the last six years moving the completed home to a residential lot in the Douglass Community. As with Habitat for Humanity, their volunteer hours and donations are an excellent source of matching funds for the HOME grant.

This activity relates to DH 1.2, Continue to create affordable homeownership opportunities through homeownership assistance, new construction and/or acquisition and rehabilitation of land and properties for income qualifying households.

Program: **First Time Homebuyer Assistance** Request: \$ 182,850
Agency: **City of Plano Community Services** Recommendation: **HOME** \$ **99,980**
CDBG \$ **50,000**

This program provides down payment and closing cost assistance to enable a low-income family to purchase their first home. Funds will assist 14 households to buy a home. The amount recommended includes an estimated \$10,200 in HOME program income based on loan repayments.

This activity relates to DH 1.2, Continue to create affordable homeownership opportunities through homeownership assistance, new construction and/or acquisition and rehabilitation of land and properties for income qualifying households.

Program:	Grant Administration	Request:	\$ 255,685
Agency:	City of Plano Community Services	Recommendation:	HOME \$ 40,000 CDBG \$ 215,685

The administrative funds from CDBG are used for incidental expenses of administration of the grant, including the annual audit, the cost of travel to HUD-related training, legal notices and advertisements, and fair housing expenses. The administrative funds are also required to staff oversight of the grants, including development of HUD reports, subrecipient agency monitoring, and financial management.

HOME administrative funds are used for the same purposes as CDBG administrative funds. HOME administrative funds have the added benefit of not requiring matching funds, thereby reducing the City's potential liability for contributing cash out of the budget for the required match.

Program:	Helping Partners	Request:	\$ 56,005
Agency:	City of Plano Community Services	Recommendation:	CDBG \$ 20,000

Helping Partners is a referral service that brings volunteer groups to location-eligible Plano homeowners and neighborhoods in need of repairs, cleanups or other services. The program connects pre-approved homeowners with community organizations who have resources to assist them.

This activity relates to DH 1.1, Continue to preserve and enhance existing housing stock through home rehabilitation.

Program:	Homelessness Prevention	Request:	\$ 75,736
Agency:	City of Plano Community Services	Recommendation:	CDBG \$ 43,755

For a number of years the City has funded a homeless prevention program, whereby families who are in non-recurring difficulties which have put them in danger of losing their home can receive up to three months of rent and utility assistance. The Commission recommended \$43,755 in funding. The program is subcontracted to the Samaritan Inn and has specific guidelines that distinguish this program from other family assistance programs run by the agency. Additionally, the Samaritan Inn comes to Plano two times a month to administer the program within the city, providing easier access for residents.

This program relates to SL 2.2, Fund public service activities serving primarily lower income persons and those with special needs.

Program: **Housing Rehabilitation** Request: \$1,045,000
Agency: **City of Plano Community Services** Recommendation: **CDBG** \$ **795,025**

This is an on-going program of low-interest loans for the rehabilitation of houses and apartments in Plano. The program also provides for the acquisition, rehabilitation and resale of single family homes to low and moderate-income homebuyers. The program helps low-income households to make their homes livable, and has been the primary activity of the Community Development program in Plano since its inception. Housing Rehabilitation provides a decent living environment for low-income families, and visibly improves neighborhoods.

Since this is a revolving loan fund, a portion of the money is recovered to be used again. The amount recommended includes an estimated \$102,000 in program income based on loan repayments.

This activity relates to DH 1.1, Continue to preserve and enhance existing housing stock through home rehabilitation.

Program: **Help Kids Program** Request: \$ 40,000
Agency: **Communities in Schools Dallas, Inc.** Recommendation: **CDBG** \$ **18,000**

Communities in Schools Dallas, Inc. is requesting funds to compensate counselors at Williams High School and Armstrong Middle School. These individuals provide academic and social support services, drug and alcohol prevention programs, and mentoring and tutoring for at-risk students. According to the agency, student needs in these schools continue to increase. CDBG has funded this program for the past eight years. This is a public service.

This program relates to SL 2.2, Fund public service activities serving primarily lower income persons and those with special needs.

Program: **New and Rehabilitated Affordable Housing** Request: \$ 190,000
Agency: **Habitat for Humanity of South Collin County** Recommendation: **HOME** \$ **120,000**

Habitat is asking for money to buy land to build four houses in Plano. This year the Commission is recommending funding from HOME. The program will also allow for the purchase and rehabilitation of single family dwelling units for the purpose of housing affordable low- and moderate-income households. The volunteer hours and donations obtained by Habitat in building their homes have been invaluable in meeting the City's matching requirements for the HOME program.

This activity relates to DH 1.2, Continue to create affordable homeownership opportunities through homeownership assistance, new construction and/or acquisition and rehabilitation of land and properties for income qualifying households.

Program: **Nutrition and Hygiene Services**
Agency: **Health Services of North Texas**

Request: \$ 52,000
Recommendation: **CDBG** \$ **10,000**

This request is for hygiene and nutritional products for persons living with HIV/AIDS and other low-income clients, operational costs and staff salaries. The request is considered to be a public service. The Commission believed that the services provided by this organization meet needs of individuals with significant medical and related financial challenges. Funding this year is limited by the number of Plano clients projected to use this service in the application.

This program relates to SL 2.2, Fund public service activities serving primarily lower income persons and those with special needs.

Program: **Supported Employment/Continued Support**
Agency: **LaunchAbility**

Request: \$ 15,092
Recommendation: **CDBG** \$ **10,000**

This request is for the Supported Employment program, a comprehensive program that helps adults with cognitive disabilities to obtain employment at market pay.

This program relates to Strategy EO, Encourage economic opportunities that promote private investment for low and moderate income persons and area workforce.

Program: **Preventative Health Care**
Agency: **Maurice Barnett Geriatric Wellness Center**

Request: \$ 50,000
Recommendation: **CDBG** \$ **30,000**

This request is for preventative nursing care, counseling, health education, referrals, medical equipment lending and routine preventative service not covered by Medicare. Individuals participating in this program will be either elderly or severely disabled.

This program relates to SL 2.2, Fund public service activities serving primarily lower income persons and those with special needs.

Program: **Gatekeeper**
Agency: **Maurice Barnett Geriatric Wellness Center**

Request: \$ 36,000
Recommendation: **CDBG** \$ **23,000**

This service assists at-risk Plano elderly or disabled adults with case management. Case management will include referrals to the appropriate community partners, assistance in securing resources and advocacy.

This program relates to SL 2.2, Fund public service activities serving primarily lower income persons and those with special needs.

Program:	Gerontology	Request:	\$ 34,375
Agency:	Jewish Family Service Of Dallas	Recommendation:	CDBG \$ 14,000

This program assists at-risk Plano seniors age 62 or older with in-home case management and physical and mental healthcare services.

This program relates to SL 2.2, Fund public service activities serving primarily lower income persons and those with special needs.

Program:	Land Purchase and Lot Preparation	Request:	\$ 240,500
Agency:	Plano Housing Corporation	Recommendation:	CDBG \$ 20,261 HOME \$ 138,707

This request is for operational expenses up to \$41,435, and funding to purchase, rehabilitate, and re-sell single-family homes with approximately \$117,533. The homes are typically sold at a discount from appraised value to make them more affordable to low-income families.

HOME rules require that at least 15% of the HOME funds be designated for Community Housing Development Organizations (CHDO's). The rules also allow the City to provide up to 5% of the HOME grant for CHDO operating expenses. No matching funds are required for operating expenses, so it is to our benefit to provide them in order to reduce our matching requirements. Plano Housing Corporation is currently our only CHDO, so they automatically receive \$63,523 (15% of the HOME grant). The Commission is recommending that they receive \$138,707 from HOME, including \$21,174 (5%) of the HOME entitlement grant for operating expenses.

The Commission also recommended that \$20,261 be granted from CDBG funds to give them a total of \$158,968.

This activity relates to DH 1.1, Continue to preserve and enhance existing housing stock through home rehabilitation.

Unfunded Request Details:

There were two agencies' requests, considered for CDBG and HOME funding, that were not recommended by the Commission.

Program:	Mullins and Crossbend Rehabilitation, Alma Center Equip- ment, and Computer Acquisition	Request:	\$ 89,514
Agency:	LifePath Systems, Inc.	Recommendation:	CDBG \$ 0

LifePath Systems provides services to people living with mental illness and developmental disabilities. The agency requested funds to rehabilitate two of their group homes, equip four group homes with computers and internet access, purchase a copier, and replace the heating and air conditioning system for their Alma Center Offices.

The Commission felt strongly that the agency did not demonstrate the capacity to adequately administer funds, and therefore, is recommending no funding for these requests.

Program:	Plano Family Literacy Program	Request:	\$ 20,000
Agency:	Plano ISD Education Foundation	Recommendation:	CDBG \$ 0

The application requests funds to support a GED class for parents of PISD students. The Commission considered this application for funding out of the Community Development Block grant (CDBG) since the request was ineligible for Buffington Community Service Grant funds because GED classes do not provide short-term, urgent economic assistance or care services, offering the immediate relief of a crisis.

The program is eligible for CDBG funds since it provides services to illiterate and economically disadvantaged families consistent with the city's Consolidated Plan goals. Unfortunately, the application provided no DUNS number as required by HUD, which is a condition of CDBG funding. In fairness to other applicants, the Commission could not consider the application to have a DUNS number after the application deadline.

A Resolution of the City Council of the City of Plano, Texas, adopting the 2011-2012 Action Plan, including the final statement of Community Development Block Grant and HOME program objectives and proposed uses of funds for program year 2011-2012; and declaring an effective date.

WHEREAS, the Community Relations Commission held public hearings in 2011 on April 13, April 19, April 26, and May 3 and made final recommendations at the public meeting on May 17, 2011, concerning the 2011-2012 Action Plan, and the use of the Community Development Block Grant Funds, and the HOME Investment Partnership Funds collectively referred to herein as “the Funds”, and;

WHEREAS, the City Council held a public hearing on June 27, 2011, to receive public comments concerning the recommendations of the Community Relations Commission, and;

WHEREAS, the City Council has authorized the City Manager to make application for the Funds;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:

SECTION I. - The 2011-2012 Action Plan (Exhibit “A” attached hereto), including the Final Statement of Community Development Block Grant and HOME Investment Partnership Objectives and Proposed Use of Funds for 2011-2012, are hereby adopted with funding allocations as follows:

Boys and Girls Clubs of Collin County	\$ 22,000
Christ United Methodist Church	\$ 35,000
First Time Homebuyer Assistance	\$149,980
Grant Administration	\$255,685
Homelessness Prevention	\$ 43,755
Helping Partners	\$ 20,000
Housing Rehabilitation	\$795,025
Communities in Schools Dallas Region	\$ 18,000
Habitat for Humanity of South Collin County	\$120,000
Health Services of North Texas	\$ 10,000
Jewish Family Service of Dallas	\$ 14,000
LaunchAbility	\$ 10,000

Maurice Barnett Geriatric Wellness Center – PHC	\$ 30,000
Maurice Barnett Geriatric Wellness Center – Gatekeeper	\$ 23,000
Plano Housing Corporation	\$158,968

SECTION II. - This resolution shall take effect immediately upon its passage.

DULY PASSED AND APPROVED THIS 27TH DAY OF JUNE 2011.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

Approved as to form:

Diane C. Wetherbee, CITY ATTORNEY

2011-12 City of Plano Action Plan

Prepared for the
United States Department of Housing
and Urban Development
by the City of Plano, TX



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As part of the Federal regulations guiding the development of this document, the City is required to provide an executive summary that includes objectives and outcomes identified for the plan year, as well as an evaluation of past performance, a summary of the citizen participation and consultation process, and a summary of comments or views expressed with reasons for any comments not accepted.

The City of Plano 2011-12 Action Plan details activities that will receive U.S. Department of Housing and Urban Development (HUD) funds from October 1, 2011 through September 30, 2012. After a lengthy citizen participation process that encouraged involvement from Plano residents and those organizations assisting Plano residents, the activities detailed in the Plan represent the recommendations of the Community Relations Commission. Funding for the activities will come from HUD's Community Development Block Grant (CDBG) and HOME Investment Partnership Grant (HOME) funds. All of the activities will improve the quality of life for Plano residents and enhance the overall community.

Priorities for funding are established through the 2010-2014 City of Plano Consolidated Plan. The 2010-2014 Consolidated Plan details the strategies, objectives, outcomes and goals the City of Plano will address with the use of HUD funds. The City of Plano combines general funds with HUD funds to achieve the objectives and outcomes set forth in the 2010-2014 Consolidated Plan. The 2011-12 Action Plan serves as year two of the five years.

2011-12 Goals and Objectives

The following are the FY 2011 objectives and outcomes identified for funding in the 2011-12 Annual Action Plan.

Decent Housing

Objective 1: To preserve and enhance existing housing stock through home rehabilitation.

Outcome: Provide programs to rehabilitate and improve the existing stock of homes occupied by low and moderate income owners.

Objective 2: To create affordable homeownership opportunities through homeownership assistance, new construction and/or acquisition and rehabilitation of land and properties for income qualifying households.

Outcome: Provide assistance to homebuyers with downpayment assistance, closing cost assistance, and/or homebuyer education and counseling.

Suitable Living Environment

Objective: Fund public service activities serving primarily lower income persons and those with special needs.

Outcome 1: Provide support to organizations that engage in public services for Plano residents, especially special needs populations, including but not limited to low income elderly, persons with disabilities, persons with HIV/AIDS and at-risk youth.

Outcome 2: Assist homeless supportive services across the entire spectrum of need, from homelessness to self-sufficiency, with the continued emphasis on homelessness prevention.

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Economic Opportunities

Objective: Create and/or expand opportunities for small businesses and/or microenterprises.

Outcome: Support activities that provide job training and assist with job/small business creation.

Evaluation of Past Performance

The City of Plano strives to improve performance of all organizations participating in the delivery of activities funded to enhance and improve the quality of life of Plano residents. Within the past 12 months, city staff has made several changes in policies, procedures and overall processes for many in-house HUD-funded programs. One of the most significant changes has come in the area of loan servicing. In previous years the Community Services Division (CSD) serviced all CDBG and HOME rehabilitation loans. In 2010, the CSD and Accounting Department staff collaborated to improve the servicing of CDBG and HOME rehabilitation loans. These collaboration efforts have enhanced the City's loan servicing services while allowing CSD staff to allocate more time towards ensuring that the City's Affordable Housing Goals are met.

In the past twelve months, the City of Plano has invested \$2,907,883 of HUD funds in the community to meet objectives and outcomes outlined in the 2010-2014 Consolidated Plan. \$355,883 in Homelessness Prevention and Rapid Re-Housing Program (HPRP) and \$38,185 in CDBG funds provided homelessness prevention and case management to Plano residents. \$1,517,469 in CDBG and \$414,764 in HOME funds were spent on creating, improving, and/or placing low to moderate income households into Plano's affordable housing stock. \$324,953 was spent on services to assist the elderly, disabled adults, at-risk youth, patients living with AIDS/HIV, and provide grant administration. Finally, \$256,629 in Community Development Block Grant Recovery (CDBG-R) funds were spent on improving the City's Day Labor Center which facilitates temporary labor placements.

The City has not achieved all the objectives and outcomes set forth in the 2010-2014 Consolidated Plan that ends September 30, 2015. However, it has made strides at addressing annual objectives. Though the 2010 Action Plan year ends on September 30, 2011, the city has exceeded the Housing Rehabilitation Program's outcome and met its 2010 economic opportunity outcome. The City expects to meet all other 2010-11 annual objectives by the end of FY2010.

Public Participation

The City of Plano understands the importance of citizen participation when making decisions that affect the community. The Community Relations Commission (CRC), policy recommending body to the Plano City Council, is made up of Plano residents and serves as the first resource by which the community can participate in funding allocations of HUD and City of Plano Buffington Community Service Grant funds. Through its coordination with staff, the CRC oversees the citizen participation process. In February 2011, the City of Plano notified Plano residents and organizations that expressed interest in providing services to Plano residents of available funding through electronic mail, letters sent by the U.S. Post Office and via the web at www.planoplanning.gov.

Applications were accessible via the city's website. In order to assist interested agencies in applying, city staff held two mandatory application trainings on February 9th and 10th. One-on-one technical assistance was made available by appointment to organizations interested in applying. Several organizations took this opportunity to meet with the CSD manager and staff in preparing their application before its official submission. On March 31st, the City published a newspaper notice in

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the Plano Star Courier informing the public of hearings for the use of CDBG and HOME funds. The CRC held public hearings for those desiring to speak on 2011 funding allocations on April 13th, April 19th, April 26th and May 3rd.

On May 17, 2011, the CRC made recommendations for the use of grant funding. A preliminary funding notice was published in the Plano Star Courier newspaper on June 12, 2011. In addition to listing CRC funding recommendations, it also explained how to obtain a copy City of Plano Draft 2011-12 Action Plan and noted the City Council public hearing date on June 27, 2011.

Summary of Citizen Comments or Plan Views:

To-date, comments received were made during CRC hearings by organization representatives regarding information presented in their written application. No written or public comments, other than written applications, have been received by City staff. The June 12, 2011 newspaper notice generated one call from a resident interested in the City's Homebuyer Assistance Program. The resident was further assisted by staff regarding the program.

Any comments received prior to the June 27th City Council public hearing will be provided to the Council. All comments made during the City Council public hearing and before July 14, 2011 will be submitted to the U.S. Department of Housing and Urban Development's Region VI Director of Community Planning and Development.

Resources

The City of Plano will use both CDBG and HOME funds during FY 2011. The following represents the FY 2011 CDBG and HOME entitlement allocations as compared to last year.

	FY 2010	FY 2011	Difference
CDBG	\$1,385,905	\$1,169,726	-\$216,179
HOME	\$477,993	\$423,487	-\$54,506
	\$1,863,898	\$1,593,213	-\$270,685 Total

HUD funds impact public services (social services), affordable housing, and grant administration. The 2011 reduction in CDBG funds has resulted in a 6% drop in available public services funding compared to that available in 2010. Non-profit partners will receive a smaller allocation this year due to the reduction in CDBG.

Affordable housing programs are funded through 65% of the CDBG allocation and 90% of the HOME allocation. The cuts have resulted in a loss of funding to our affordable housing partners, Habitat for Humanity and Christ United Methodist Church's House on the Corner, when compared to last year. Additionally, fewer homeowners will receive home rehabilitations through the City's Housing Rehabilitation Program.

The City expects to receive program income from rehabilitation loans for both the CDBG and HOME programs. As in FY 2010, the City anticipates receiving \$102,000 in CDBG and \$10,200 in HOME CDBG program income.

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The City of Plano also expects to meet the 25% HOME match requirement of \$105,872 through volunteer labor and donations received by Habitat for Humanity of South Collin County's Plano projects.

The above mentioned federal funds will be used to leverage private sector and non-federal public sources to aid organizations in providing a more complete scale of care to Plano residents. Funds provided by City of Plano to organizations are not enough to fund their entire program. For public service organizations, these funds help leverage state, foundation, and sometimes other federal funds to provide a continuum of services to Plano residents. For non-public service organizations, CDBG and HOME funds are used to leverage private bank funds and other federal programs to assist homebuyers and homeowners in improving or purchasing a home.

Annual Objectives

The Community Relations Commission has recommended the following activities for 2011:

DECENT HOUSING	
Objective 1: Continue to preserve and enhance existing stock of homes occupied by low and moderate income owners.	
Agency, Program	City of Plano, Housing Rehabilitation
Amount, Source	\$693,025 (CDBG) \$102,000 (CDBG Program Income)
Activity	Provide low-interest rehabilitation and reconstruction loans to low-to-moderate income owner-occupied and rental housing, some of which may include historic preservation. Also provide for the acquisition, rehabilitation and resale of single family homes.
Outcome	38 houses rehabilitated
Customer/ Beneficiary	Low-to-moderate income(LMI) homeowners
Service Area	City-wide
Agency, Program	City of Plano, Helping Partners
Amount, Source	\$20,000 (CDBG)
Activity	Connects volunteers with homeowners or neighborhoods in need of repairs, cleanups or other services.
Outcome	66 houses repaired
Customer/ Beneficiary	Plano residents living within City of Plano Benefit Area

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Service Area	Locations within City of Plano Benefit Area Map (Geographic Distribution section)
Objective 2: Continue to preserve and enhance existing stock of homes occupied by low and moderate income owners.	
Agency, Program	City of Plano, Homeownership Financial Assistance
Amount, Source	\$50,000 (CDBG) \$99,980 (HOME)
Activity	Provide downpayment and closing cost assistance of up to \$10,000 to low-to-moderate income families buying homes in Plano, including a mandatory eight hour homebuyer education class.
Outcome	14 households assisted into homeownership
Customer/ Beneficiary	LMI homebuyers
Service Area	Citywide
Agency, Program	Christ United Methodist Church, House on the Corner
Amount, Source	\$35,000 (HOME)
Activity	Construct an affordable house for an eligible homebuyer.
Outcome	1 house constructed and sold to a qualified homebuyer
Customer/ Beneficiary	LMI households
Service Area	Citywide
Agency, Program	Habitat for Humanity of South Collin County, Habitat for Humanity Plano Builds 2011-12
Activity	Acquire residential lots for the purpose of construction of housing and/or purchase existing homes for rehabilitation and resale.
Amount, Source	\$120,000 (HOME)
Outcome	4 houses rehabilitated or constructed and sold to a qualified homebuyer
Customer/ Beneficiary	LMI households
Service Area	Citywide

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Agency, Program	Plano Housing Corporation, Acquisition, Rehabilitation and Sale of Homes
Activity	Purchase and develop residential lots and/or purchase existing homes for rehabilitation and resale.
Amount, Source	\$20,261 (CDBG) \$138,707 (HOME)
Outcome	2 houses rehabilitated and resold
Customer/ Beneficiary	LMI households
Service Area	Citywide

2011-12 Decent Housing Outcome Summary

Rehabilitation/ Repair Goal	New Construction Goal	New Homeowner Goal	Total Outcome Goal
108 households	3 households	14 households	125 households

SUITABLE LIVING ENVIRONMENT

Objective: Fund public service activities serving primarily lower income persons and those with special needs.

Agency, Program	City of Plano, Homelessness Prevention
Activity	Provide rent or mortgage payments and utility assistance.
Amount, Source	\$43,755 (CDBG)
Outcome	16 households prevented from becoming homeless
Customer/ Beneficiary	LMI households
Service Area	Citywide

Agency, Program	Jewish Family Service of Dallas, Gerontology
Activity	Provide physical and mental healthcare.
Amount, Source	\$14,000 (CDBG)
Outcome	16 seniors assisted with healthcare
Customer/ Beneficiary	Seniors ages 62 years of age or older

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Service Area	Citywide
Agency, Program	LaunchAbility, Individualized Supported Employment
Activity	Provide job training and ongoing support to obtain and keep employment.
Amount, Source	\$10,000 (CDBG)
Outcome	3 disabled adults
Customer/ Beneficiary	Severely disabled adults
Service Area	Citywide
Agency, Program	Health Services of North Texas, Plano Nutrition Center
Activity	Provide hygiene and nutritional products for persons living with HIV/AIDS and other low-income clients.
Amount, Source	\$10,000 (CDBG)
Outcome	8 individuals assisted with nutritional services
Customer/ Beneficiary	LMI adults
Service Area	Citywide
Agency, Program	Maurice Barnett Geriatric Wellness, Gatekeeper
Activity	Provide support services to the elderly.
Amount, Source	\$23,000 (CDBG)
Outcome	19 individuals assisted with support services
Customer/ Beneficiary	Seniors ages 62 years of age or older and/or severely disabled
Service Area	Citywide
Agency, Program	Maurice Barnett Geriatric Wellness, Preventive Healthcare
Activity	Provide preventative health care to the elderly.
Amount, Source	\$30,000 (CDBG)

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Outcome	372 individuals assisted with healthcare	
Customer/ Beneficiary	Seniors ages 62 years of age or older and/or severely disabled	
Service Area	Citywide	
Agency, Program	Boys and Girls Clubs of Collin County, SMART Moves	
Activity	Provides an education program for at-risk youth.	
Amount, Source	\$22,000 (CDBG)	
Outcome	90 youth educated	
Customer/ Beneficiary	LMI Youth	
Service Area	Citywide	
Agency, Program	Communities in School Dallas Region, Help Kids at Williams High School and Armstrong Middle School	
Activity	Provide counseling to at-risk youth.	
Amount, Source	\$18,000 (CDBG)	
Outcome	40 at-risk youth	
Customer/ Beneficiary	LMI Youth	
Service Area	Armstrong Middles School and Williams High School students residing in Plano	
2011-12 Suitable Living Outcome Summary		
Households	Individuals	Total Outcome Goal
16	548	564
Other Objective		
Agency, Program	City of Plano, Grant Administration	
Activity	Provide oversight, monitoring, and coordination of the CDBG and HOME programs, as well as fair housing promotion, services, and counseling.	

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Amount, Source	\$215,685 (CDBG) \$40,000 (HOME)
Outcome	Effectively administered grant-funded programs
Customer/ Beneficiary	LMI households and individuals
Service Area	Citywide

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Annual Affordable Housing Goals

The City of Plano uses the majority of HUD funds to improve affordable housing in Plano. The City's annual affordable housing goals highlight the areas that the City of Plano plans to address. The goals addressed each year change depending on the amount of HUD funding available. The following chart represents 2011-12 Affordable Housing Goals.

ANNUAL HOUSING COMPLETION GOALS

Grantee Name: City of Plano Program Year: 2009-10	Expected Annual # of Units to be Completed	Actual # Completed	Resources Used During the Period
ANNUAL AFFORDABLE HOUSING GOALS (sec. 215)			
Homeless households	0	0	
Non-homeless household	75	0	CDBG, HOME
Special Needs households	0	0	
AFFORDABLE RENTAL HOUSING GOALS (sec. 215)			
Acquisition of existing units	0	0	
Production of new units	0	0	
Rehabilitation of existing units	0	0	
Rental Assistance	16	0	CDBG
Total Sec. 215 Affordable Rental	16	0	
AFFORDABLE OWNER HOUSING GOALS (sec. 215)			
Acquisition of existing units	2	0	CDBG, HOME
Production of new units	5	0	CDBG, HOME
Rehabilitation of existing units	38	0	CDBG
Homebuyer Assistance	14	0	CDBG
Total Sec. 215 Affordable Owner	59	0	
ANNUAL HOUSING GOALS			
Annual Rental Housing Goal	16	0	CDBG,HPRP
Annual Owner Housing Goal	59	0	CDBG, HOME
Total Annual Housing Goal	75	0	CDBG, HOME

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Explanation of Expected Numbers:

- **Non-Homeless Households:** Homelessness Prevention, First-Time Homebuyers, Plano Housing Corporation, Habitat for Humanity, Christ United Methodist, and Rehabilitation goals.
- **Rental Assistance:** Homeless Prevention goal.
- **Acquisition of existing owner units:** Plano Housing Corporation goal.
- **Production of new owner units:** Christ United Methodist and Habitat for Humanity goals.
- **Rehabilitation of existing owner units:** Rehabilitation goal.
- **Homebuyer Assistance:** First-Time Homebuyer goal.

Public Housing

The Plano Housing Authority fills an important need in the community for low income Plano residents. Through the use of Section 8 vouchers and a small portion of public housing units, Plano's most vulnerable populations are kept from entering into the realm of homelessness. The City of Plano will continue to work with the Plano Housing Authority to assist the PHA in encouraging residents to participate in the PHA Self Sufficiency Program. PHA residents participating in the program attend the City of Plano's eight hour, HUD-approved, Homeownership Class. After attending the class, the PHA leverages City of Plano First-Time Homebuyer funds to assist Self Sufficiency Program participants in becoming a homeowner.

Though the PHA is not designated as "troubled" by HUD, the City of Plano continues to work with the PHA and is available to assist them, if needed.

Homeless or At-Risk of Homelessness

The City of Plano outlined its homeless strategy in its 2010-2014 Consolidated Plan. The strategies and objectives below will be funded by both city general funds and HUD funds. The City's five year strategy, objectives and outcomes pertaining to homeless and special needs populations are as follows:

Strategy

To improve and maintain suitable living environments by supporting and enhancing public facilities, public services and infrastructure for low income persons, special needs populations and neighborhoods in need of revitalization.

Objective 1: To develop and upgrade public facilities and infrastructure to help lower income persons, those with special needs and neighborhoods in need.

Outcome 1: Support and assist with the creation of additional shelter, supportive services, and transitional housing for homeless and under-housed.

Objective 2: Fund public service activities serving primarily lower income persons and those with special needs.

Outcome 2: Assist homeless supportive services across the entire spectrum of need, from homelessness to self-sufficiency, with the continued emphasis on homelessness prevention.

In 2011-12, the City has chosen to use CDBG funds to impact Plano's homeless population by preventing more Plano residents from becoming homeless and locating those that are currently homeless during the annual homeless count. Through the City of Plano's Homelessness Prevention program, Plano residents are provided up to three consecutive months of emergency rent or mortgage and utility assistance, as well as intense case management to ensure that residents

move from being at-risk of becoming homeless to being stably housed. Additionally, the City supports the Collin County Homeless Coalition's annual Collin County Homeless Count, using CDBG funds to provide staff that assist with the coordination of the Count and printing "emergency pocket piles" for all homeless residents found during the Count. The City will provide city general funds to assist Collin County's only Homeless Shelter, the Samaritan Inn, in serving Plano residents experiencing homelessness.

Non Homeless Special Needs Populations

Likewise, through the use of city general funds, the City will provide funds to Hope's Door to provide a variety of services to victims of domestic violence. Through the use of HUD funds and city general funds, organizations serving the elderly, persons with AIDS/HIV and disabled individuals provide services to Plano residents. In 2011-12, these populations will be receiving support services, homelessness prevention services, job training and home repair assistance to improve their quality of life.

The City of Plano also served as the lead applicant for Texas Department of Housing and Community Affairs (TDHCA) FY 2011 Emergency Solutions Grant funds to further assist special needs and homeless populations throughout Collin County by providing emergency shelter funds, case management, and homelessness prevention services. The City remains hopeful that the application will receive funding for FY 2011.

Barriers to Affordable Housing

The City of Plano continues to work at removing down any barriers to affordable housing and prevent barriers from arising for Plano residents. In 2010, the City of Plano conducted an Analysis of Impediments to Fair Housing (AI). The AI produced a Fair Housing Action Plan that the City began following in 2010-11 and will continue to follows in 2011-12. The Fair Housing Action Plan suggested that the following activities be taken to reduce the fair housing impediments:

Action Item 1: Make it easier for residents to find information about fair housing and the complaint process. The city could improve its website by:

- Defining fair housing on the website. Discuss what fair housing is and provide the basics of the federal Fair Housing Act and the city's fair housing ordinance.
- Having direct instructions for filing a complaint.
- Having links to Texas Workforce Commission, Civil Rights Division (TWCCRD) AND HUD's websites.
- Providing information in Spanish and English. All of the information suggested above should be provided in English and Spanish.
- Having cross links with the Plano Housing Authority's website.
- In addition, the City should partner with the housing authority and local housing nonprofits to promote education and understanding of fair housing laws and rights. This could be accomplished through some of the following activities:

1. Fair housing presentations at neighborhood meetings and community events;
2. Sponsoring fair housing poster contests in elementary schools; and

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3. Displaying fair housing brochures and posters at community/recreation centers, in schools, health clinics, nonprofits and city/county agencies that are frequented by populations most vulnerable to housing discrimination.

Action Item 2: Continue policies to encourage and create mixed types of housing, affordable to households of all income levels.

Fostering Affordable Housing

In 2011-12, the City will continue addressing all of the actions set forth in the AI. Furthermore, the City will continue to work, ensuring that city zoning and other ordinances are conducive to the creation of more affordable housing in Plano. Organizations developing affordable housing in Plano will continue to receive funding to address these needs. Additionally, through the City's Housing Rehabilitation program, the City of Plano will acquire and rehabilitate affordable homes (including foreclosures) for sale to low-to-moderate income households.

Meeting Underserved Needs

The need for assistance to help under-served populations in Plano continues to grow with the unstable economy and unemployment. Moreover, the decrease in HUD funding, as shown in the Executive Summary of the document, place a strain on the available funds to assist organizations helping under-served populations. The City of Plano will continue to address the gap in services and needs of under-served communities through city general funds. In an effort to further help under-served populations, the City's Community Relations Commission changed the funding priorities for city general funds. All city-funded FY 2011 activities provide short-term, urgent economic assistance or care services, offering immediate relief of crisis impacting the physical and/or mental health of Plano residents. General categories for such assistance and care include food, clothing, shelter, transportation, and medical or crisis counseling care.

The City will also address underserved needs in other areas such as business and outreach. The City's Housing Rehabilitation program diligently works to include minority and women-owned contractors in the program's contracting opportunities. Letters will continue to be sent describing the rehabilitation program and requesting applications be completed for inclusion on the home improvement and rehabilitation contractor list. City staff will make efforts to attend events and meetings that minority and women-owned contractors sponsor. Also, staff will continue to attend community meeting that are minority focused, such as "Unidos" held in the city of Plano in order to include minority and women as clients in our programs.

Anti-Poverty Strategy

The City of Plano's anti-poverty strategies include assisting organizations, financially, that provide services for families living in poverty and help families get out of poverty. Through city general funds and HUD funds, families living in poverty have access to healthcare, education, food and support services. Additionally, the City works closely with homeowners and community groups to promote neighborhood involvement and neighborhood revitalization which lead to the reduction of poverty and strengthen community and family values. Through the City's "Love Where You Live" program, neighborhoods are revitalized and communities are strengthened through acts of kindness, outreach and volunteerism. The program allows the city to collaborate with various community, faith-based, and educational groups to make neighborhood and home improvements. Using the City's Neighborhood Enhancement Tool, neighborhoods are analyzed to decide which neighborhoods should be targeted for community projects. In the end, these anti-poverty strategies strengthen families and the entire community.

Lead Paint Hazards

Lead-based paint hazards are addressed through the Housing Rehabilitation program and the HOME acquisition/rehabilitation program. As homes enter these programs, they are evaluated for lead paint and, when necessary, such hazards are mitigated. Actions taken to reduce lead-based paint will be conducted in accordance with HUD's lead-based paint regulations. In addition, homes to be purchased through the First-Time Homebuyer Program that fail the required visual paint inspection will be tested for lead paint. If lead paint is present, the owner will be informed of the appropriate requirements to respond to the lead paint, and the purchase will not proceed with federal funds unless and until interim controls are completed.

Inter-agency Coordination

Inter-agency coordination is important to the institutional infrastructure surrounding HUD and city funded programs. Institutional structure is developed through financial assistance from the CDBG, HOME, city-funded grants, and other city general funds. Coordination between public and private housing agencies and social service agencies is an on-going process. The City participates in the Collin County Social Services Association, Collin County Homeless Coalition, Metro Dallas Homeless Alliance (MDHA), the Dallas Continuum of Care, and serves as Chair of the MDHA Homeless Management Information System (HMIS) Committee. Public Housing resident initiatives are supported by the Housing Authority. The City also coordinates with local faith-based groups to address the needs of Plano residents.

Program Specific Requirements

The purpose of monitoring activities funded by HUD and the City of Plano is to ensure that the activity is successfully carried out and compliant with all applicable rules and regulations. Where the activity is to be performed by a subrecipient or a CHDO, a contract between the agency and the City is signed. The contract specifies what will be done with the money allocated, and the rules and regulations which apply. In addition, City staff will meet with the agencies prior to the start of the grant year to explain the required record-keeping and provide each agency a compliance manual online.

To ensure that HOME and CDBG funds for affordable housing are committed and spent in a timely manner, the City will review monthly the progress of expenditures. In situations where the expenditures are not timely, staff will work with the subrecipient/CHDO to rectify the situation.

The monitoring process consists of the following steps:

1. Notification of subrecipient or CHDO of scheduled monitoring visit.
2. Entrance conference with agency staff, to explain what will be done during the visit.
3. Review of documents justifying expenditures and work completed or in progress, to determine the quality of the work and whether it complies with regulations and codes.
4. Where appropriate, review of income qualification documents.
5. Review of HOME match documentation, where applicable.
6. On-site inspection of housing units under way and completed, where applicable.
7. Exit conference to report tentative conclusions and findings to the agency staff.

2011-12 CITY OF PLANO ACTION PLAN

8. Written follow-up detailing any problems found and asking for a response explaining how the problems will be corrected.
9. When necessary, additional follow-up visit to see that problems have been corrected, including re-inspection for cited corrections in housing units.

In most cases, monitoring visits will be conducted when work is complete. However, in some cases, particularly with new subrecipients or CHDOs, more frequent monitoring visits will be conducted.

HOME funds will not be used for rental assistance, and therefore there will be no requirement to monitor for long-term compliance with property standards.

CDBG

In accordance with HUD requirements set forth in 91.220(l)(1), this brief paragraph seeks to address the 2011-12 CDBG programmatic status. As stated in the Executive Summary, the City of Plano expects to receive \$102,000 in CDBG program income from home rehabilitation loans during FY 2011-12. The City of Plano does not have float-funded activities and the City's Housing Rehabilitation Program is the only program using revolving loan funds. The City does not have a Section 108 loan program and does not have a surplus funds from urban renewal settlements. Finally, the City of Plano estimates that 90% of all CDBG funds will be used on activities that benefit persons of low and moderate income.

HOME

Required matching funds for the HOME program will be provided by the developers for the funds allocated to them. Matching funds for the City's portion of HOME funds will be provided primarily through the value of cash contributions, fee waivers, donated materials, equipment, and volunteer labor.

It has been determined that federal funds will be leveraged by other resources, such as loans from lenders, "boot strap" funds from Texas Department of Housing and Community Affairs (TDHCA), grants from the Federal Home Loan bank, as well as local homebuyer grants.

To ensure affordability, the City of Plano will impose recapture requirements on homeownership projects receiving subsidy that do not continue to reside in the residence for the entire affordability term.

Homebuyer HOME assistance will be provided as a deferred payment loan, amortizing annually over the course of the minimum period of affordability. An estimated 60% (12) of the households assisted in becoming homeowners will be minority households.

If the homeowner sells the property at any time prior to the end of the affordability period, he/she will be expected to pay the full unamortized amount due at the time of sale. If, however, the net proceeds of the sale, less the amount of homeowner investment (defined as down payment and documented capital improvements), is less than the unamortized amount remaining, the City will share the net proceeds with the homeowner. The net proceeds will be divided proportionally according to the following mathematical formulas:

$$\frac{\text{HOME Subsidy}}{\text{HOME investment} + \text{homeowner investment}} \times \text{Net Proceeds} = \text{HOME amount recaptured by P.J.}$$

Homeowner Investment X Net proceeds = Amount to homeowner
HOME subsidy + homeowner investment

The City of Plano will apply HOME Resale provisions when there is no direct subsidy made to the homebuyer, meaning no funds to recapture. Resale would normally occur with funds provided to developers. The home will be sold to qualified low-to-moderate income buyers, the sales price will remain affordable, and the seller will receive a fair return. Projects only involving development subsidy will not be subject to recapture.

The City of Plano does not intend to use a form of investment not described in the HOME regulations.

The City of Plano does not intend to use HOME funds to refinance existing debt secured by multifamily housing.

The City of Plano will self-impose an affordability period of ten (10) years on Homeowner Rehabilitation projects. Assistance will be provided as an interest bearing note, a deferred payment loan, or a combination of both.

The resale and recapture of funds will be enforced with liens, deed restrictions, affidavits, and contracts.

Summary Statement

In summary, the City developed this document to describe future community development activities that will take place in the upcoming fiscal year. The document will serve as a guide to achieving objectives and outcomes set forth in the 2010-2014 Consolidated Plan during FY2011. It is designed to meet HUD requirements set forth in Title 24 Part 91.220. Activities in this plan serve as an avenue to improve the quality of life for all Plano residents and revitalize the community. Citizens are encouraged to read this document and submit comments and/or questions to city staff.



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		6/27/11		
Department:		Planning/Community Services		
Department Head		Phyllis Jarrell		
Agenda Coordinator (include phone #): Karen Suiter ext. 7566				
CAPTION				
A Resolution of the City Council of the City of Plano, Texas, authorizing the filing of applications for Federal Funds in an amount not to exceed \$1,593,213 under the Housing and Community Development Act and the HOME Investment Partnership Act; designating Bruce D. Glasscock as Chief Executive Officer and authorized representative of the City for the purpose of giving required assurances and acting in connection with said application and providing required information; and declaring an effective date.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input checked="" type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	2011-12 & 2012-13	Prior Year (CIP Only)	Current Year	Future Years
		TOTALS		
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	1,593,213	1,593,213
BALANCE	0	0	1,593,213	1,593,213
FUND(S): CDBG & HOME GRANT FUNDS				
COMMENTS: This item is a companion agenda item of the CDBG and HOME Action Plan which will allow the City of Plano to file grant applications, in the amount of \$1,593,213, to provide annual funding for the CDBG and HOME programs projected to impact fiscal years 2011-12 and 2012-13.				
STRATEGIC PLAN GOAL: Filing for Federal grant funds for the CDBG and HOME programs relates to the City's goals of Great Neighborhoods - 1st Choice to Live, Financially Strong City with Service Excellence, and Partnering for Community Benefit.				
SUMMARY OF ITEM				
This resolution authorizes the City Manager to apply to HUD for Community Development Block Grant (CDBG) and HOME Investment Partnership (HOME) funds.				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Resolution			None	

A Resolution of the City Council of the City of Plano, Texas, authorizing the filing of applications for Federal Funds in an amount not to exceed \$1,593,213 under the Housing and Community Development Act and the HOME Investment Partnership Act; designating Bruce D. Glasscock as Chief Executive Officer and authorized representative of the City for the purpose of giving required assurances and acting in connection with said application and providing required information; and declaring an effective date.

WHEREAS, the City of Plano is eligible to receive certain funds under the Housing and Community Development Act of 1974 as amended, in the amount of \$1,169,726 based on the adopted Community Development Block Grant budget for entitlement communities; certain funds under the HOME Investment Partnership Act of 1990 as amended, in the amount of \$423,487 based on the adopted HOME Investment Partnership grant budget for entitlement communities for the 2011-2012 program year; and

WHEREAS, it is in the public interest of the citizens of the City of Plano that application be made for such funding; and

WHEREAS, the 2011-2012 Final Statement of Community Development Block Grant and HOME Investment Partnership Objectives has been adopted by the City of Plano as its official 2011-2012 Community Development Program budget and as the Action Plan for 2011-2012.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:

SECTION I. – Bruce D. Glasscock, City Manager of the City of Plano, is hereby authorized to file an application for funds under the Housing and Community Development Act of 1974 as amended and the HOME Investment Partnership Act of 1990 as amended on behalf of the City of Plano, Texas, and to certify to all understandings and assurances required under said Acts, including but not limited to, OMB circulars A-95 and A-1020 and Federal Management Circular 74-4, National Environmental Policy Act of 1969, Titles VI and VII of the Civil Rights Act of 1964 and 1968 respectively, Executive Orders 11063 and 11246, and such other assurances and understandings as may be required.

SECTION II. - Bruce D. Glasscock, City Manager, is hereby designated as the Chief Executive Officer and authorized representative of the City of Plano, Texas, for the purpose of acting in connection with the application and providing such additional information as may be required.

SECTION III. - This resolution shall take effect immediately upon its passage.

DULY PASSED AND APPROVED THIS THE 27TH DAY OF JUNE, 2011.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

Approved as to form:

Diane C. Wetherbee, CITY ATTORNEY



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		6/27/11		
Department:		Finance		
Department Head		Denise Tacke		
Agenda Coordinator (include phone #): Katherine Crumbley x-7479				
CAPTION				
<p>An Ordinance of the City of Plano, Texas, designating a certain area within the City of Plano, Texas, as Reinvestment Zone No. 123 for tax abatement consisting of a 7.255 acre tract of land located in the Martha McBride Survey, Abstract No. 553 Collin County in the City of Plano, Texas, establishing the boundaries of such zone; ordaining other matters related thereto; and providing an effective date.</p>				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S):				
<p>COMMENTS: Notice of public hearing published on June 16, 2011, to create Reinvestment Zone 123. The real property improvements amount is \$10,000,000 and the business personal property amount is \$5,000,000. Strategic Plan Goal: Providing Economic Development Incentives relates to the City's goal of Strong Local Economy.</p>				
SUMMARY OF ITEM				
<p>This is related to Internap Network Services Corporation, a Delaware corporation, request for tax abatement on Reinvestment Zone 123 and creation of the zone.</p>				
List of Supporting Documents: Ordinance			Other Departments, Boards, Commissions or Agencies	

An Ordinance of the City of Plano, Texas, designating a certain area within the City of Plano, Texas, as Reinvestment Zone No. 123 for tax abatement consisting of a 7.255 acre tract of land located in the Martha McBride Survey, Abstract No. 553 Collin County in the City of Plano, Texas, establishing the boundaries of such zone; ordaining other matters related thereto; and providing an effective date.

WHEREAS, the City Council of the City of Plano, Texas (the "City"), desires to promote the development or redevelopment of a certain contiguous geographic area within its jurisdiction by the creation of a reinvestment zone for tax abatement, as authorized by V.T.C.A. Tax Code Chapter 312 (referred to as the "Property Redevelopment and Tax Abatement Act" or the "Act"); and

WHEREAS, a public hearing before the City Council was set for 7:00 p.m. on the 27th day of June, 2011, such date being at least seven (7) days after the date of publication of the notice of such public hearing; and

WHEREAS, the City held such public hearing after giving written notice of said hearing to all taxing units overlapping the territory inside the proposed reinvestment zone; and

WHEREAS, the City at such hearing invited any interested person or his representative to appear for or against the creation of the reinvestment zone, the boundaries of the proposed reinvestment zone, whether all or part of the territory described in the notice calling such public hearing should be included in such proposed reinvestment zone, and the concept of tax abatement; and

WHEREAS, the proponents of the reinvestment zone offered evidence, both oral and documentary, in favor of all matters relating to the creation of the reinvestment zone.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:

Section I. The facts and recitations contained in the preamble of this Ordinance are hereby found and declared to be true and correct.

Section II. Definitions. For the purposes of this Ordinance, the following terms and phrases shall have the following meanings ascribed to them:

- a) Improvements - Improvements shall include, for the purpose of establishing eligibility under the Act, any activity at the location, including, but not limited to, new construction.
- b) Taxable Real Property - Taxable real property shall be as defined in the Texas Property Tax Code and shall not include personal property as defined in said code, nor shall it include land.
- c) Taxable Tangible Personal Property - Shall be defined, for purposes of this Ordinance, as tangible personal property, such as office machines and office furnishings, but shall specifically exclude inventory or supplies.
- d) Base Year - The base year for determining increased value shall be the taxable real property value assessed the year in which the agreement is executed.

Section III. The City, after conducting the above-mentioned hearing and having heard such evidence and testimony, has made the following findings and determinations based on the testimony presented to it:

- a) That a public hearing on the adoption of the reinvestment zone has been properly called, held and conducted and that notices of such hearings have been published as required by law and mailed to all taxing units overlapping the territory inside the proposed reinvestment zone; and
- b) That the boundaries of the reinvestment zone should be the area as described in the metes and bounds description attached hereto as Exhibit "A"; and
- c) That creation of the reinvestment zone for commercial/industrial tax abatement with boundaries as described in Exhibit "A" will result in benefits to the City and to the land included in the zone and the improvements sought are feasible and practical; and
- d) That the reinvestment zone as defined in Exhibit "A" meets the criteria for the creation of a reinvestment zone as set forth in Section 312.202 of the Act in that it is "reasonably likely as a result of the designation to contribute to the retention or expansion of primary employment or to attract major investment in the zone that would be a benefit to the property and that would contribute to the economic development of the City"; and

- e) That the reinvestment zone as defined in Exhibit "A" meets the criteria for the creation of a reinvestment zone as set forth in the City of Plano Revised Policy Statement for Tax Abatement.

Section IV. Pursuant to Section 312.201 of the Act, the City hereby creates a reinvestment zone for commercial/industrial tax abatement encompassing only the area described by metes and bounds in Exhibit "A" attached hereto and such reinvestment zone is hereby designated and shall hereafter be designated as Reinvestment Zone No. 123, City of Plano, Texas.

Section V. The zone shall be effective as of June 27, 2011.

Section VI. To be eligible for tax abatement a project shall:

- a) Be located wholly within the zone as established herein.
- b) Not include property that is owned or leased by a member of the City Council of the City of Plano or by a member of the Planning and Zoning Commission.
- c) Conform to the requirements of the City's Zoning Ordinance and all other applicable laws and regulations.
- d) Have and maintain all land located within the designated zone, appraised at market value for tax purposes.

Section VII. Written tax abatement agreements with property owner(s) located within the zone shall provide the terms regarding duration of exemption and share of taxable real property (and personalty) value from taxation as approved hereunder as shown below:

- a) Duration of Exemption – ten (10) consecutive tax years beginning with and including the January 1, 2012 assessment date.
- b) Share of taxes abated – fifty percent (50%) of taxes on total value of appraised Real Property Improvements and on total value of Business Personal Property for the years 2012 and 2021.

Section VIII. Any written agreements authorized under this Ordinance must include provisions for:

- a) Listing the kind, number and location of all proposed improvements of the property;

- b) Access to and inspection of property by municipal employees to ensure that the improvements or repairs are made according to the specification and conditions of the agreements;
- c) Limiting the use of the property consistent with the general purpose of encouraging development or redevelopment of the zone during the period that property tax exemptions are in effect; and
- d) Recapturing property tax revenue lost as a result of the agreement if the owner of the property fails to make the improvements or repairs as provided by the agreement or violates any other applicable term of the Agreement.

Section IX. If any portion of this Ordinance shall, for any reason, be declared invalid by any court of competent jurisdiction, such invalidity shall not affect the remaining provisions hereof.

Section X. This Ordinance shall become effective from and after its date of passage.

DULY PASSED AND APPROVED this 27th day of June, 2011.

Phil Dyer, Mayor

Attested:

Diane Zucco, City Secretary

Approved as to form:

Diane C. Wetherbee, City Attorney



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		6/27/11		
Department:		Finance		
Department Head		Denise Tacke		
Agenda Coordinator (include phone #): Katherine Crumbley x7479				
CAPTION				
<p>A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an agreement by and between the City of Plano, Texas, Internap Network Services Corporation and Behringer Harvard 1221 Coit, LP, a Texas Limited Partnership; providing for a business personal property and real property improvement tax abatement; and authorizing its execution by the City Manager or his authorized designee; and providing an effective date.</p>				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S):				
<p>COMMENTS: The real property improvements to be maintained is \$10,000,000 and the business personal property improvements to be maintained is 5,000,000. Strategic Plan Goal: Providing Economic Development Incentives relates to the City's goal of Strong Local Economy.</p>				
SUMMARY OF ITEM				
<p>This is related to Internap Network Services Corporation, a Delaware corporation, request for tax abatement on Reinvestment Zone 123 and creation of the zone.</p>				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Tax Abatement Agreement				

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an agreement by and between the City of Plano, Texas, Internap Network Services Corporation and Behringer Harvard 1221 Coit, LP, a Texas Limited Partnership; providing for a business personal property and real property improvement tax abatement; and authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

WHEREAS, the City Council has been presented a proposed Tax Abatement Agreement by and between the City of Plano, Texas, Internap Network Services Corporation, **Behringer Harvard 1221 Coit, LP**, and a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and

WHEREAS, upon full review and consideration of the Agreement and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the City Manager or his authorized designee shall be authorized to execute it on behalf of the City of Plano.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS:

Section I. The terms and conditions of the Agreement having been reviewed by the City Council of the City of Plano, Texas, and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things approved.

Section II. The City Manager or his authorized designee is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreement.

Section III. This Resolution shall become effective from and after its passage.

DULY PASSED AND APPROVED this the 27th day of June, 2011.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

hereinafter referred to as the "Personalty." The Personalty is to have an assessed taxable value as determined by the Collin County Appraisal District of not less than Five Million Dollars (\$5,000,000.00) on the Real Property by December 31, 2011, and is or will be owned by Tenant.

3. Tenant shall maintain the taxing situs of the Personalty on the Real Property and may not relocate the taxing situs of the Personalty in other Reinvestment Zones in the City.

JOBS

4. Tenant represents the proposed occupancy of the Real Property as shown in **EXHIBIT "B"** (the "Development") will result in the retention, creation or transfer of at least seven (7) full time jobs ("Job Equivalents") at the Development in Plano by the Commencement Date (as defined below in Section 5). "Job Equivalent" shall mean one or more employees located at the Development which individually or when combined work a total of 2080 hours on an annual basis (inclusive of holidays, vacation and sick leave) and where such employees are issued a W-2 form by Tenant.

IMPROVEMENTS

5. (a) The Tenant shall lease not less than 128,000 gross square feet of space on the Real Property by the Commencement Date and add the Personalty required under Paragraph 2. The "Commencement Date" means the date of occupancy of the Real Property by the Tenant but in no event shall be later than December 31, 2011 unless an extension as a result of an Event of Force Majeure is approved by the City.

(b) By December 31, 2011, the Owner or Tenant shall make or cause to be made improvements to the Real Property consisting of critical power infrastructure, electrical and plumbing equipment, air conditioning ducts and chillers, electrical transformers, raised flooring, lights, ceiling, walls and other improvements with an assessed taxable value of Real Property Improvements of not less than Ten Million Dollars (\$10,000,000.00) as determined by the Collin County Central Appraisal District for the tax year beginning in 2012 unless an extension as a result of an Event of Force Majeure has been approved by the City.

(c) In the Event of a Force Majeure "Event" the affected party shall notify the City in writing not less than sixty days of the onset of the Event with supporting documentation, the anticipated duration and the actions that the party will take to alleviate the Event. The City Manager shall consider such request and may grant an extension of time to complete the obligations, such extension shall not be unreasonably withheld. If the Event results in a delay of meeting the required improvement value, the party requesting the extension agrees that in the following year the minimum required taxable value of the Improvements and/or Personalty shall be met.

(d) The term "Event of Force Majeure" means any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the party), fires, explosions or floods, strikes,

slowdowns, shortages or unavailability of materials or labor, or work stoppages any of which event(s) directly impact the Owner or Tenant at the Real Property. The term shall not include a downturn in the economy.

DEFAULT

6. Any of the following events shall be deemed a breach of this Agreement resulting in default:

(a) Tenant allows its personal property taxes located on the Real Property or Owner allows its real property improvement taxes owed the City to become delinquent and fails to either (1) timely and properly follow the legal procedures for protest and/or contest of any such ad valorem taxes, or (2) cure such delinquency within 30 days of receipt of notice of such delinquency; or

(b) (i) Tenant fails to occupy the Improvements on or before the Commencement Date; or

(ii) Owner or Tenant fails to construct the Improvements required in 5(b); or

(c) In the first year of the abatement period, the assessed taxable value of Personalty is less than the minimum amount set forth in paragraph 2 or the assessed taxable value falls below the minimum amount set as the result of the Tenant filing a protest or as a result of the removal of Personalty from the Real Property unless the party has been granted an extension for an Event of Force Majeure under 5 (c); or

(d) The assessed taxable value of the Real Property Improvements is less than the minimum amount set forth in paragraph 5(b) as a result of the Owner's protest; or

(e) Tenant fails to employ at least 75% of the required Job Equivalents as provided in paragraph 4 above, subject to Event of Force Majeure; or

(f) Tenant or Owner or Owner's duly authorized representative fails to provide annual certification as required in paragraph 9 below; or

(g) Tenant or Owner has been convicted of a violation under 8 U.S.C. Section 1324a (f) regarding the unlawful employment of aliens at the Real Property.

7. In the event that the Tenant or Owner defaults under this Agreement, the City shall give all parties written notice of such default and if the default is not cured or a waiver obtained thereof within thirty (30) days of said written notice, this Agreement shall be automatically terminated as to all parties except any damages as specified below shall survive the termination of this Agreement. Notice shall be in writing as provided below. The City Manager is authorized on behalf of the City to send notice of default and to terminate the Agreement for any default that is not cured.

8. Upon the occurrence of an event of default under Paragraphs 6(a), (b) and (g) above and that remains uncured, this Agreement shall terminate in its entirety as to all parties upon delivery of written notice by the City to the parties and all taxes, including previously abated taxes which would have been paid to the City without the benefit of this Agreement, shall become due and owing to the City, together with interest charged from the date of this Agreement at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 33.01, but without the addition of penalty other than that mandated by V.T.C.A., § 33.01 or 33.07.

Upon the occurrence of an event of default under Paragraphs 6(c) or (d) (e) or (f) above and that remains uncured, this Agreement shall terminate in its entirety to all parties upon delivery of written notice by the City to the parties. At the City's sole option, it may require all or a portion of all previously abated taxes which would have been paid to the City without the benefit of this Agreement to become due and owing to the City, together with interest charged from the date of this Agreement at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 33.01, but without the addition of penalty other than that mandated by V.T.C.A., § 33.01 or 33.07. City shall exercise such option within ninety days of notice of default.

EFFECT OF TERMINATION/SURVIVAL OF OBLIGATIONS

9. The rights, responsibilities and liabilities of the parties under this Agreement shall be extinguished upon the applicable effective date of termination of this Agreement, except for any obligations or default(s) that existed prior to such termination or as otherwise provided herein and those liabilities and obligations shall survive the termination of this Agreement, including the refund provision, maintenance of records, and access thereto.

ANNUAL CERTIFICATION

10. Beginning November 1, 2012 and on or before the 1st day of November of each calendar year thereafter during the Term (as defined below) of this Agreement, the Tenant and Owner, or their successors or assigns, must each provide annual certification (substantially in the form attached as **EXHIBIT "C"** hereto) to the City certifying compliance with each applicable term of the Agreement. Owner hereby grants to Tenant a power of attorney for the term of this Agreement for the limited purpose of making its annual certification on behalf of Owner and Tenant agrees to perform such duty.

ASSIGNMENT

11. Except as provided herein, this Agreement cannot be assigned by Tenant or Owner unless written permission is first granted by the City, which permission shall be at the reasonable discretion of the City. Assignment without the permission of the City is allowed to: a) A wholly owned affiliate of Tenant or Owner is permissible as long as the successors or assigns agree to be bound by the terms of this Agreement without exception and the City is provided a copy of the assignment; or, b) Upon the sale of the real property and the new Owner agrees to be bound to the terms and conditions of this Agreement without exception and provides proof of the ownership of the Real Property.

ABATEMENT PROVISIONS

12. Subject to the terms and conditions of this Agreement, and subject to the rights of holders of any outstanding bonds of the City, a portion of ad valorem personal property taxes and real property improvement taxes belonging to Tenant and Owner located on the Real Property otherwise owed to the City shall be abated as follows:

(a) The tax abatements as to Personalty and Real Property improvements, as provided for herein, shall be for a period of ten (10) tax years, from January 1, 2012, through December 31, 2021 (the "Term").

(b) In accordance with all applicable federal, state, and local laws and regulations, the abatement shall be based on amounts equal to fifty (50%) of the taxable value of the Personalty and Real Property improvements for each tax year from January 1, 2012, through December 31, 2021.

(c) The Tenant or Owner shall have the right to protest and/or contest any assessment of the Personalty or real property improvements where such assessment is above the minimum amount required to be maintained under Paragraphs 2 and 5 of this Agreement. The abatement shall be applied to the amount of taxes finally determined to be due as a result of any such protest and/or contest. Notwithstanding the above, it shall be a breach of this Agreement if assessed values fall below those required in paragraph 2 and 5 as a result of a Tenant or Owner filed protest and/or contest or the removal of Personalty from the Real Property.

NOTICE

13. Notices required to be given to any party to this Agreement shall be given personally or by registered or certified mail, return receipt requested, postage prepaid, addressed to the party at its address as set forth below, and, if given by mail, shall be deemed delivered as of the date deposited in the United States mail:

For City by notice to:

City of Plano
Attention: Mr. Bruce D. Glasscock
City Manager
P.O. Box 860358
Plano, Texas 75086-0358

With copy to:

City of Plano
Attention: Ms. Diane C. Wetherbee
City Attorney
P.O. Box 860358
Plano, Texas 75086-0358

For Tenant by notice to:

Internap Network Services Corporation
Attn: Mr. Danny Groves
Tax Director
250 Williams Street, Suite E-100
Atlanta, Georgia 30303

For Owner by notice to:

Behringer Harvard 1221 Coit LP
Attn: Mr. Mark Flynt
Senior Vice President – Portfolio Manager
15601 Dallas Parkway, Suite 600
Addison, Texas 75001

Any party may change the address to which notices are to be sent by giving the other parties written notice in the manner provided in this paragraph.

MISCELLANEOUS PROVISIONS

14. During the term of the Agreement, the Tenant and Owner further agree that the City, its agents and employees, shall have reasonable right (with no less than 5 business days prior written notice to Owner) to access the Real Property during regular business hours to inspect the Personalty and Real Property improvements in order to insure that the location of the Personalty and real property improvements are in accordance with this Agreement and all applicable federal, state, and local laws and regulations.

15. It is understood and agreed between the parties that the Tenant and Owner, in performing their respective obligations hereunder, are acting independently, and the City assumes no responsibilities or liabilities in connection therewith to third parties and Tenant and Owner agree to indemnify and hold harmless City from any and all claims, suits, and causes of actions, including attorneys' fees, of any nature whatsoever arising out of their respective defaults of their obligations hereunder.

16. Based upon the certification provided by Owner and Tenant, the City represents that the Personalty or Real Property do not include any property that is owned by it or its council or boards, agencies, commissions, or other entities approving, or having responsibility for the approval of this Agreement.

17. This Agreement was authorized by Resolution of the City Council at its Council meeting on the 27th day of June, 2011, authorizing the City Manager to execute the Agreement on behalf of the City.

18. This Agreement was entered into by Tenant and Owner pursuant to their duly authorized representatives.

19. This instrument shall constitute a valid and binding agreement between the City, the Tenant and the Owner when executed in accordance herewith.

20. Severability. If any term or provision of this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement (or the application of such term or provision, to persons or circumstances other than those in respect of which it is invalid or unenforceable) except those terms or provisions, which are made subject to or conditioned upon such invalid or unenforceable term or provision, shall not be affected thereby, and each other term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

This Agreement is performable in Collin County, Texas. Signed this ____ day of _____, 2011.

ATTEST:

CITY OF PLANO, TEXAS, a home-rule
municipal corporation

Diane Zucco, CITY SECRETARY

Bruce D. Glasscock
CITY MANAGER

APPROVED AS TO FORM:

Diane Wetherbee, CITY ATTORNEY

Internap Network Services Corporation
a Delaware corporation

By: _____
Name: _____
Title: _____

Behringer Harvard 1221 Coit LP,
a Texas limited partnership

By: _____
Name: _____
Title: _____

EXHIBIT "A"
LEGAL DESCRIPTION

1221 Coit Road • Plano, Texas

Being all of that certain tract of land situated in the Martha McBride Survey, Abstract No. 553, Collin County, Texas, as described in deed to Premier Wholesale Club, Inc., and recorded in Volume 2267, Page 438, Deed Records, Collin County, Texas, also being all of Lot 1, Block 1, AMWC/Coit Road Warehouse Addition, an addition to the City of Plano. as recorded in Cabinet F, Page 621, Plat Records, Collin County. Texas, and as shown by replat recorded in Cabinet G, Page 97, said Plat Records, and being more particularly described by metes and bounds as follows:

BEGINNING at the Southwest corner of the remainder of that certain tract of land as described in deed to JD. Sims and Co. and recorded in Volume 1958, Page 462, of said Deed Records also being on the north line of that certain tract of land as described in deed to Westwind Properties, Inc. and recorded in Volume 1803, Page 534, of said Deed Records:

THENCE North 89 degrees 26 minutes 36 seconds West, 554.28 feet along said northerly line to a one inch iron rod, found, being the northwesterly corner of said Westwind tract, also being on the easterly right-of-way line of Commerce Street (a 60 foot wide public right-of-way):

THENCE North 00 degrees 54 minutes 00 seconds East, 477.28 feet along said easterly right-of-way line to a one inch iron rod found, being the southwesterly corner of the remainder of that certain tract of land as described in deed to Charles Gartner and recorded in Volume I 007, Page 184, of said Deed Records:

THENCE South 89 degrees 06 minutes 00 seconds East, 800.00 feet along the southerly line of said Gartner tract to an "X" cut set in concrete being the southeasterly corner of said Gartner tract, also being on the Westerly right-of-way line of Coit Road (a 130' right-of-way);

THENCE South 00 degrees 23 minutes 00 seconds West, 212.48 feet along said westerly right-of-way line to an "X" cut found, being the northeasterly corner of the aforementioned Sims tract:

THENCE North 89 degrees 06 minutes 00 seconds West, 247.65 feet along the northerly line of said Sims tract to a one inch iron rod, found, being the northwesterly corner of said Sims tract;

THENCE South 00 degrees 54 minutes 00 seconds West, 261 .49 feet along the westerly line of said Sims tract to the POINT OF BEGINNING and containing 316.036 square feet or 7.255 acres of land, more or less.

EXHIBIT "C"
CERTIFICATION FORM

[DATE]

City of Plano
Finance Department
P.O. Box 860358
Plano, Texas 75086-0358

RE: Certification Form – Reinvestment Zone No. _____
Tax Abatement Agreement (the "Agreement") between Internap Network Services Corporation ("Tenant"); Beringer Harvard 1221 Coit LP ("Owner") and the City of Plano, dated as of _____

This letter certifies that Tenant and Owner are in compliance with each applicable term as set forth in the Agreement. The term of the Agreement is January _____, through _____. This form is due on November 1 of each year the Agreement is in force. Tenant makes this certification on behalf of Owner pursuant to its power of attorney in Section 9 of the Agreement.

Internap Network Services Corporation,
a Delaware corporation,
as Tenant and on behalf of Behringer
Harvard 1221 Coit LP, a Texas limited
partnership, as Owner

By: _____
Name: _____
Title: _____



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		6/27/11		
Department:		Finance		
Department Head		Denise Tacke		
Agenda Coordinator (include phone #): Katherine Crumbley - 7479				
CAPTION				
A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Economic Development Incentive Agreement by and between Internap Network Services Corporation and the City of Plano; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2010-11	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	12,179,503	0	12,179,503
Encumbered/Expended Amount	0	-3,138,575	-6,090,050	-9,228,625
This Item	0	-50,000	0	-50,000
BALANCE	0	8,990,928	-6,090,050	2,900,878
FUND(S): ECONOMIC DEVELOPMENT FUND				
COMMENTS: Strategic Plan Goal: Providing economic development incentives relates to the City's goal of strong local economy				
SUMMARY OF ITEM				
A request from Internap Network Services Corporation for an Economic Development Incentive to relocate its business and commercial activities to the City, thereby generating additional local sales tax revenues and increasing ad valorem tax values to the City. Internap agrees to occupy not less than 128,000 sq. ft of commercial space on or before 12/31/11.				
List of Supporting Documents: Economic Development Incentive Agreement			Other Departments, Boards, Commissions or Agencies	

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Economic Development Incentive Agreement by and between Internap Network Services Corporation and the City of Plano; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

WHEREAS, the City Council has been presented a proposed Economic Development Incentive Agreement by and between Internap Network Services Corporation and the City of Plano, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and,

WHEREAS, upon full review and consideration of the Agreement, and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the City Manager or his authorized designee shall be authorized to execute it on behalf of the City of Plano.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:

Section I. The terms and conditions of the Agreement, having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things approved.

Section II. The City Manager or his authorized designee is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreement.

Section III. This Resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED this the 27th day of June, 2011.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

This Economic Development Incentive Agreement (“Agreement”) is made by and between the City of Plano, Texas (the “City”), and Internap Networks Services Corporation, a Delaware corporation, (“Company”), acting by and through their respective authorized officers and representatives.

WITNESSETH:

WHEREAS, Company is engaged in the business of providing internet solutions and plans to make \$10,000,000.00 of Real Property improvements and add \$5,000,000.00 of Business Personalty to the Property at 1221 Coit Road, Plano, Texas 75025; and

WHEREAS, Company agrees to occupy at least 128,000 square feet of Real Property and maintain a Data Center to be located on the Real Property for the term of this Agreement; and

WHEREAS, the Company has advised the City that a contributing factor that would induce the Company to locate its business and commercial activities in the City, thereby increasing ad valorem tax values for the City, would be an agreement by the City to provide an economic development grant to the Company; and

WHEREAS, the Council finds that the occupancy of at least 128,000 square feet of Property within the City will promote economic development, stimulate commercial activity and enhance the tax base and economic vitality of the City; and

WHEREAS, the City has adopted programs for promoting economic development; and

WHEREAS, the City is authorized by TEX. LOC. GOV’T CODE §380.001 *et seq.* to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the City has determined that making an economic development grant to the Company in accordance with the terms and conditions set forth in this Agreement will further the objectives of the City, will benefit the City and its citizens and will promote local economic development and stimulate business and commercial activity in the City.

NOW THEREFORE, in consideration of the foregoing and the premises, mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby covenant and agree as follows:

Article I Definitions

For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

“Company” shall mean Internap Network Services Corporation, a Delaware corporation.

“Data Center” shall mean a facility whose primary service is data processing and is used to house computer systems and associated components, such as telecommunications and storage systems, including but not limited to web hosting organizations and internet service organizations. A server farm, telecom hotel, carrier hotel, telco hotel, telehouse co-location center, or any other term applicable to facilities which are used for these specified purposes shall be deemed to be a data center.

“Development Permit Fees” shall mean those fees paid to the City of Plano by Company and are customarily charged by the City in order to receive a Certificate of Occupancy for the Property. These fees include site plan review, engineering, inspection, building permit, etc.

“Effective Date” shall mean the last date on which all of the parties hereto have executed this Agreement.

“Event of Force Majeure” shall mean any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the party), fires, explosions or floods, strikes, slowdowns or work stoppages any of which event(s) directly and significantly impact the Company’s business at the Property. An economic down turn shall not constitute an event of force majeure.

“Grant Payment” shall mean all payments made by the City to the Company pursuant to Section 4.01.

“Property” or “Real Property” shall mean 1221 Coit Road, Plano, Texas 75025.

Article II Term

The term of this Agreement shall begin on the Effective Date and continue until ten years following the Effective date unless sooner terminated as provided herein.

Article III Obligations of Company

In consideration for the grant of public funds as set forth in Section 4.01 below, the Company agrees to perform the following:

- (a) On or before December 31, 2011, occupy at least 128,000 square feet of commercial space on the Real Property and maintain that occupancy throughout the term of the Agreement; and,
- (b) During the term of this Agreement, Company agrees that the Property shall not be used for any purpose other than a Data Center. Company shall not allow the operation of the Property to cease for more than thirty (30) days except in connection with, and to the extent of an Event of Force Majeure or the termination of this Agreement; and,
- (c) Use reasonable efforts to place all Company-managed hotel room nights, related to the Company's business activities, at facilities located in the City of Plano.

Article IV Economic Development Grant

4.01 **Development Fee/Permit Reimbursement.** If Company complies with the requirements in Article III above, the Development Permit fees paid by the Company to the City of Plano will be reimbursed as follows:

The City agrees to reimburse Company up to Fifty Thousand Dollars (\$50,000.00) for Development Permit Fees that were paid to the City of Plano for the construction of improvements to the Property and which fees are incurred after the execution of this Agreement. In order to receive this reimbursement, the Company must submit a written request for reimbursement listing the nature of the fees paid and amount, provide all necessary documentation that supports the request, including receipts and invoices, all of which must be submitted to the City not later than December 31, 2011. If the information supporting the request is deemed reasonably satisfactory by the City, the reimbursement shall be made within thirty days of receipt and initial certification as required in below in Article V of this Agreement. **A failure to submit the request with all supporting documents including the initial certificate by December 31, 2011 shall result in a forfeiture of any reimbursement.**

Article V
Certification Requirements for Development Fee Reimbursement

5.01 (a) In addition to the documentation, the Company must submit the Initial Certification form attached hereto as Exhibit "A" certifying compliance with the obligations set forth in this provision not later than December 31, 2011.

City will make the Development Fee Reimbursement within thirty (30) days of receipt of the initial certification and the supporting documentation set forth in 4.01 unless the City reasonably objects to the submitted information.

(b) Beginning January 2013, Company must submit an annual certification on the form attached hereto as Exhibit "B" not later than January 31 of each year for the duration of this agreement verifying compliance with the terms and conditions of this Agreement. A failure to file the annual certification by the January 31 deadline during the remaining years of the Agreement shall result in a default and a right to a full refund of all Grant Funds previously paid.

(c) All certifications must be verified by the Company's chief executive or financial officer.

Article VI
Default/Termination

6.01 (a) At any time during the term of this Agreement if the Company and/or its wholly owned subsidiaries is convicted of a violation under 8 U.S.C. Section 1324a(f) regarding the unlawful employment of undocumented workers that shall constitute a default and Company shall reimburse the City all grant funds paid pursuant to this Agreement.

(b) If the Company breaches any term or condition of this Agreement, defaults on the payment of any refund, fails to provide any annual certification or files a certification indicating no-compliance, the full amount of the Grant Payment shall be refunded by Company to the City. City may use any efforts to collect such sums owed and Company agrees to pay any and all interest, and expenses, including reasonable attorney fees and costs incurred by City. This obligation shall survive termination of this Agreement.

6.02 This Agreement terminates upon any one or more of the following:

(a) By expiration of the term and where no defaults have occurred;

(b) If a party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof by the non-defaulting party unless a longer period is provided. Any default

under this provision and right to recover any claims, refunds, damages and/or fees and expenses shall survive the termination of the Agreement as provided in 6.03.

The City Manager is authorized on behalf of the City to send notice of default and to terminate this Agreement for any default that is not cured.

6.03 **Effect of Termination/Survival of Obligations.** The rights, responsibilities and liabilities of the parties under this Agreement shall be extinguished upon the applicable effective date of termination of this Agreement, except for any obligations or default(s) that existed prior to such termination or as otherwise provided herein and those liabilities and obligations shall survive the termination of this Agreement, including the refund provision, maintenance of records, and access thereto.

Article VII Retention and Accessibility of Records

7.01 Company shall maintain the fiscal records and supporting documentation for expenditures of funds associated with this Agreement. Company shall retain such records, and any supporting documentation for the greater of: (1) Five years from the end of the Agreement period; or (2) the period required by other applicable laws and regulations.

7.02 Company on behalf of itself and its wholly owned subsidiaries gives City, its designee, or any of their duly authorized representatives, access to and the right to examine relevant books, accounts, records, audit reports, reports, files, documents, written or photographic material, videotape and other papers, things, or personal and real property belonging to or in use by Company and its wholly owned subsidiaries pertaining to the Grant Payment (the "Records") upon receipt of ten (10) business days written notice from the City. The City's access to books and records will be limited to information needed to verify that Company and its wholly owned subsidiaries are in compliance with the terms of this Agreement. Any information that is not required by law to be made public shall be kept confidential by City. In no event shall City's access to Records include any access to any personal and/or medical data of any employees. Company and its wholly owned subsidiaries shall not be required to disclose to the City any information that by law is required to keep confidential. Should any good faith dispute or question arise as to the validity of the data provided, the City reserves the right to require Company to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost of Company. The rights to access the Records shall terminate five (5) years after the termination or expiration of this Agreement. Failure to provide reasonable access to the Records to authorized City representatives shall give the City the right to suspend or terminate this Agreement as provided for in Section 5 above, or any portion thereof, for reason of default. All Records shall be retained by Company and its wholly owned subsidiaries for a period of five (5) years after all performance requirements are achieved for audit purposes until such audits or other administrative, civil or criminal matters including, but

not limited to, investigations, lawsuits, administrative inquires and open record requests are completed. Company agrees to maintain all Records in an accessible location.

Article VIII Assignment

8.01 **Assignment.** This Agreement may not be assigned without the express written consent of the non-assigning party, except that the Company may assign this Agreement without obtaining the City's consent (a) to one of its wholly owned affiliates, or (b) to any person or entity that directly or indirectly acquires, through merger, sale of stock, purchase or otherwise, all or more than ninety (90) percent of the assets of the Company as long as the Company gives sixty (60) days prior written notice to the City and the assignee executes an agreement with the City to be bound to all the terms and conditions of this Agreement and be responsible for any default(s) that occurred prior to or after the assignment.

For any assignment not covered by (a) or (b) above, the Company must obtain the prior approval of the City through its City Council and the assignee must agree to be bound to all the terms and conditions of this Agreement and to accept all liability for any default that occurred prior to and/or after the assignment.

Any assignment agreement must be furnished in a form acceptable to the City and be provided at least thirty days prior to the effective assignment date.

Article IX Miscellaneous

9.01 **No Joint Venture.** It is acknowledged and agreed by the parties that the terms of this Agreement are not intended to and shall not be deemed to create a partnership or joint venture among the parties. Neither party shall have any authority act on behalf of the other party under any circumstances by virtue of this Agreement.

9.01.1 **Notice of Bankruptcy.** In the event Company files for bankruptcy, whether involuntarily or voluntary, Company shall provide written notice to the City within three (3) business days of such event.

9.02 **Authorization.** Each party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

9.03 **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below (or such other address as such party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered.

If intended for the City:
City of Plano, Texas
Attention:
City Manager
1520 Avenue K
P.O. Box 860358
Plano, TX 75086-0358

With a copy to:
City of Plano, Texas
Attention:
City Attorney
1520 Avenue K
P. O. Box 860358
Plano, TX 75086-0358

Company:
Internap Network Services Corporation
Mr. Mike Higgins
Senior Vice President
1099 New York Avenue, N.W. Suite #500
Washington, D.C. 20001

With a copy to:
Internap Tax Department
Attn: Danny Groves, Tax Director
250 Williams Street
Atlanta, GA 30303

9.04 **Entire Agreement.** This Agreement is the entire Agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the parties that in any manner relates to the subject matter of this Agreement.

9.05 **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction. Venue for any action concerning this Agreement, the transactions contemplated hereby or the liabilities or obligations imposed hereunder shall be in the State District Court of Collin County, Texas.

9.06 **Amendment.** This Agreement may only be amended by the mutual written agreement of the parties.

9.07 **Severability.** In the event any one or more of the provisions contained in

this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

9.08 **Recitals.** The recitals to this Agreement are incorporated herein.

9.09. **Authorized to Bind.** The persons who execute their signatures to this Agreement represent and agree that they are authorized to sign and bind their respective parties to all of the terms and conditions contained herein including those that apply to Company's wholly owned subsidiaries.

9.10 **Counterparts.** This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

EXECUTED on this _____ day of _____, 20__.

ATTEST:

CITY OF PLANO, TEXAS, a home rule municipal corporation

Diane Zucco, CITY SECRETARY

By:

Bruce D. Glasscock,
CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ATTEST:

INTERNAP NETWORK SERVICES CORPORATION,
a Delaware corporation

Title: _____

By:

Name: _____
Title: Chief Financial Officer

EXHIBIT "A"

INITIAL CERTIFICATE OF COMPLIANCE

Please select one of the options below before signing and returning the certification:

_____ a. I hereby certify that INTERNAP NETWORK SERVICES CORPORATION is entitled to receive Development Fee Reimbursement in accordance with Section 4.01 of that Agreement.

_____ b. I hereby certify that INTERNAP NETWORK SERVICES CORPORATION is not in compliance with the Agreement and is not entitled to receive Development fee reimbursement payment in accordance with Section 4.01 of that Agreement.

ATTEST:

INTERNAP NETWORK
SERVICES CORPORATION

Title: _____

By: _____
Name: _____
Title: Chief Financial Officer

Date

This Certification is due by December 31, 2011.

This Certificate of Compliance should be mailed to:

City of Plano
Finance Department
P.O. Box 860358
Plano, Texas 75086-0358

EXHIBIT "B"

ANNUAL CERTIFICATE OF COMPLIANCE

Please select one of the options below before signing and returning the certification:

_____ a. I hereby certify that for the prior year INTERNAP NETWORK SERVICES CORPORATION has been in continuous compliance with all terms of the Agreement.

_____ b. I hereby certify that for the prior year INTERNAP NETWORK SERVICES CORPORATION has failed to be in compliance with one or more terms of the Agreement.

ATTEST:

INTERNAP NETWORK
SERVICES CORPORATION

Title: _____

By: _____
Name: _____
Title: Chief Financial Officer

Date

This Certification is due by January 31 of each year beginning in 2013 while the Agreement is in effect.

This Certificate of Compliance should be mailed to:

City of Plano
Finance Department
P.O. Box 860358
Plano, Texas 75086-0358



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		6/27/11		
Department:		Finance		
Department Head		Denise Tacke		
Agenda Coordinator (include phone #): Katherine Crumbley - 7479				
CAPTION				
A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano and Aimbridge Hospitality, L.P., a Texas limited liability company; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	2011-11	Prior Year (CIP Only)	Current Year	Future Years
		TOTALS		
Budget		0	12,179,503	0
Encumbered/Expended Amount		0	-3,138,575	-6,090,050
This Item		0	-75,000	0
BALANCE		0	8,965,928	-6,090,050
FUND(S): ECONOMIC DEVELOPMENT FUND				
COMMENTS: Strategic Plan Goal: Providing economic development incentives relates to the City's goal of strong local economy				
SUMMARY OF ITEM				
A request from Aimbridge Hospitality, LP for an Economic Development Incentive to relocate its business and commercial activities to the City, thereby generating additional local sales tax revenues and increasing ad valorem tax values to the City. Aimbridge Hospitality agrees to occupy not less than 25,000 sq. ft of commercial space on or before 10/1/11. Aimbridge Hospitality also agrees to retain, create or transfer at least 60 jobs by 10/1/11.				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Economic Development Incentive Agreement				

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano and Aimbridge Hospitality, L.P., a Texas limited liability company; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

WHEREAS, the City Council has been presented a proposed Economic Development Incentive Agreement by and between the City of Plano, Texas and Aimbridge Hospitality, L.P., a Texas limited liability company, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and,

WHEREAS, upon full review and consideration of the Agreement, and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the City Manager or his authorized designee shall be authorized to execute it on behalf of the City of Plano.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:

Section I. The terms and conditions of the Agreement, having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things approved.

Section II. The City Manager or his authorized designee is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreement.

Section III. This Resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED this the 27th day of June, 2011.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

This Economic Development Incentive Agreement (“Agreement”) is made by and between the City of Plano, Texas (the “City”), and Aimbridge Hospitality, L.P., a Texas Limited Liability Company, (“Company”), acting by and through their respective authorized officers and representatives.

WITNESSETH:

WHEREAS, Company is engaged in the business of hotel investment and management and represents its will add a minimum of \$500,000.00 of Real Property improvements and a minimum of \$155,000.00 of Business Personal Property at 2500 N. Dallas Parkway, Suite 600, Plano, TX 75093 “Real Property”; and

WHEREAS, Company agrees to occupy at least 25,000 square feet of Real Property in Plano and maintain or create at least 60 Job Equivalents to be located on the Property for the term of this Agreement; and

WHEREAS, the Company has advised the City that a contributing factor that would induce the Company to locate its business and commercial activities in the City, thereby generating additional local sales tax revenues and increasing ad valorem tax values for the City, would be an agreement by the City to provide an economic development grant to the Company; and

WHEREAS, the Council finds that the occupancy of at least 25,000 square feet of Property, and the retention, creation or transfer of at least 60 Job Equivalents within the City will promote economic development, stimulate commercial activity and enhance the tax base and economic vitality of the City; and

WHEREAS, the City has adopted programs for promoting economic development; and

WHEREAS, the City is authorized by TEX. LOC. GOV’T CODE §380.001 *et seq.* to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the City has determined that making an economic development grant to the Company in accordance with the terms and conditions set forth in this Agreement will further the objectives of the City, will benefit the City and its citizens and will promote local economic development and stimulate business and commercial activity in the City.

NOW THEREFORE, in consideration of the foregoing and the premises, mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby covenant and agree as follows:

Article I Definitions

For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

“Company” shall mean Aimbridge Hospitality, L.P., a Texas Limited Liability Company.

“Effective Date” shall mean the last date on which all of the parties hereto have executed this Agreement.

“Event of Force Majeure” shall mean any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the party), fires, explosions or floods, strikes, slowdowns or work stoppages any of which event(s) directly and significantly impact the Company’s operations at the real property. An economic down turn shall not constitute an event of force majeure.

“Job Equivalent” shall mean one or more Company employees, whether individual or combined with other employees, who are located at the Property and each Job Equivalent is paid a total 2080 hours annually and issued an Internal Revenue Service W-2 form by the Company.

“Real Property” shall mean 2500 N. Dallas Parkway, Suite 600, Plano, TX 75093

Article II Term

The term of this Agreement shall begin on the Effective Date and continue until September 30, 2018 unless sooner terminated as provided herein.

Article III Obligations of Company

In consideration for the grant of public funds as set forth in Section 4.01 below, the Company agrees to perform the following:

- (a) On or before October 1, 2011 occupy at least 25,000 square feet of commercial space on the Real Property and maintain such occupancy throughout the term of the Agreement;

- (b) Retain, create or transfer at least 60 Job Equivalents to the Real Property by October 1, 2011, and maintain those Job Equivalents on the Real Property throughout the term of the Agreement;
- (c) Use reasonable efforts to place all Company-managed hotel room nights, related to the Company's business activities, at facilities located in the City of Plano.

Article IV Economic Development Grant

4.01 **Grant.** The City agrees to provide the Company a cash grant of \$75,000.00 as long as Company meets each of the obligations set out in Article III above and complies with the certification schedule and requirements set out in 4.02 below.

4.02 **Grant Payment Requirements and Schedule.** Except as otherwise indicated, the Company shall be entitled to the grant award in accordance with the following requirements and schedule:

(a) By October 1, 2011, Company shall occupy not less than 25,000 square feet of commercial space and have at least 60 Job Equivalents at the Real Property to be eligible to receive the grant payment of \$75,000.00. The payment will not be pro-rated. **Company must submit the Initial Certification form attached hereto as Exhibit "A" verifying compliance with the obligations set forth in this provision not later than January 31, 2012. A failure to provide this form by that date is an event of default and, if not cured, results in an immediate and complete forfeiture of the entire grant under 4.01.**

City will make the \$75,000.00 payment within thirty (30) days of receipt of the initial certification unless the City reasonably objects to the certification.

(b) Beginning 2013, **Company must submit an annual certification on the form attached hereto as Exhibit "B" not later than January 31 of each year for the duration of this agreement verifying compliance with Article III above. The certification must be based upon the number of Job Equivalents for which the Company has received a grant. A failure to file the annual certification by the January 31st deadline during the remaining years of the Agreement shall result in a default and a right to a full refund of all grant amounts previously paid as set out in 4.03.**

(c) All certifications must be certified by the Company's chief executive or financial officer.

4.03 **Refund/Default.**

(a) If following the receipt of a grant payment, the Company fails to meet the required number of Job Equivalents for which it has received payment for more than 180

consecutive days at any time during the term of this Agreement and the loss is not the result of an Event of Force Majeure, the Company shall refund to the City an amount equal to One Thousand Two Hundred and Fifty Dollars (\$1,250.00) for each lost Job Equivalent. For the purposes of determining whether the City is due a refund under this section, the Company shall certify to the City as set out in Section 4.02 above the actual number of Job Equivalents at the Real Property for the compliance period using the applicable forms that are attached hereto.

(b) All refunds under this Agreement shall be due within thirty (30) days of written demand for payment. A failure to make the refund payment within thirty (30) days shall constitute an event of default. If a refund is due for one or more Job Equivalent(s), Company is not entitled to any future payment for that lost Job Equivalent(s) notwithstanding that it subsequently complies with the Job Equivalent requirements of this Agreement.

(c) In the Event of a Force Majeure, the Company shall notify the City in writing not less than sixty days of the onset of the Event with adequate supporting documentation of the reasons for the Event, anticipated duration, and actions that the Company will take to alleviate the Event with a request for an extension. The City Manager shall consider such request and may grant such extension, such approval shall not be unreasonably withheld.

(d) If the Company defaults on the payment of any refund or fails to timely provide any certification as required by Section 4.02, the full amount of the Grant paid shall be refunded by Company to the City. City may use any efforts to collect such sums owed and Company agrees to pay any and all interest, and expenses, including attorney fees and costs incurred by City.

(d) At any time during the term of this Agreement the Company is convicted of a violation under 8 U.S.C. Section 1324a(f) regarding the unlawful employment of undocumented workers, it shall reimburse the City all grant funds paid pursuant to this Agreement together with interest charged from the date of payment of the funds at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 33.01, but without the addition of penalty. Repayment of grant funds and interest shall be due not later than 120 days after the date of the conviction.

Article V Termination

5.01 This Agreement terminates upon any one or more of the following:

(a) By expiration of the term and where no defaults have occurred;

(b) If a party defaults or breaches any of the terms or conditions of this Agreement, including those not described as an event of default, and such default or

breach is not cured within thirty (30) days after written notice thereof by the non-defaulting party unless a longer period is provided.

(c) The City Manager is authorized on behalf of the City to send notice of default and to terminate this Agreement for any default that is not cured.

5.02 **Effect of Termination/Survival of Obligations.** The rights, responsibilities and liabilities of the parties under this Agreement shall be extinguished upon the applicable effective date of termination of this Agreement, except for any obligations or default(s) that existed prior to such termination or as otherwise provided herein and those liabilities and obligations shall survive the termination of this Agreement, including the refund provision, maintenance of records, and access thereto.

Article VI Retention and Accessibility of Records

6.01 Company shall maintain the fiscal records and supporting documentation for expenditures of funds associated with this Agreement. Company shall retain such records, and any supporting documentation for the greater of: (1) Five years from the end of the Agreement period; or (2) the period required by other applicable laws and regulations.

6.02 Company gives City, its designee, or any of their duly authorized representatives, access to and the right to examine relevant books, accounts, records, audit reports, reports, files, documents, written or photographic material, videotape and other papers, things, or personal and real property belonging to or in use by Company pertaining to the Economic Development Program Grant (the "Records") upon receipt of ten (10) business days written notice from the City. The City's access to Company's books and records will be limited to information needed to verify that Company is and has been complying with the terms of this Agreement. Any information that is not required by law to be made public shall be kept confidential by City. In no event shall City's access to Company's Records include any access to any personal and/or medical data of any employees of Company except to confirm payroll information compliance for Job Equivalents. Company shall not be required to disclose to the City any information that by law Company is required to keep confidential. Should any good faith dispute or question arise as to the validity of the data provided, the City reserves the right to require Company to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost of Company. The rights to access the Records shall terminate five (5) years after the termination or expiration of this Agreement. Failure to provide reasonable access to the Records to authorized City representatives shall give the City the right to suspend or terminate this Agreement as provided for in Section 5 above, or any portion thereof, for reason of default. All Records shall be retained by Company for a period of five (5) years after all performance requirements are achieved for audit purposes until such audits or other administrative, civil or criminal matters including, but not limited to, investigations,

lawsuits, administrative inquires and open record requests are completed. Company agrees to maintain the Records in an accessible location.

Article VII Assignment

7.01 **Assignment.** This Agreement may not be assigned without the express written consent of the non-assigning party, except that the Company may assign this Agreement without obtaining the City's consent (a) to one of its wholly owned affiliates, or (b) to any person or entity that directly or indirectly acquires, through merger, sale of stock, purchase or otherwise, all or more than ninety (90) percent of the assets of the Company as long as the Company gives sixty (60) days prior written notice to the City and the assignee executes an agreement with the City to be bound to all the terms and conditions of this Agreement and be responsible for any default(s) that occurred prior to or after the assignment.

For any assignment not covered by (a) or (b) above, the Company must obtain the prior written approval of the City and the assignee must agree in writing to be bound to all the terms and conditions of this Agreement and to accept all liability for any default that occurred prior to and/or after the assignment.

Any assignment agreement must be furnished in a form reasonably acceptable to the City and be provided at least thirty days prior to the effective assignment date. City agrees to notify the potential assignee of any known default, but such notification shall not excuse defaults that are not yet known to the City.

Article VIII Miscellaneous

8.01 **No Joint Venture.** It is acknowledged and agreed by the parties that the terms of this Agreement are not intended to and shall not be deemed to create a partnership or joint venture among the parties. Neither party shall have any authority act on behalf of the other party under any circumstances by virtue of this Agreement.

8.01.1 **Notice of Bankruptcy.** In the event Company files for bankruptcy, whether involuntarily or voluntary, Company shall provide written notice to the City within three (3) business days of such event.

8.02 **Authorization.** Each party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

8.03 **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth

below (or such other address as such party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered.

If intended for the City:
City of Plano, Texas
Attention:
City Manager
1520 Avenue K
P.O. Box 860358
Plano, TX 75086-0358

With a copy to:
City of Plano, Texas
Attention:
City Attorney
1520 Avenue K
P. O. Box 860358
Plano, TX 75086-0358

If intended for the Company before relocation:
Aimbridge Hospitality, L.P.
Attention: Les Bentley, Chairman
4100 Midway Road, Suite 2115
Carrollton, TX 75007

With a copy to:
Aimbridge Hospitality, L.P.
Attn: Todd Watson
Corporate Counsel
4100 Midway Road, Suite 2115
Carrollton, TX 75007

If intended for the Company after relocation:
Aimbridge Hospitality, L.P.
Attention: Les Bentley, Chairman
2500 N. Dallas Parkway
Suite 600
Plano, TX 75093

With a copy to:
Aimbridge Hospitality, L.P.
Attn: Todd Watson
Corporate Counsel
2500 N. Dallas Parkway
Suite 600
Plano, TX 75093

8.04 **Entire Agreement.** This Agreement is the entire Agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the parties that in any manner relates to the subject matter of this Agreement.

8.05 **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction. Venue for any action concerning this Agreement, the transactions contemplated hereby or the liabilities or obligations imposed hereunder shall be in the State District Court of Collin County, Texas.

8.06 **Amendment.** This Agreement may only be amended by the mutual written agreement of the parties.

8.07 **Severability.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

8.08 **Recitals.** The recitals to this Agreement are incorporated herein.

8.09. **Authorized to Bind.** The persons who execute their signatures to this Agreement represent and agree that they are authorized to sign and bind their respective parties to all of the terms and conditions contained herein.

8.10 **Counterparts.** This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument. Any such counterpart may be or delivered by electronic means.

EXECUTED on this _____ day of _____, 20__.

ATTEST:

CITY OF PLANO, TEXAS, a home
rule municipal corporation

Diane Zucco, CITY SECRETARY

By: _____
Bruce D. Glasscock,
CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ATTEST:

Aimbridge Hospitality, L.P.,
a Texas Limited Liability Company

Name: _____

By: _____

Name

Title: _____

Title: _____

EXHIBIT "A"

INITIAL CERTIFICATE OF COMPLIANCE

Please select one of the options below before signing and returning the certification:

- _____ a. I hereby certify that Aimbridge Hospitality, L.P. has occupied at least 25,000 square feet of commercial space and retained, transferred or added at least 60 Job Equivalent positions at the Real Property by October 1, 2011 and is in compliance with the Agreement and is entitled to receive payment in accordance with Section 4.02(a) of that Agreement.
- _____ b. I hereby certify that Aimbridge Hospitality, L.P. has failed to occupy at least 25,000 square feet of commercial space and failed to retain, transfer or add at least 60 Job Equivalent positions at the Property by October 1, 2011 and is not in compliance with the Agreement and is not entitled to receive payment in accordance with Section 4.02 (a) of that Agreement.

ATTEST: _____
Name: _____

By: _____
Chief Financial Officer

Date

This Certification is due by January 31, 2012.

This Certificate of Compliance should be mailed to:

City of Plano
Finance Department
P.O. Box 860358
Plano, Texas 75086-0358

EXHIBIT "B"

ANNUAL CERTIFICATE OF COMPLIANCE

Please select one of the options below before signing and returning the certification:

- _____ a. I hereby certify that Aimbridge Hospitality, L.P. is in compliance with each applicable term as set forth in the Agreement and the transferred or retained number of job Equivalents has not fallen below the number for which Aimbridge Hospitality, L.P. has received a grant payment in accordance with the terms and conditions set out in Article III. I further certify that as of December 31 of the prior year, the number of Job Equivalents was _____.
- _____ b. I hereby certify that Aimbridge Hospitality, L.P. is not in compliance with each applicable term as set forth in the Agreement and the transferred or retained number of Job Equivalents has fallen below the number for which Aimbridge Hospitality, L.P. has received a grant payment in accordance with the terms and conditions set out in Article III. I further certify that as of December 31 of the prior year, the number of Job Equivalents was _____. I further certify that the City of Plano has been refunded the appropriate amount as required by Article IV, Section 4.03 of the Agreement.

ATTEST: _____
Name: _____

By: _____
Chief Financial Officer

Date

NOTE:

This form is due by January 31 of each year beginning on January 31, 2013 and as long as this Agreement is in effect.

This Certificate of Compliance should be mailed to:

City of Plano
Finance Department
P.O. Box 860358
Plano, Texas 7508



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		6/27/11		
Department:		Finance		
Department Head		Denise Tacke		
Agenda Coordinator (include phone #): Katherine Crumbley - 7479				
CAPTION				
A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano and Ambit Holdings LLC, a Texas limited liability corporation; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2010-11	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	12,179,503	0	12,179,503
Encumbered/Expended Amount	0	-3,138,575	-6,090,050	-9,228,625
This Item	0	-30,217	-30,218	-60,435
BALANCE	0	9,010,711	-6,120,268	2,890,443
FUND(S): ECONOMIC DEVELOPMENT FUND				
COMMENTS: Strategic Plan Goal: Providing economic development incentives relates to the City's goal of strong local economy				
SUMMARY OF ITEM				
A request from Ambit Holdings LLC for an Economic Development Incentive to relocate its business and commercial activities to the City, thereby generating additional local sales tax revenues and increasing ad valorem tax values to the City. Ambit Holdings agrees to occupy not less than 69,000 sq. ft of commercial space and agrees to retain, create or transfer at least 237 jobs by 10/1/11.				
List of Supporting Documents: Economic Development Incentive Agreement			Other Departments, Boards, Commissions or Agencies	

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano and Ambit Holdings LLC, a Texas limited liability corporation; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

WHEREAS, the City Council has been presented a proposed Economic Development Incentive Agreement by and between the City of Plano, Texas and Ambit Holdings LLC, a Texas limited liability corporation, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and,

WHEREAS, upon full review and consideration of the Agreement, and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the City Manager or his authorized designee shall be authorized to execute it on behalf of the City of Plano.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:

Section I. The terms and conditions of the Agreement, having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things approved.

Section II. The City Manager or his authorized designee is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreement.

Section III. This Resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED this the 27th day of June, 2011.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

This Economic Development Incentive Agreement (“Agreement”) is made by and between the City of Plano, Texas (the “City”), and Ambit Holdings LLC, a Texas Limited Liability Corporation, (“Company”), acting by and through their respective authorized officers and representatives.

WITNESSETH:

WHEREAS, Company is engaged in the business of providing retail energy and represents it will add a minimum of \$1,400,000.00 of Real Property improvements and \$3,540,000.00 of Business Personal Property at 1600 W. Plano Parkway, Plano, Texas 75075 “Real Property”; and

WHEREAS, Company agrees to occupy at least 69,000 square feet of Real Property in Plano and maintain or create up to 237 Job Equivalents to be located on the Property for the term of this Agreement; and

WHEREAS, the Company has advised the City that a contributing factor that would induce the Company to expand its business and commercial activities in the City, thereby generating additional local sales tax revenues and increasing ad valorem tax values for the City, would be an agreement by the City to provide an economic development grant to the Company; and

WHEREAS, the Council finds that the occupancy of at least 69,000 square feet of Property, and the retention, creation or transfer of up to 237 Job Equivalents within the City will promote economic development, stimulate commercial activity and enhance the tax base and economic vitality of the City; and

WHEREAS, the City has adopted programs for promoting economic development; and

WHEREAS, the City is authorized by TEX. LOC. GOV'T CODE §380.001 *et seq.* to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the City has determined that making an economic development grant to the Company in accordance with the terms and conditions set forth in this Agreement will further the objectives of the City, will benefit the City and its citizens and will promote local economic development and stimulate business and commercial activity in the City.

NOW THEREFORE, in consideration of the foregoing and the premises, mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby covenant and agree as follows:

Article I Definitions

For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

“Company” shall mean Ambit Holdings LLC, a Texas Limited Liability Corporation.

“Effective Date” shall mean the last date on which all of the parties hereto have executed this Agreement.

“Event of Force Majeure” shall mean any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the party), fires, explosions or floods, strikes, slowdowns or work stoppages any of which event(s) directly and significantly impact the Company’s operations at the real property. An economic down turn shall not constitute an event of force majeure.

“Job Equivalent” shall mean one or more Company employees, whether individual or combined with other employees, who are located at the Property and each Job Equivalent is paid a total 2080 hours annually and issued an Internal Revenue Service W-2 form by the Company.

“Real Property” shall mean 1600 W. Plano Parkway, Plano, Texas 75075.

Article II Term

The term of this Agreement shall begin on the Effective Date and continue until September 30, 2018 unless sooner terminated as provided herein.

Article III Obligations of Company

In consideration for the grant of public funds as set forth in Section 4.01 below, the Company agrees to perform the following:

- (a) On or before October 1, 2011 occupy at least 69,000 square feet of commercial space on the Real Property and maintain such occupancy throughout the term of the Agreement;
- (b) Retain, create or transfer at least 237 Job Equivalents to the Real Property by October 1, 2011, and maintain those Job Equivalents on the Real Property throughout the term of the Agreement;

(c) Use reasonable efforts to place all Company-managed hotel room nights, related to the Company's business activities in Plano, at facilities located in the City of Plano.

Article IV Economic Development Grant

4.01 **Grant.** The City agrees to provide the Company a cash grant up to \$60,435.00 as long as Company meets each of the obligations set out in Article III above and complies with the certification schedule and requirements set out in 4.02 below.

4.02 **Grant Payment Requirements and Schedule** Except as otherwise indicated, the Company shall be entitled to the grant award in accordance with the following requirements and schedule:

(a)(i) By October 1, 2011, Company shall occupy not less than 69,000 square feet of commercial space and have at least 237 Job Equivalents at the Real Property to be eligible to receive the initial payment of \$30,217.50. The payment will not be pro-rated. **Company must submit the Initial Certification form attached hereto as Exhibit "A" verifying compliance with the obligations set forth in this provision not later than January 31, 2012. A failure to provide this form by that date is an event of default and, if not cured, results in an immediate and complete forfeiture of the entire grant under 4.01.**

City will make the \$30,217.50 payment within thirty (30) days of receipt of the initial certification unless the City reasonably objects to the certification.

(ii) If Company continues to occupy not less than 69,000 square feet of commercial space and continues to have at least 237 Job Equivalents at the Real Property as of December 31, 2012, it is entitled to a second grant payment of \$30,217.50. This amount will not be pro-rated. Company must also have complied with Article III above to receive this portion of the grant award. **Company must submit its second certification verifying compliance with this provision on the form attached as Exhibit "B" not later than January 31, 2013. A failure to provide this certification by that date, if not cured pursuant to Section 5.01(b) herein, results in an immediate and complete forfeiture of the remaining outstanding grant and a right to a full refund of all grant amounts previously paid as set out in 4.03.**

City will make the second payment within thirty (30) days of receipt of Exhibit "B" unless the City reasonably objects to the certification.

The total amount of all grant payments shall not exceed \$60,435.00.

(b) Beginning 2014, **Company must submit an annual certification on the form attached hereto as Exhibit "C" not later than January 31 of each year for the duration of this Agreement verifying compliance with Article III above. The certification must be based upon the number of Job Equivalents for which the Company has received a grant. A failure to file the annual certification by the January 31st deadline during the remaining**

years of the Agreement shall result in a default, if not cured pursuant to Section 5.01(b) herein, and a right to a full refund of all grant amounts previously paid as set out in 4.03.

(c) All certifications must be certified by the Company's chief executive or financial officer.

4.03 Refund/Default

(a) If following the receipt of a grant payment, the Company fails to meet the required number of Job Equivalents for which it has received payment for more than 180 consecutive days at any time during the term of this Agreement and the loss is not the result of an Event of Force Majeure, the Company shall refund to the City an amount equal to the following:

- (i) One Hundred Twenty Seven Dollars and Fifty Cents (\$127.50) for each lost Job Equivalent that occurs after receipt of the first installment of the grant payment pursuant to 4.02(a)(i) but before the receipt of the second installment of the grant payment pursuant to 4.02(a)(ii); and
- (ii) Two Hundred and Fifty Five Dollars (\$255.00) for each lost Job Equivalent that occurs after receipt of the full grant amount of Sixty Thousand Four Hundred and Thirty Five Dollars (\$60, 435.00).

For the purposes of determining whether the City is due a refund under this section, the Company shall certify to the City as set out in Section 4.02 above the actual number of Job Equivalents at the Real Property for the compliance period using the applicable forms that are attached hereto.

(b) All refunds under this Agreement shall be due within thirty (30) days of written demand for payment. A failure to make the refund payment within thirty (30) days shall constitute an event of default. If a refund is due for one or more Job Equivalent(s), Company is not entitled to any future payment for that lost Job Equivalent(s) notwithstanding that it subsequently complies with the Job Equivalent requirements of this Agreement.

(c) In the Event of a Force Majeure, the Company shall notify the City in writing not less than sixty days of the onset of the Event with adequate supporting documentation of the reasons for the Event, anticipated duration, and actions that the Company will take to alleviate the Event with a request for an extension. The City Manager shall consider such request and may grant such extension, such approval shall not be unreasonably withheld.

(d) If the Company defaults on the payment of any refund or fails to timely provide any certification as required by Section 4.02, the full amount of the Grant paid shall be refunded by Company to the City. City may use any efforts to collect such sums owed and Company agrees to pay any and all interest, and expenses, including attorney fees and costs incurred by City.

(e) At any time during the term of this Agreement the Company is convicted of a violation under 8 U.S.C. Section 1324a(f) regarding the unlawful employment of undocumented workers, it shall reimburse the City all grant funds paid pursuant to this Agreement together with

interest charged from the date of payment of the funds at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 33.01, but without the addition of penalty. Repayment of grant funds and interest shall be due not later than 120 days after the date of the conviction.

Article V Termination

5.01 This Agreement terminates upon any one or more of the following:

(a) By expiration of the term and where no defaults have occurred;

(b) If a party defaults or breaches any of the terms or conditions of this Agreement, including those not described as an event of default, and such default or breach is not cured within thirty (30) days after written notice thereof by the non-defaulting party unless a longer period is provided.

(c) The City Manager is authorized on behalf of the City to send notice of default and to terminate this Agreement for any default that is not cured.

5.02 **Effect of Termination/Survival of Obligations**. The rights, responsibilities and liabilities of the parties under this Agreement shall be extinguished upon the applicable effective date of termination of this Agreement, except for any obligations or default(s) that existed prior to such termination or as otherwise provided herein and those liabilities and obligations shall survive the termination of this Agreement, including the refund provision, maintenance of records, and access thereto.

Article VI Retention and Accessibility of Records

6.01 Company shall maintain the fiscal records and supporting documentation for expenditures of funds associated with this Agreement. Company shall retain such records, and any supporting documentation for the greater of: (1) Five years from the end of the Agreement period; or (2) the period required by other applicable laws and regulations.

6.02 Company gives City, its designee, or any of their duly authorized representatives, access to and the right to examine relevant books, accounts, records, audit reports, reports, files, documents, written or photographic material, videotape and other papers, things, or personal and real property belonging to or in use by Company pertaining to the Economic Development Program Grant (the "Records") upon receipt of ten (10) business days written notice from the City. The City's access to Company's books and records will be limited to information needed to verify that Company is and has been complying with the terms of this Agreement. Any information that is not required by law to be made public shall be kept confidential by City. In no event shall City's access to Company's Records include any access to any personal and/or medical data of any employees of Company except to confirm payroll information compliance for Job Equivalents. Company shall not be required to disclose to the City any information that by law Company is required to keep confidential. Should any good faith dispute or question

arise as to the validity of the data provided, the City reserves the right to require Company to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost of Company. The rights to access the Records shall terminate five (5) years after the termination or expiration of this Agreement. Failure to provide reasonable access to the Records to authorized City representatives shall give the City the right to suspend or terminate this Agreement as provided for in Section 5 above, or any portion thereof, for reason of default. All Records shall be retained by Company for a period of five (5) years after all performance requirements are achieved for audit purposes until such audits or other administrative, civil or criminal matters including, but not limited to, investigations, lawsuits, administrative inquires and open record requests are completed. Company agrees to maintain the Records in an accessible location.

Article VII Assignment

7.01 **Assignment.** This Agreement may not be assigned without the express written consent of the non-assigning party, except that the Company may assign this Agreement without obtaining the City's consent (a) to one of its wholly owned affiliates, or (b) to any person or entity that directly or indirectly acquires, through merger, sale of stock, purchase or otherwise, all or more than ninety (90) percent of the assets of the Company as long as the Company gives sixty (60) days prior written notice to the City and the assignee executes an agreement with the City to be bound to all the terms and conditions of this Agreement and be responsible for any default(s) that occurred prior to or after the assignment.

For any assignment not covered by (a) or (b) above, the Company must obtain the prior written approval of the City and the assignee must agree in writing to be bound to all the terms and conditions of this Agreement and to accept all liability for any default that occurred prior to and/or after the assignment.

Any assignment agreement must be furnished in a form acceptable to the City and be provided at least thirty days prior to the effective assignment date. City agrees to notify the potential assignee of any known default, but such notification shall not excuse defaults that are not yet known to the City.

Article VIII Miscellaneous

8.01 **No Joint Venture.** It is acknowledged and agreed by the parties that the terms of this Agreement are not intended to and shall not be deemed to create a partnership or joint venture among the parties. Neither party shall have any authority to act on behalf of the other party under any circumstances by virtue of this Agreement.

8.01.1 **Notice of Bankruptcy.** In the event Company files for bankruptcy, whether involuntarily or voluntary, Company shall provide written notice to the City within five (5) business days of such event.

8.02 **Authorization.** Each party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

8.03 **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below (or such other address as such party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered.

If intended for the City:
City of Plano, Texas
Attention:
City Manager
1520 Avenue K
P.O. Box 860358
Plano, TX 75086-0358

With a copy to:
City of Plano, Texas
Attention:
City Attorney
1520 Avenue K
P. O. Box 860358
Plano, TX 75086-0358

If intended for the Company:
Ambit Holdings LLC
Attention: Legal Department
1600 W. Plano Parkway
Plano, Texas 75075

8.04 **Entire Agreement.** This Agreement is the entire Agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the parties that in any manner relates to the subject matter of this Agreement.

8.05 **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction. Venue for any action concerning this Agreement, the transactions contemplated hereby or the liabilities or obligations imposed hereunder shall be in the State District Court of Collin County, Texas.

8.06 **Amendment.** This Agreement may only be amended by the mutual written agreement of the parties.

8.07 **Severability.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

8.08 **Recitals.** The recitals to this Agreement are incorporated herein.

8.09. **Authorized to Bind.** The persons who execute their signatures to this Agreement represent and agree that they are authorized to sign and bind their respective parties to all of the terms and conditions contained herein.

8.10 **Counterparts.** This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

EXECUTED on this _____ day of _____, 2011.

ATTEST:

CITY OF PLANO, TEXAS, a home rule
municipal corporation

Diane Zucco, CITY SECRETARY

By:

Bruce D. Glasscock,
CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ATTEST:

Ambit Holdings LLC, a Texas Limited
Liability Corporation

Name: _____
Title: _____

By: _____
Chief Financial Officer

EXHIBIT "A"

INITIAL CERTIFICATE OF COMPLIANCE

Please select one of the options below before signing and returning the certification:

- _____ a. I hereby certify that Ambit Holdings LLC has occupied at least 69,000 square feet of commercial space and retained, transferred or added at least 237 Job Equivalent positions at the Real Property by October 1, 2011 and is in compliance with the Agreement and is entitled to receive payment in accordance with Section 4.02(a)(i) of that Agreement.
- _____ b. I hereby certify that Ambit Holdings LLC has failed to occupy at least 69,000 square feet of commercial space and failed to retain, transfer or add at least 45 Job Equivalent positions at the Property by October 1, 2011 and is not in compliance with the Agreement and is not entitled to receive payment in accordance with Section 4.02 (a)(i) of that Agreement.

ATTEST:

Ambit Holdings LLC, a Texas Limited
Liability Corporation

By: _____
Chief Financial Officer

_____ Date

This Certification is due by January 31, 2012.

This Certificate of Compliance should be mailed to:

City of Plano
Finance Department
P.O. Box 860358
Plano, Texas 75086-0358

EXHIBIT "B"

SECOND CERTIFICATE OF COMPLIANCE

Please select one of the options below before signing and returning the certification:

- _____ a. I hereby certify that Ambit Holdings LLC has continued to occupy at least 69,000 square feet and continued to retain at least 237 Job Equivalents at the Real Property as of December 31, 2012 and is in compliance with all terms of the Agreement and is entitled to receive payment in accordance with Section 4.02 (a)(ii). The actual number of Job Equivalents is _____.
- _____ b. I hereby certify that **Ambit Holdings LLC** has **failed to continue to occupy at least 69,000 square feet and/or has failed to continue to retain at least 237 Job Equivalents** at the Real Property **as of** December 31, 2012 and is **not** in compliance with all terms of the Agreement and is **not** entitled to receive payment **in accordance with** Section 4.02 (a)(ii). The actual number of Job Equivalents is _____. I further certify that the City of Plano has been refunded the appropriate amount as required by Article IV, Section 4.03 of the Agreement.

ATTEST:

By: _____
Chief Financial Officer

Date

This form is due by January 31, 2013.

This Certificate of Compliance should be mailed to:

City of Plano
Finance Department
P.O. Box 860358
Plano, Texas 75086-0358

EXHIBIT "C"

ANNUAL CERTIFICATE OF COMPLIANCE

Please select one of the options below before signing and returning the certification:

- _____ a. I hereby certify that Ambit Holdings LLC is in compliance with each applicable term as set forth in the Agreement and the transferred or retained number of job Equivalents has not fallen below the number for which Ambit Holdings LLC has received a grant payment in accordance with the terms and conditions set out in Article III. I further certify that as of December 31, 20__ of the prior year, the number of Job Equivalents was _____.
- _____ b. I hereby certify that Ambit Holdings LLC is not in compliance with each applicable term as set forth in the Agreement and the transferred or retained number of Job Equivalents has fallen below the number for which Ambit Holdings LLC has received a grant payment in accordance with the terms and conditions set out in Article III. I further certify that as of December 31, 20__ of the prior year, the number of Job Equivalents was _____. I further certify that the City of Plano has been refunded the appropriate amount as required by Article IV, Section 4.03 of the Agreement.

ATTEST:

Ambit Holdings LLC, a Texas Limited Liability Corporation

By: _____
Chief Financial Officer

Date

NOTE:

This form is due by January 31 of each year beginning on January 31, 2014 and as long as this Agreement is in effect.

This Certificate of Compliance should be mailed to:

City of Plano
Finance Department
P.O. Box 860358
Plano, Texas 75086-0358



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		6/27/11		
Department:		Finance		
Department Head		Denise Tacke		
Agenda Coordinator (include phone #): Katherine Crumbley - 7479				
CAPTION				
A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano and Masergy Communications, Inc., a Delaware corporation; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2010-11	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	12,179,503	0	12,179,503
Encumbered/Expended Amount	0	-3,138,575	-6,090,050	-9,228,625
This Item	0	-90,000	0	-90,000
BALANCE	0	8,950,928	-6,090,050	2,860,878
FUND(S): ECONOMIC DEVELOPMENT FUND				
COMMENTS: Strategic Plan Goal: Providing economic development incentives relates to the City's goal of strong local economy				
SUMMARY OF ITEM				
A request from Masergy Communications, Inc. for an Economic Development Incentive to relocate its business and commercial activities to the City, thereby generating additional local sales tax revenues and increasing ad valorem tax values to the City. Masergy agrees to occupy not less than 35,000 sq. ft of commercial space and retain, create or transfer at least 120 jobs before 3/31/12.				
List of Supporting Documents: Economic Development Incentive Agreement			Other Departments, Boards, Commissions or Agencies	

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano and Masergy Communications, Inc., a Delaware corporation; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

WHEREAS, the City Council has been presented a proposed Economic Development Incentive Agreement by and between the City of Plano, Texas and Masergy Communications, Inc., a Delaware corporation, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and,

WHEREAS, upon full review and consideration of the Agreement, and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the City Manager or his authorized designee shall be authorized to execute it on behalf of the City of Plano.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:

Section I. The terms and conditions of the Agreement, having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things approved.

Section II. The City Manager or his authorized designee is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreement.

Section III. This Resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED this the 27th day of June, 2011.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

This Economic Development Incentive Agreement (“Agreement”) is made by and between the City of Plano, Texas (the “City”), and Masergy Communications, Inc., a Delaware corporation, (“Company”), acting by and through their respective authorized officers and representatives.

WITNESSETH:

WHEREAS, Company is engaged in the business of voice, video and data network connectivity services and plans to add \$700,000 of Real Property improvements and \$400,000 of Business Personalty Property to their existing \$5,145,000 of Business Personal Property at 2740 North Dallas Parkway, Plano, Texas 75093; and

WHEREAS, Company agrees to occupy at least 35,000 square feet of “ Real Property” in Plano and maintain or create up to 120 Job Equivalents to be located on the Property for the term of this Agreement; and

WHEREAS, the Company has advised the City that a contributing factor that would induce the Company to relocate and expand its business and commercial activities in the City, thereby generating additional local sales tax revenues and increasing ad valorem tax values for the City, would be an agreement by the City to provide an economic development grant to the Company; and

WHEREAS, the Council finds that the occupancy of at least 35,000 square feet of Property, and the retention, creation or transfer of up to 120 Job Equivalents within the City will promote economic development, stimulate commercial activity and enhance the tax base and economic vitality of the City; and

WHEREAS, the City has adopted programs for promoting economic development; and

WHEREAS, the City is authorized by TEX. LOC. GOV’T CODE §380.001 *et seq.* to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the City has determined that making an economic development grant to the Company in accordance with the terms and conditions set forth in this Agreement will further the objectives of the City, will benefit the City and its citizens and will promote local economic development and stimulate business and commercial activity in the City.

NOW THEREFORE, in consideration of the foregoing and the premises, mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby covenant and agree as follows:

Article I Definitions

For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

“Company” shall mean Masergy Communications, Inc., a Delaware corporation.

“Effective Date” shall mean the last date on which all of the parties hereto have executed this Agreement.

“Event of Force Majeure” shall mean any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the party), fires, explosions or floods, strikes, slowdowns or work stoppages any of which event(s) directly and significantly impact the Company’s operations in the City. An economic down turn shall not constitute an event of force majeure.

“Job Equivalent” shall mean one or more Company employees, whether individual or combined with other employees, who are located at the Property and each Job Equivalent is paid a total 2080 hours annually and issued an Internal Revenue Service W-2 form by the Company.

“Real Property” shall mean 2740 North Dallas Parkway, Plano, Texas 75093.

Article II Term

The term of this Agreement shall begin on the Effective Date and continue until December 31, 2018 unless sooner terminated as provided herein.

Article III Obligations of Company

In consideration for the grant of public funds as set forth in Section 4.01 below, the Company agrees to perform the following:

- (a) On or before March 31, 2012, occupy at least 35,000 square feet of commercial space on the Real Property throughout the term of the Agreement; and,

- (b) Retain, create or transfer at least 120 Job Equivalents to the Real Property by March 31, 2012 and maintain those Job Equivalents on the Real Property throughout the Agreement; and
- (c) Use reasonable efforts to place all Company-managed hotel room nights, related to the Company's business activities, at facilities located in the City of Plano.

Article IV Economic Development Grant

4.01 **Grant.** The City agrees to provide the Company a cash grant of Ninety Thousand Dollars (\$90,000) as long as Company meets each of the obligations set out in Article III above and complies with the certification schedule and requirements set out in 4.02 below.

4.02 **Grant Payment Requirements and Schedule.** Except as otherwise indicated, the Company shall be entitled to the grant award in accordance with the following requirements and schedule:

(a) By March 31, 2012, Company shall occupy not less than 35,000 square feet of commercial space and retain, transfer, or create at least 120 Job Equivalents at the Real Property to be eligible to receive a payment of Ninety Thousand Dollars (\$90,000.00). The payment will not be pro-rated. **Company must submit the Initial Certification form attached hereto as Exhibit "A" verifying compliance with the obligations set forth in this provision not later than June 30, 2012. A failure to provide this form by that date is an event of default and, if not cured, results in an immediate and complete forfeiture of the entire grant.**

City will make the payment within thirty (30) days of receipt of the initial certification unless the City reasonably objects to the certification.

(b) Beginning January 2013, Company must submit an annual certification on the form attached hereto as Exhibit "B" not later than January 31 of each year for the duration of this agreement, with the final certification being due December 31, 2018, verifying compliance with Article III above. The certification must be based upon the number of Job Equivalents for which the Company has received a grant. A failure to file the annual certification by the January 31 deadline during the remaining years of the Agreement shall result in a default and a right to a full refund of all grant amounts previously paid as set out in 4.03.

(c) All certifications must be verified by the Company's chief executive or financial officer.

4.03 **Refund/Default.**

(a) If following the receipt of a grant payment, the Company fails to meet the required number of Job Equivalents for which it has received payment for more than 180 consecutive days at any time during the term of this Agreement and the loss is not the result of an Event of Force Majeure, the Company shall refund to the City an amount equal to Seven Hundred and Fifty Dollars (\$750.00) for each lost Job Equivalent. For the purposes of determining whether

the City is due a refund under this section, the Company shall certify to the City as set out in Section 4.02 above the actual number of Job Equivalents at the Real Property for the compliance period using the form attached as Exhibits "B". All refunds under this Agreement shall be due within thirty (30) days of written demand for payment. A failure to make the refund payment within thirty (30) days shall constitute an event of default. If a refund is due for one or more Job Equivalent(s), Company is not entitled to any future payment for that lost Job Equivalent(s) notwithstanding that it subsequently complies with the Job Equivalent requirements of this Agreement.

(b) If the Company defaults on the payment of any refund or fails to timely provide any certification as required by Section 4.02, and such default or failure is not cured within thirty (30) days after written demand to Company, the full amount of the Grant paid shall be refunded by Company to the City. City may use any efforts to collect such sums owed and Company agrees to pay any and all interest, and expenses, including attorney fees and costs incurred by City. This obligation shall survive termination of this Agreement.

(c) At any time during the term of this Agreement the Company is convicted of a violation under 8 U.S.C. Section 1324a(f) regarding the unlawful employment of undocumented workers, it shall reimburse the City all grant funds paid pursuant to this Agreement together with interest charged from the date of payment of the funds at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 33.01, but without the addition of penalty. Repayment of grant funds and interest shall be due not later than 120 days after the date the City notifies the Company of the conviction.

Article V Termination

5.01 This Agreement terminates upon any one or more of the following:

(a) By expiration of the term and where no defaults have occurred;

(b) If a party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof by the non-defaulting party unless a longer period is provided. Any default under this provision and right to recover any claims, refunds, damages and/or expenses shall survive the termination of the Agreement.

The City Manager is authorized on behalf of the City to send notice of default and to terminate this Agreement for any default that is not cured.

5.02 **Effect of Termination/Survival of Obligations.** The rights, responsibilities and liabilities of the parties under this Agreement shall be extinguished upon the applicable effective date of termination of this Agreement, except for any obligations or default(s) that existed prior to such termination or as otherwise provided herein and those liabilities and obligations shall survive the termination of this Agreement, including the refund provision, maintenance of records, and access thereto.

Article VI
Retention and Accessibility of Records

6.01 Company shall maintain the fiscal records and supporting documentation for expenditures of funds associated with this Agreement. Company shall retain such records, and any supporting documentation for the greater of: (1) Five years from the end of the Agreement period; or (2) the period required by other applicable laws and regulations.

6.02 Company gives City, its designee, or any of their duly authorized representatives, access to and the right to examine relevant books, accounts, records, audit reports, reports, files, documents, written or photographic material, videotape and other papers, things, or personal and real property belonging to or in use by Company pertaining to the Economic Development Program Grant (the "Records") upon receipt of ten (10) business days written notice from the City. The City's access to Company's books and records will be limited to information needed to verify that Company is and has been complying with the terms of this Agreement. Any information that is not required by law to be made public shall be kept confidential by City. In no event shall City's access to Company's Records include any access to any personal and/or medical data of any employees of Company except to confirm payroll information compliance for Job Equivalents. Company shall not be required to disclose to the City any information that by law Company is required to keep confidential. Should any good faith dispute or question arise as to the validity of the data provided, the City reserves the right to require Company to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost of Company. The rights to access the Records shall terminate five (5) years after the termination or expiration of this Agreement. Failure to provide reasonable access to the Records to authorized City representatives shall give the City the right to suspend or terminate this Agreement as provided for in Section 5 above, or any portion thereof, for reason of default. All Records shall be retained by Company for a period of five (5) years after all performance requirements are achieved for audit purposes until such audits or other administrative, civil or criminal matters including, but not limited to, investigations, lawsuits, administrative inquires and open record requests are completed. Company agrees to maintain the Records in an accessible location.

Article VII
Assignment

7.01 **Assignment.** This Agreement may not be assigned without the express written consent of the non-assigning party, except that the Company may assign this Agreement without obtaining the City's consent (a) to one of its wholly owned affiliates, or (b) to any person or entity that directly or indirectly acquires, through merger, sale of stock, purchase or otherwise, all or more than ninety (90) percent of the assets of the Company as long as the Company gives sixty (60) days prior written notice to the City and the assignee executes an agreement with the City to be bound to all the terms and conditions of this Agreement and be responsible for any default(s) that occurred prior to or after the assignment.

For any assignment not covered by (a) or (b) above, the Company must obtain the prior approval of the City through its City Manager and the assignee must agree to be bound to all the

terms and conditions of this Agreement and to accept all liability for any default that occurred prior to and/or after the assignment.

Any assignment agreement must be furnished in a form acceptable to the City and be provided at least thirty days prior to the effective assignment date. City agrees to notify the potential assignee of any known default, but such notification shall not excuse defaults that are not yet known to the City.

Article VIII Miscellaneous

8.01 **No Joint Venture.** It is acknowledged and agreed by the parties that the terms of this Agreement are not intended to and shall not be deemed to create a partnership or joint venture among the parties. Neither party shall have any authority act on behalf of the other party under any circumstances by virtue of this Agreement.

8.01.1 **Notice of Bankruptcy.** In the event Company files for bankruptcy, whether involuntarily or voluntary, Company shall provide written notice to the City within three (3) business days of such event.

8.02 **Authorization.** Each party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

8.03 **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below (or such other address as such party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered.

If intended for the City:
City of Plano, Texas
Attention:
City Manager
1520 Avenue K
P.O. Box 860358
Plano, TX 75086-0358

With a copy to:
City of Plano, Texas
Attention:
City Attorney
1520 Avenue K
P. O. Box 860358
Plano, TX 75086-0358

If intended for the Company:
Masergy Communications, Inc.
Attn: Vice President & CFO
2740 N. Dallas Parkway, Suite 260
Plano, TX 75093

8.04 **Entire Agreement.** This Agreement is the entire Agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the parties that in any manner relates to the subject matter of this Agreement.

8.05 **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction. Venue for any action concerning this Agreement, the transactions contemplated hereby or the liabilities or obligations imposed hereunder shall be in the State District Court of Collin County, Texas.

8.06 **Amendment.** This Agreement may only be amended by the mutual written agreement of the parties.

8.07 **Severability.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

8.08 **Recitals.** The recitals to this Agreement are incorporated herein.

8.09. **Authorized to Bind.** The persons who execute their signatures to this Agreement represent and agree that they are authorized to sign and bind their respective parties to all of the terms and conditions contained herein.

8.10 **Counterparts.** This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

EXECUTED on this _____ day of _____, 20__.

ATTEST:

CITY OF PLANO, TEXAS, a home rule
municipal corporation

Diane Zucco, CITY SECRETARY

By: _____
Bruce D. Glasscock, CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ATTEST:

Masergy Communications, Inc.

Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT "A"

INITIAL CERTIFICATE OF COMPLIANCE

Please select one of the options below before signing and returning the certification:

- _____ a. I hereby certify that Masergy Communications, Inc. has occupied 35,000 square feet of commercial space and retained, transferred or added at least 120 Job Equivalent positions at the Real Property by March 31, 2012 and is in compliance with the Agreement and is entitled to receive payment in accordance with Section 4.02 (a) of that Agreement. The actual number of job equivalents is _____.
- _____ b. I hereby certify that Masergy Communications, Inc. has failed to occupy 35,000 square feet of commercial space and failed to retain, transfer or add at least 120 Job Equivalent positions at the Property by March 31, 2012 and is not in compliance with the Agreement and is not entitled to receive payment in accordance with Section 4.02 (a) of that Agreement. The actual number of job equivalents is _____.

ATTEST:

**Masergy Communications, Inc., a
Delaware Company**

By: _____

Name: _____

Chief Financial Officer

Date

This Certification is due by June 30, 2012.

This Certificate of Compliance should be mailed to:

City of Plano
Finance Department
P.O. Box 860358
Plano, Texas 75086-0358

EXHIBIT "B"

ANNUAL CERTIFICATE OF COMPLIANCE

Please select one of the options below before signing and returning the certification:

- _____ a. I hereby certify that Masergy Communications, Inc. is in compliance with each applicable term as set forth in the Agreement and the transferred or retained number of Job Equivalents has not fallen below the number for which Masergy Communications, Inc. has received a grant payment in accordance with the terms and conditions set out in Article IV. I further certify that as of December 31 of the prior year, the number of Job Equivalents was _____.
- _____ b. I hereby certify that Masergy Communications, Inc. is not in compliance with each applicable term as set forth in the Agreement and the transferred or retained number of Job Equivalents has fallen below the number for which Masergy Communications, Inc. has received a grant payment in accordance with the terms and conditions set out in Article IV. I further certify that as of December 31 of the prior year, the number of Job Equivalents was _____. I further certify that the City of Plano has been refunded the appropriate amount as required by Article IV, Section 4.03 of the Agreement.

ATTEST:

**Masergy Communications, Inc., a
Delaware Company**

By: _____
Name: _____
Chief Financial Officer

Date

NOTE:

This form is due by January 31 of each year beginning on January 31, 2013 and as long as this Agreement is in effect, with the final certification due December 31, 2018.

This Certificate of Compliance should be mailed to:

City of Plano
Finance Department
P.O. Box 860358
Plano, Texas 75086-0358