

CITY COUNCIL

1520 AVENUE K



DATE: 9/24/2012
CALL TO ORDER: 7:00 p.m.
INVOCATION: Sr. Pastor Gene Wilkes
Legacy Church
PLEDGE OF ALLEGIANCE: Cadette Girl Scout Troop 1861
Armstrong, Bowman, Haggard & Otto Middle
Schools

ITEM NO.	EXPLANATION	ACTION TAKEN
(a)	<p>OUR MISSION - THE CITY OF PLANO IS A REGIONAL AND NATIONAL LEADER, PROVIDING OUTSTANDING SERVICES AND FACILITIES THROUGH COOPERATIVE EFFORTS THAT ENGAGE OUR CITIZENS AND 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>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> August 27, 2012 September 5, 2012 September 10, 2012</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. 2012-288-B for the purchase of two (2) Trucks from Caldwell Country Automotive in the amount of \$65,176 for Fleet Services, to be utilized by Special Waste, and authorizing the City Manager to execute all necessary documents.	
(c)	Bid No. 2012-267-B for Gladys Harrington Library Restroom Renovation to Tegrity Contractors, Inc. in the amount of \$174,777 and authorizing the City Manager to execute all necessary documents.	
	<p>Purchase from an Existing Contract</p>	
(d)	To approve the purchase of Haggard Library Interior Improvements in the amount of \$70,855 from Williams and Thomas, L.P. d/b/a Jamail & Smith Construction through an existing contract/agreement with TCPN, and authorizing the City Manager to execute all necessary documents. (TCPN Contract #R5086)	
(e)	To approve the purchase of six (6) Pick-Up Trucks for Fleet Services to be utilized by Ground Maintenance, Compost Operations, Utility Maintenance, Backflow Operations, & Police, in the amount of \$133,326 from Caldwell Country Automotive through an existing contract/agreement with TASB/BuyBoard, and authorizing the City Manager to execute all necessary documents. (TASB/BuyBoard Contract #358-10)	
(f)	To approve a one (1) year contract with four (4) City optional renewals for the purchase of Blauer Police Uniforms for the Police Department in an estimated amount of \$100,000 from GST Public Safety Supply through an existing contract/agreement with Tarrant County (Tarrant County Contract #2011-041), 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>	
(g)	To approve a Professional Services Agreement by and between the City of Plano and J. Volk Consulting, Inc., in the amount of \$100,260 for the Standard Details project; and authorizing the City Manager to execute all necessary documents.	
	<p><u>Adoption of Resolutions</u></p>	
(h)	To approve the appointment of the Health Authority for the City of Plano in accordance with Section 121.033 of the Texas Health and Safety Code; approving the Agreement between the City of Plano and Allan R. deVilleneuve, M.D. for Professional Services; and providing an effective date.	
(i)	To approve the terms and conditions of an Advance Funding Agreement for project using funds held in the State Highway 121 Sub-account – City Street Improvements – Off System Project; authorizing its execution by the City Manager; and providing an effective date.	

ITEM NO.	EXPLANATION	ACTION TAKEN
(j)	To approve the terms and conditions of Agreements between the City of Plano and various community organizations, providing for the expenditure of Buffington Community Services funds in the amount of \$263,500 for the provision of various community services; authorizing its execution by the City Manager; and providing the effective date.	
(k)	To approve the terms and conditions of Agreements between the City of Plano and various community organizations, providing for the expenditure of Community Development Block Grant funds in the amount of \$183,344 and HOME funds in the amount of \$276,533 for the provisions of various community services and developments; authorizing the execution by the City Manager; and providing the effective dates.	
(l)	To approve the terms and conditions of agreements between the City of Plano, Texas and various heritage preservation organizations which render services that are beneficial to the public and serve a valid public purpose in the total amount of \$735,583; authorizing the City Manager to execute such agreements with these organizations for the provision of support of heritage preservation; and providing an effective date.	
(m)	To approve the terms and conditions of a technical services contract with Motorola Solutions, Inc.; authorizing its execution by the City Manager; and providing an effective date.	
(n)	To rescind prior Resolution No. 2012-5-11(R) which approved the Agreement with TT Holdings I, Inc., d/b/a TriTech Software Systems for the purchase of Stratus ft6300 fault tolerant server and one year maintenance on May 29, 2012; approving a new Agreement for the purchase of Stratus ft6300 fault tolerant server and one year maintenance from TriTech Software Systems for a total \$91,200 and maintenance service for five (5) additional years in an amount not to exceed \$66,724.00; authorizing its execution by the City Manager; and providing an effective date.	
(o)	To ratify the terms and conditions of a Consent to Assignment Agreement by and between the City of Plano, Texas, 15th and I, LLC, and Comerica Bank to authorize assignment of the Development Agreement between Southern Land Company, LLC and the City of Plano as security for financing of the development project at the southeast corner of 15th Street and I Avenue; ratifying its execution by the City Manager; and providing an effective date.	
(p)	<p><u>Adoption of Ordinances</u></p> <p>To repeal in its entirety Ordinance No. 2011-9-27, codified as Section 18-34 of Article II, Commercial Container Rates, of Chapter 18, Solid Waste of the Code of Ordinances of the City of Plano, Texas and enacting this new Section 18-34 of Article II, Commercial Container Rates, of Chapter 18, Solid Waste, of the Code of Ordinances of the City of Plano, establishing a revised schedule of rates and charges for solid waste disposal and collection applicable to commercial accounts; providing a repealer clause, a severability clause, and providing an effective date.</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
(q)	To repeal Ordinance No. 2011-9-31; establishing the number of certain classifications within the Fire Department for fiscal year 2012-13; establishing the authorized number and effective dates of such positions for each classification; establishing a salary plan for the Fire Department effective September 24, 2012; and providing a repealer clause, a severability clause and an effective date.	
(r)	To repeal Ordinance No. 2012-4-9; establishing the number of certain classifications within the Police Department for fiscal year 2012-13; establishing the authorized number and effective dates of such positions for each classification effective September 24, 2012; establishing a salary plan for the Police Department effective September 24, 2012; and providing a repealer clause, a severability clause and an effective date.	
(s)	To repeal Ordinance No. 2011-3-17; establishing a certification pay plan for classified members of the Plano Fire and Police Departments; establishing an assignment pay plan for members of the Plano Fire Department serving in the capacity of paramedic; establishing a Paramedic Preceptor pay plan for members of the Plano Fire Department; establishing an assignment pay plan for members of the Plano Police Department serving in the capacity of Field Training Officers; and providing a repealer clause, a severability clause and an effective date.	
<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)	Consideration of a Resolution to approve the terms and conditions of an Economic Development Incentive Agreement by and between Collin Creek Mall, LLC and the City of Plano, Texas; authorizing its execution by the City Manager; and providing an effective date.	
(2)	Consideration of an Appeal of the Heritage Commission's Denial of a Certificate of Appropriateness to reinstall a non-permanent retractable cover on the roof top patio located at 1006 E. 15th Street. Zoned Downtown Business/Government (BG); Heritage Resource #26 Designation (H-26). Applicant: Blackgold Partners/Nathan & Bonnie Shea (Tabled 08/13/12)	

ITEM NO.	EXPLANATION	ACTION TAKEN
(3)	<p>Public Hearing and consideration of an Ordinance as requested in Zoning Case 2012-12 to amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, so as to amend Planned Development-374-Retail on 6.9± acres of land located at the northeast corner of Plano Parkway and Independence Parkway, in the City of Plano, Collin County, Texas, to modify the development standards of the district including amending or repealing the limitation on the hours of operation; 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: RaceTrac (Tabled 09/10/12)</p>	
(4)	<p>Consideration of a Resolution to appoint a board member to serve on the Dallas Area Rapid Transit Authority (DART) Board of Directors as provided in Chapter 452 of the Texas Transportation Code and providing an effective date.</p>	
(5)	<p>Consideration of a Resolution to affirm the appointment of a shared board member with the City of Farmers Branch to serve on the Dallas Area Rapid Transit Authority (DART) Board of Directors as provided in Chapter 452 of the Texas Transportation Code 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>	

**PLANO CITY COUNCIL
PRELIMINARY OPEN MEETING
AUGUST 27, 2012**

COUNCIL MEMBERS PRESENT

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

STAFF PRESENT

Bruce D. Glasscock, City Manager
LaShon Ross, Deputy City Manager
Diane Wetherbee, City Attorney
Diane Zucco, City Secretary

Mayor Dyer called the meeting to order at 5:00 p.m., Monday, August 27, 2012, in Training Room A of the Municipal Center, 1520 K Avenue. A quorum was 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; receive information regarding Economic Development, Section 551.087 and to discuss Real Estate, Section 551.072 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 5:44 p.m.

Consideration and action resulting from Executive Session discussion.

No items were discussed.

Discussion and Direction Regarding Preston at Legacy – Median Left Turn

Police Chief Rushin spoke to the opening of the Preston Road/Legacy Road intersection on July 27, 2010 with full construction completed on September 1, 2010 and review of statistics related to turning movements before and after completion. He advised that there was a 15% decrease in crashes, noted the changes in the pattern of accidents, and the increase in the number of injury collisions. Chief Rushin reviewed the causes of accidents before/after implementation and the level of incidents at other area intersections following construction, advising that of the four reviewed, two saw increases and two decreases. He responded to the Council, advising that while there were some severe crashes during the construction phase, there have been none since its completion. Director of Public Works Cosgrove spoke to implementation of the median left turn providing better movement on Preston Road and improvement as the public becomes more familiar with the intersection. Deputy Mayor Pro Tem Harris spoke to the lack of data on the impact to collector streets and in opposition to the design. The Council stated a general consensus to retain the design at this intersection, continue review and delay implementation at other locations.

Discussion and Direction Regarding Planning and Zoning Commission Training

Director of Planning Jarrell advised regarding training and educational opportunities provided for the Planning & Zoning Commission including Staff sessions with those newly appointed to review topics such as zoning, comprehensive planning, legal considerations and site plan and plat regulation. She spoke to additional training in the form of special work sessions with the Planning and Legal Departments and available programs from other organizations. Ms. Jarrell spoke to utilizing a mix of in-house and outside opportunities to provide a balanced perspective. Mayor Pro Tem Smith spoke to requiring training of newly appointed members whether it is in-house or outside. Council Member Dunlap spoke to the Council's final authority for zoning cases, the experience of those applying for the board and utilizing in-house resources including worksessions. Mayor Pro Tem Smith spoke to sessions being geared toward orientation.

Report on 2012 Point-in-Time Homeless Count

Collin County Homeless Coalition Chair Cara Mendelsohn spoke to the increase in participation beginning in 2011 and the survey required by HUD, utilized for resource allocation and increasing awareness. She spoke to increases in the County and a 12% increase in the City of Plano with a total of 291 (199 adults and 92 children). Ms. Mendelsohn spoke to factors impacting the count including the number of surveyors and weather and advised regarding ethnicity, family composition, educational level, and the significant increase in those who are chronically homeless. She spoke to the needs of the homeless and the school district's differing methods of tracking. Ms. Mendelsohn responded to the Council, advising that those staying overnight in Dallas are not included in the Plano count and challenges of providing services for differing needs.

Update Regarding West Nile Virus

Director of Environmental Health Collins advised that the West Nile Virus was first detected in the United States in 1999 and in Texas in 2002 and spoke to transmission from mosquitos after they have bitten an infected bird. He spoke to the two forms of the virus being a "fever" which is mild in nature and the neuroinvasive which is more severe in nature. Mr. Collins advised regarding the City's sampling/monitoring and utilization of an integrated program including education, larvacide and land-based fogging. He spoke to notification provided to spray areas and the relatively low level of cases city and county-wide as compared to other regions. Mr. Collins advised regarding the evening fogging program, products utilized and stated that the risks of west nile virus may be present through October. Council Member Dunlap thanked Staff for pro-active education and information provided.

Comprehensive Monthly Financial Report

Director of Finance Tacke advised that the July 2012 report finds General Fund revenues up as a percentage of budget as compared to last year while Water and Sewer revenues are up slightly. She stated that actual General Fund revenues are up \$11.4 million, primarily due to an increase in ad valorem taxes and an increase in sales tax resulting from an audit adjustment. Ms. Tacke also stated revenues were up in court fines, cable franchises, and ambulance services. She advised that General, Water & Sewer Fund, and Golf Course Fund expenditures are up as a percentage of budget and personnel services are up due to the large number of retirees this fiscal year. She advised that the unemployment rate is at 6.7% and that sales tax collections for the month of July are up by \$294,000.

Ms. Tacke advised that actual revenues for the Water & Sewer Fund are down by \$6.2 million compared to the prior year due to drought conditions and water restrictions while expenses are up by \$6.7 million. She responded to Council Member Gallagher, advising that ambulance billings are up due to a change in the billing company.

Council items for discussion/action on future agendas

No items were discussed.

Consent and Regular Agendas

Council Member Dunlap requested that Consent Agenda Item "B," Bid No. 2012-269-B for the 2011-2012 Residential Concrete Pavement Project Zone I10 & J9, Project No. 6211 to Jerusalem Corporation in the amount of \$1,370,742, be removed for individual consideration due to a possible conflict of interest.

Mayor Dyer requested that Consent Agenda Item "K," repealing Ordinance No. 2011-9-31 and approving the updated classification, including the number of positions and compensation plan, for the Fire Department sworn personnel for fiscal year 2011-2012 be removed for individual consideration.

Nothing further was discussed. Mayor Dyer adjourned the Preliminary Meeting at 6:48 p.m.

Phil Dyer, MAYOR

ATTEST

Diane Zucco, City Secretary

PLANO CITY COUNCIL

August 27, 2012

COUNCIL MEMBERS PRESENT

Phil Dyer, Mayor

Lissa Smith, Mayor Pro Tem

Ben Harris, Deputy Mayor Pro Tem

Pat Miner

André Davidson

James Duggan

Patrick Gallagher

Lee Dunlap

STAFF PRESENT

Bruce Glasscock, City Manager

LaShon Ross, Deputy City Manager

Diane Wetherbee, City Attorney

Diane Zucco, City Secretary

Mayor Dyer convened the Council into the Regular Session on Monday, August 27, 2012, 2012, at 7:02 p.m. in the Council Chamber of the Plano Municipal Center, 1520 K Avenue. A quorum was present.

Reverend Alice Coder of First United Methodist Church in Plano led the invocation and Cadette Girl Scout Troop 656 led the Pledge of Allegiance.

PROCLAMATIONS & SPECIAL RECOGNITION

Mayor Dyer presented proclamations recognizing Plano ISD PTA's celebration of Family Engagement Month and The InTouch Credit Union Plano Hot Air Balloon Festival. City Manager Glasscock recognized Nancy Nevil, Director of the Plano Sustainability & Environmental Services Department for her thirty years of service.

COMMENTS OF PUBLIC INTEREST

Citizen Denise Midgley requested information regarding the placement of bicycle path signs along roadways and stated concern regarding on street cycling. City Manager Glasscock advised that Staff will respond to Ms. Midgley's request.

CONSENT AGENDA

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

Upon the request of Mayor Dyer, Consent Agenda Item "K" was removed for individual consideration.

Upon a motion made by Council Member Miner and seconded by Deputy Mayor Pro Tem Harris, the Council voted 8-0 to approve and adopt all remaining items on the Consent Agenda as recommended and as follows:

Approval of Minutes (Consent Agenda Item “A”)

August 8, 2012
August 13, 2012
August 18, 2012

Approval of Expenditures

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

Bid No. 2012-223-B to approve the purchase of two (2) Portable Video Surveillance Towers, at a total cost of \$99,000 from Cameras Onsite LLC, through the 2010 COPS Child Sexual Predator Grant and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “C”)

To terminate Contract No. 2011-204-C Tires – New, and award Bid No. 2012-260-C for a one (1) year contract with three (3) city optional renewals to purchase Tires – New for Inventory Control & Asset Disposal (ICAD) from A to Z Tire & Battery, Inc., American Tire Distributors, and Southern Tire Mart in an estimated amount of \$316,686 and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “D”)

Purchase from an Existing Contract

To approve the purchase of the installation of conduits and cabling for the Technology Services Data Center Renovation project, in the amount of \$149,948 from Able Communications, Inc. through an existing contract and authorizing the City Manager to execute all necessary documents. (City of Plano Contract Number 2011-195-C) (Consent Agenda Item “E”)

Adoption of Resolutions

Resolution No. 2012-8-10(R): To extend the time limits of an exclusive period for development of a preliminary project design and the negotiation of the terms and conditions of a development agreement by and between the City of Plano, Texas and Prescott Realty Group for the redevelopment of 4.6± acres located at the northwest corner of Park Boulevard and K Avenue in the City of Plano; authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item “F”)

Resolution No. 2012-8-11(R): To approve the terms and conditions of an agreement by and between the City of Plano, Texas and Alcatel-Lucent USA, Inc., a sole source provider, to purchase services and products related to the Phase 7 upgrade and replacement of the existing microwave radio system in the amount of \$677,448; authorizing its execution by the City Manager and providing an effective date. (Consent Agenda Item “G”)

Resolution No. 2012-8-12(R): To find Officer Samuel Mark McClendon is entitled to defense representation pursuant to the City Code of Ordinances in connection with the matter of Roger C. Fountain v. City of Plano Police Department, et al., in the United States District Court for the Eastern District of Texas, Sherman Division, Case No. 4:12-cv-00026; and providing an effective date. (Consent Agenda Item “H”)

Resolution No. 2012-8-13(R): To find Officer Stan Roady is entitled to defense representation pursuant to the City Code of Ordinances in connection with the matter of Roger C. Fountain v. City of Plano Police Department, et al., in the United States District Court for the Eastern District of Texas, Sherman Division, Case No. 4:12-cv-00026; and providing an effective date. (Consent Agenda Item “I”)

Adoption of Ordinances

Ordinance No. 2012-8-14: To amend Section 12-74(b) of Chapter 12, Motor Vehicles and Traffic, of the Code of Ordinances of the City of Plano, Texas to amend the prima facie maximum speed limits for motor vehicles operating on certain sections of Park Boulevard within the corporate limits of the City of Plano; providing a fine for criminal penalties not to exceed \$200.00 for each offense; and providing a repealer clause, a penalty clause, a severability clause, a savings clause, a publication clause, and an effective date. (Consent Agenda Item “J”)

END OF CONSENT

Due to a possible conflict of interest, Council Member Dunlap stepped down from the bench on the following item.

Bid No. 2012-269-B for the 2011-2012 Residential Concrete Pavement Project Zone I10 & J9, Project No. 6211 to Jerusalem Corporation in the amount of \$1,370,742 and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “B”)

Upon a motion made by Mayor Pro Tem Smith and seconded by Council Member Miner, the Council voted 7-0 to approve Bid No. 2012-269-B for the 2011-2012 Residential Concrete Pavement Project Zone I10 & J9, Project No. 6211 to Jerusalem Corporation in the amount of \$1,370,742.

Council Member Dunlap resumed his seat at the bench.

Consideration of an Ordinance to repeal Ordinance No. 2011-9-31 and approve the updated classification, including the number of positions and compensation plan, for the Fire Department sworn personnel for fiscal year 2011-2012 effective August 28, 2012; and providing a repealer clause, a severability clause and an effective date. (Consent Agenda Item “K”)

Interim Fire Chief Peterson advised that the proposed ordinance would establish positions to implement the pilot program to place Engine #8 in service on October 1. Fire Captain Biggerstaff spoke regarding the process of responding to emergencies and in opposition to the proposal revising the number of personnel on an engine from four to three. He spoke to the importance of the first few moments at the scene of a fire and the potential impact on service and safety.

Fire Rescue Specialist McCutcheon stated agreement with utilizing Engine #8 at Station 8, but disagreement with doing so prior to hiring additional staff. He spoke to research which indicates the effectiveness of four-member staffing, the impact on firefighter safety and paramedic outcomes. Mr. McCutcheon requested the Council reverse their decision.

City Manager Glasscock advised that the ordinance addresses promotions needed to implement the program for which Staff had received direction. Chief Peterson spoke to differing studies regarding the need for four-man staffing, being responsive to the needs of the north and west portion of the City, and operating in a cost-effective manner. He stated that he did not recommend: implementing three-man staffing department-wide, sending fewer fire fighters than indicated by a particular call, decreasing the minimum daily staffing level below 81, accepting a decreased level of service, risking lives, or removing medical units during typical low-incident times. Mr. Glasscock spoke to considering the level of service provided by every department, costs, and the importance of public safety. He spoke to getting equipment on the street, potential savings and requested Council direction.

Council Member Gallagher stated his respect for the firefighters and their position. He spoke to Staff time spent evaluating the expenses of all departments and in support of a pilot program. Mr. Gallagher requested the firefighters assist by proving metrics for the program.

Chief Peterson responded to Council Member Davidson, advising that without the program, Engine #8 would begin service in October 2013 and provided information on other Texas cities utilizing four-man staffing. He further responded, advising that additional resources for an emergency can be provided from other stations if needed. He responded to Mayor Pro Tem Smith, advising that the number of staff responding to a fire scene can be defined in the program and spoke regarding current response times. In response to Council Member Dunlap, he advised that the equipment sent to a structure fire include two engines, one aerial ladder, an ambulance and a battalion chief. He responded to Council Member Miner advising that, should the pilot not prove successful, those promoted can fill vacancies and to Deputy Mayor Pro Tem Harris that the City's medical director has indicated that a response of three people on an engine and two on an ambulance are adequate in the case of a medical emergency and that a matrix for evaluation will be developed.

Fire Apparatus Operator Moberly spoke to cities using four-man staffing and the relatively similar response times between an engine and the truck currently serving from Station #8. Fire Rescue Specialist Gillespie spoke to Chief Peterson's service as chair of the committee that established the recommendation of four-man staffing. He spoke to the staffing plan in place, approval of the bond referendum by voters and the requirement that new fire fighters already have certification shortening the time before full staffing can be achieved. Chief Peterson spoke to the recommendation of four-man staffing as an appendix to documentation standards and representing a recommendation, rather than a requirement.

Mr. Glasscock advised that the plan is not to reduce staffing across the board, but to address expenses and possibly recapture some savings. Council Member Duggan stated concern regarding the uncertainty of when reduced levels would be utilized and potential injury risks.

Chief Peterson spoke to four vehicles out of the department's 17 that would be impacted by decreased staffing. Council Member Miner questioned the use of a pilot program and spoke to citizens accepting a tax increase rather than a decrease in levels of public safety. In response to Mayor Pro Tem Smith, Chief Peterson advised that Staff would bring forward updates as the program progresses and continue its use until fifteen personnel are included in the budget for four-man staffing.

Mayor Dyer spoke to significant savings only being achieved through expansion of the program and Chief Peterson advised that his recommendation is for no fewer than 81 employees per shift.

Mr. Glasscock advised that the pilot program would allow management to evaluate whether or not to call in additional personnel on overtime. Chief Peterson spoke regarding his experience in fire protection, taking different approaches to individual circumstances and the current/anticipated departmental budget. He responded to Council Member Dunlap, advising that if the program is not implemented, the biggest impact would be on responses to structural service calls. Director of Budget and Research Rhodes-Whitley advised that an additional \$1.2 million would be needed to hire 15 firefighters on January 1.

Deputy Mayor Pro Tem Harris spoke to the importance of discussing direction for all departments, considering citizen demands, the lack of a matrix to evaluate the program and its benefits and in support of four-man staffing. Council Member Davidson stated respect for the time and effort put forth by the City Manager and Chief; but, stated concern with the structure of the pilot program and its evaluation. She spoke to other major Texas cities, recommendations by the American Heart Association and in support of four-man staffing. Mayor Dyer advised that if a majority of the Council is not in support, no motion is necessary and that silence will be interpreted as support for a failure of the item and an associated change in direction (not pursuing the pilot program).

No motion was made and the item died for lack thereof.

Public Hearing on a proposal to increase total tax revenues from properties on the tax roll in the preceding tax year by 0.65 percent (percentage by which proposed tax rate exceeds lower of rollback tax rate or effective tax calculated under Chapter 26, Tax Code). (Regular Agenda Item "1")

Director of Budget and Research Rhodes advised that the proposed rate is 48.86 cents per \$100 valuation and that the rollback rate is 48.54 cents.

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

Public Hearing and adoption of Ordinance No. 2012-8-15 as requested in Zoning Case 2012-20 to amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, granting Specific Use Permit No. 630 so as to allow the additional use of Private Club on 0.7± acre of land located on the north side of Spring Creek Parkway, 470± feet east of Custer Road, in the City of Plano, Collin County, Texas, presently zoned 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: Iraj Zilaie (Regular Agenda Item “2”)

Planning Manager Firgens advised that the Planning and Zoning Commission recommends approval of the request as submitted and stated that if approved, annual audits shall be provided for compliance review.

Ordinance No. 2012-8-15 (cont'd)

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

Upon a motion made by Council Member Miner and seconded by Council Member Gallagher, the Council voted 8-0 to grant Specific Use Permit No. 630 so as to allow the additional use of Private Club on 0.7± acre of land located on the north side of Spring Creek Parkway, 470± feet east of Custer Road as recommended by the Planning and Zoning Commission and as requested in Zoning Case 2012-20; and further to adopt Ordinance No. 2012-8-15

Public Hearing and adoption of Ordinance No. 2012-8-16 as requested in Zoning Case 2012-21 to amend Section 1.600 (Definitions) of Article 1 (General Regulations), Subsection 2.502 (Schedule of Permitted Uses) of Section 2.500 (Permitted Uses) of Article 2 (Zoning Districts and Uses), and Subsection 3.102 (Day Care Centers, Day Care Centers (In-home), and Day Care Centers (Accessory)) of Section 3.100 (Supplementary Regulations for Principal Permitted Uses and Specific Uses) of Article 3 (Supplementary Regulations) and related sections of the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, regarding day care centers (in-home); 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 Item “3”)

Director of Planning Jarrell spoke to operators being requested to confirm the number of children under their care by the Building Inspection’s Department and Council’s concern regarding exceeding eight children at in-home centers. She spoke to the proposal impacting both licensed and registered providers and to removing language referencing a specific use permit for those caring for more than eight children. Planner Munyaradzi responded to the Council regarding licensing in other area cities. Ms. Jarrell responded to the Council regarding enforcement challenges of permitting additional children for before/after/holiday care and advised that the Planning and Zoning Commission recommended approval as follows:

Ordinance No. 2012-8-16 (cont'd)

1. Amend Section 1.600 (Definitions) of Article 1 (General Regulations) to revise the definition for day care center (in home) and remove the word “center” as follows:

Day care ~~center~~ (in home):

An operation providing care in the caretaker’s residence for less than 24 hours a day for up to ~~4~~ 8 children under the age of 14, provided that the total number of children, including the caretaker’s own children, is no more than ~~4~~ 8 at any time.

2. Amend Subsection 2.502 (Schedule of Permitted Uses) of Section 2.500 (Permitted Uses) of Article 2 (Zoning Districts and Uses) to add End Note number 42 to the MH, MF-1, MF-2 and MF-3 districts, delete “c” from End Note: 42 - See Subsection 3.102.2.c, and remove the word “center” as follows:

Residential Zoning Districts

Permitted Uses	Category	A- Agricultural	ED - Estate Development	SF-20 - Single-Family-20	SF-9 - Single-Family-9	SF-7 - Single-Family-7	SF-6 - Single-Family-6	2F - Two-Family (Duplex)	PH - Patio Home	SF-A - Single-Family Attached	MH - Mobile Home	MF-1 - Multifamily-1	MF-2 - Multifamily-2	MF-3 - Multifamily-3	GR - General Residential	UR - Urban Residential
Day Care Center (In-home)	Service	P 42	P 42	P 42	P 42	P 42	P 42	P 42	P 42	P 42	P <u>42</u>	P <u>42</u>	P <u>42</u>	P <u>42</u>	P 42	P 42

End Note: 42 - See Subsection 3.102.2.e

3. Amend Subsection 2.502 (Schedule of Permitted Uses) of Section 2.500 (Permitted Uses) of Article 2 (Zoning Districts and Uses) to change any references to “day care center (in-home)” to state “day care (in-home).”
4. Amend Subsection 3.102 (Day Care Centers, Day Care Centers (In-Home), and Day Care Centers (Accessory)) of Section 3.100 (Supplementary Regulations for Principal Permitted Uses and Specific Uses) of Article 3 (Supplementary Regulations) as follows:

3.102 Day Care Centers, Day Care ~~Centers~~ (In-home), and Day Care Centers (Accessory)

1. All day care centers and day care centers (accessory) shall comply with the following standards:

Ordinance No. 2012-8-16 (cont'd)

- a. If required by the State of Texas, the day care center must be licensed or registered.
 - b. No day care center shall be part of a single-family or two-family dwelling.
 - c. A day care center shall abut and derive its primary access from a street with a pavement width of 36 feet or greater.
2. Day care center (in-home) is allowed as a home occupation (refer to Subsection 3.110) in the caretaker's residence subject to:

a. If required by the State of Texas, the day care center must be licensed or registered. Care may be provided to a maximum of eight or fewer children is allowed by right, regardless of the number of children permitted by the State of Texas or the type of state license held by the operator.

~~b. Care provided to nine or more children is allowed with approval of a specific use permit.~~

~~All group day care homes~~ licensed child-care homes which were licensed by the State of Texas or had a license application pending on or before October 25, 1993, are considered to be a legal use in residential districts ~~and will not require specific use permit approval~~ as long as a valid license is maintained for the operation in its original location and it provides care for less than 24 hours a day for no more than 12 children (including the caretaker's and staff's children) under the age of 14.

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

Council Member Dunlap stated opposition to the request, citing the potential for approval of additional capacity at specific locations.

A motion was made by Council Member Miner and seconded by Deputy Mayor Pro Tem Harris to amend sections of the Comprehensive Zoning Ordinance of the City related to day care centers (in-home); as recommended by the Planning and Zoning Commission and as requested in Zoning Case 2012-21; and further to adopt Ordinance No. 2012-9-16. The Council voted 7-1 with Council Member Dunlap voting in opposition. The motion carried.

Nothing further was discussed. Mayor Dyer adjourned the Open Meeting at 8:33 p.m.

Phil Dyer, MAYOR

ATTEST

Diane Zucco, City Secretary

**PLANO CITY COUNCIL
Special Called Session
September 5, 2012**

COUNCIL MEMBERS PRESENT

Phil Dyer, Mayor
Lissa Smith, Mayor Pro Tem
Ben Harris, Deputy Mayor Pro Tem
Pat Miner
André Davidson
Patrick Gallagher
Lee Dunlap

COUNCIL MEMBERS ABSENT

James Duggan

STAFF

Bruce Glasscock, City Manager
Diane C. Wetherbee, City Attorney
Alice D. Snyder, Assistant City Secretary

Mayor Dyer convened the Council into the Special Called Session on Wednesday, September 5, 2012 at 5:02 p.m. in the Council Chamber of the Plano Municipal Center, 1520 K Avenue. A quorum was present.

A second public hearing on a proposal to increase total tax revenues from properties on the tax roll in the preceding tax year by 0.65 percent (percentage by which proposed tax rate exceeds lower of rollback tax rate or effective tax calculated under Chapter 26, Tax Code). (First public hearing held August 27, 2012.)

Mayor Dyer opened the Public Hearing. No one appeared to speak for or against the item. The Public Hearing was closed.

Nothing further was discussed. Mayor Dyer adjourned the meeting at 5:03 p.m.

Phil Dyer, MAYOR

ATTEST:

Alice D. Snyder, Assistant City Secretary

**PLANO CITY COUNCIL
PRELIMINARY OPEN MEETING
SEPTEMBER 10, 2012**

COUNCIL MEMBERS PRESENT

Phil Dyer, Mayor
Lissa Smith, Mayor Pro Tem
Ben Harris, Deputy Mayor Pro Tem
Pat Miner
André Davidson
Patrick Gallagher
Lee Dunlap

COUNCIL MEMBERS ABSENT

James Duggan

STAFF PRESENT

Bruce Glasscock, City Manager
Frank Turner, Deputy City Manager
LaShon Ross, Deputy City Manager
Paige Mims, Deputy City Attorney
Diane Zucco, City Secretary

Mayor Dyer called the meeting to order at 5:13 p.m., Monday, September 10, 2012, in Training Room A of the Municipal Center, 1520 K Avenue. A quorum was 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; receive information regarding Economic Development, Section 551.087 and to discuss Personnel, Section 551.074 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 6:17 p.m.

Consideration and action resulting from Executive Session discussion

No items were discussed.

Discussion and Direction Regarding Employee Health Insurance Benefits

Director of Human Resources Parrish spoke to the role of benefits in recruiting and retaining employees and provided a history of health insurance claims. He spoke to the categories of spending including hospitalization, physicians, etc. and advised that through network discounts, City has received discounts of 50%+ off the retail rate of services. Mr. Parrish spoke to the uncertainties of healthcare reform including potential leadership changes, federal mandates, changes in the medical industry, requirements by outside entities and a loss of local control of health plans. He spoke regarding the "grandfather" provision allowing the City to maintain flexibility and postpone mandates, its associated costs and the eventual loss of this status. Mr. Parrish reviewed design changes which apply to all plans beginning in 2014 including requirements to offer insurance coverage or pay fees and to offer coverage to all dependents and penalties for failure to comply. Mayor Pro Tem Smith requested information on the possible tiering of dependent coverage for new versus current employees.

Mr. Parrish reviewed the number of dependents on the City's plan and costs and reviewed retiree subsidies. He spoke to anticipated changes in 2014, the lack of guidance and regulations at the current time, making data-driven decisions, communicating information to employees and the potential of a tax in 2018 for those plans outside of current regulations. Mr. Parrish advised that he would provide regular briefings.

Discussion Regarding North Texas Municipal Water District Sewer Rates

Director of Policy and Governmental Relations Israelson spoke to the \$2 million impact to the City's sewer budget discussed at the August Budget Worksession and advised that the increase from the district is a mathematical calculation based on the City's sewer flow rates over the last five years and does not reflect the downward movement of Plano's percentage of use or neighboring cities increase of use. He recommended that any increase in sewer rates be delayed until spring 2013 to allow for review of FY 2011-12 use and winter quarter averaging figures.

Update Regarding MotoMesh

Director of Technology Services Stephens spoke to providing City-wide connectivity for both public safety and non-public safety employees and redundancy to existing land-based networks. He spoke to deployment of hotspots (2007), installation along major arterials (2008), and infill of neighborhoods beginning in 2009. Mr. Stephens advised that of the approximate 1,000 devices for neighborhoods, 174 have no usable asset for installation and stated that in working with Coserv, Staff has developed an acceptable pole design. He advised that Oncor has not approved any designs submitted and recommended in 2009 that the City install separate poles. Mr. Stephens spoke to Staff recommendations: 1) no installations in Oncor service areas (lack of coverage in 6% of Plano); 2) continue working with Oncor toward a solution; 3) install new City-owned poles to provide complete coverage. City Manager Glasscock spoke to the uncertainty of continued discussions with Oncor and Mr. Stephens advised the Council of the services that will be provided by system installation. The Council spoke to the benefits and directed Staff to move forward with placement of City-owned poles.

Discussion and Direction Regarding Intersection Improvements – Custer & Parker – Tree Removal

Director of Public Works Cosgrove spoke regarding the impact of intersection improvements at the southeast corner of Custer Road and Parker Road advising that a normal right-turn lane would provide maximum storage and transition length and will handle all right turns, but be unacceptable since almost all trees would need removal and a retail driveway would be in transition. He spoke to Option 2 which includes a 100-foot transition and 200-foot storage providing for maximum storage, handling all right turns, and removing the driveway from transition, but would require removal of almost all the trees and result in a shorter transition distance. Mr. Cosgrove advised that Option 3 would include a 75-foot transition and 140-foot storage which would provide for the best balance between traffic needs and the desire to save trees and handle all right turns, but will require the removal of one or two trees and include shorter storage and transition distances. He stated that Option 4 would be the same as Option 3 without transition but would save trees. He spoke to discussions with property owners, the present service at a Level E with any option offering small level of improvement to Level D and the recommendations for Option 2 to meet traffic needs and Option 3 to balance traffic needs with the desire to save trees.

Mayor Pro Tem Smith stated concern with the removal of trees in this area, particularly if there is not a significant level of improvement in traffic flow. Mr. Cosgrove spoke to the negative impact should double left-turn lanes be installed and advised that funding is from Regional Toll Revenues. City Manager Glasscock advised that a new developer may remove trees at this location. After discussion, the Council concurred to take no action.

Discussion and Direction Regarding Recycling Campaign

Director of Sustainability and Environmental Services Nevil spoke to the City's plateau at 25% recycling for residential customers and efforts to develop a campaign to increase participation. The Council directed Staff to continue work on its design.

Consideration to Reschedule March 2013 Council Meeting Date

City Manager Glasscock requested consideration of moving the March 5 meeting to March 6 citing a conflict with Collin County Days. The Council stated concurrence with the recommendation.

Council items for discussion/action on future agendas

No items were discussed.

Consent and Regular Agendas

No items were discussed.

Nothing further was discussed. Mayor Dyer adjourned the Preliminary Meeting at 7:25 p.m.

Phil Dyer, MAYOR

ATTEST

Diane Zucco, City Secretary

PLANO CITY COUNCIL
September 10, 2012

COUNCIL MEMBERS PRESENT

Phil Dyer, Mayor
Lissa Smith, Mayor Pro Tem
Ben Harris, Deputy Mayor Pro Tem
Pat Miner
André Davidson
Patrick Gallagher
Lee Dunlap

COUNCIL MEMBERS ABSENT

James Duggan

STAFF PRESENT

Bruce Glasscock, City Manager
Frank Turner, Deputy City Manager
LaShon Ross, Deputy City Manager
Paige Mims, Deputy City Attorney
Diane Zucco, City Secretary

Mayor Dyer convened the Council into the Regular Session on Monday, September 10, 2012, at 7:30 p.m. in the Council Chamber of the Plano Municipal Center, 1520 K Avenue. A quorum was present.

Mayor Dyer led a moment of silence in remembrance of 9-11 and the Boys and Girls Club of Collin County Plano led the Pledge of Allegiance.

COMMENTS OF PUBLIC INTEREST

No one appeared to speak.

CONSENT AGENDA

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

Approval of Expenditures
Purchase from an Existing Contract

To approve the purchase of Air-Pak 75 SCBA Units and SCBA cylinders in the amount of \$139,177 from (MES) Municipal Emergency Services through an existing contract/agreement with the City of Fort Worth Contract #PO-12-00069877 (City of Plano Contract #2012-97-I);and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item "A")

Adoption of Resolutions

Resolution No. 2012-9-1(R): To approve the terms and conditions of an Economic Development Incentive Agreement by and between Tyler Technologies, Inc., a Delaware corporation, and the City of Plano, Texas; authorizing its execution by the City Manager; and providing an effective date (Consent Agenda Item “B”).

Resolution No. 2012-9-2(R): To approve the terms and conditions of an Economic Development Incentive Agreement by and between Winzer Corporation, a Texas corporation, and the City of Plano, Texas; authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item “C”)

Resolution No. 2012-9-3(R): To approve the terms and conditions of an Economic Development Incentive Agreement by and between Optisense Network, LLC, a Delaware limited liability company, and the City of Plano, Texas; authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item “D”)

Resolution No. 2012-9-4(R): To authorize the City of Plano to participate in and receive funding through the Texas Highway Traffic Safety Program for the Intersection Traffic Control Project, PIN 17560006409000, targeting intersections regulated by a signal light; authorizing the City Manager or his authorized designee; to execute the grant agreement and any other documents necessary to effectuate the action taken; and providing an effective date. (Consent Agenda Item “E”)

Resolution No. 2012-9-5(R): To approve the terms and conditions of an Interlocal Agreement by and between the City of Plano, Texas and the Plano Independent School District for the operation of the Police/School Liaison Program; authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item “F”)

Resolution No. 2012-9-6(R): To approve the terms and conditions of an Interlocal Agreement by and between the City of Plano, Texas and the Frisco Independent School District for the operation of the Police/School Liaison Program; authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item “G”)

Adoption of Ordinances

Ordinance No. 2012-9-7: To adopt and enact Supplement Number 100 to the Code of Ordinances for the City of Plano; providing for amendment to certain sections of the Code; and providing an effective date. (Consent Agenda Item “H”)

END OF CONSENT

Ordinance No. 2012-9-8: To approve and adopt the Operating Budget and setting the appropriations for the fiscal year beginning October 1, 2012, and terminating September 30, 2013; and providing an effective date. (Public Hearing held on August 13, 2012.) (Regular Agenda Item “1”)

Director of Budget and Research Rhodes-Whitley advised that the total combined budget is \$425 million.

Ordinance No. 2012-9-8 (cont'd)

Upon a motion made by Mayor Pro Tem Smith and seconded by Deputy Mayor Pro Tem Harris, the Council voted 7-0 to approve and adopt the Operating Budget and set the appropriations for the fiscal year beginning October 1, 2012, and terminating September 30, 2013; and further to adopt Ordinance No. 2012-9-8.

Ordinance No. 2012-9-9: To approve and adopt the Community Investment Program and setting the appropriations for 2012-13; and providing an effective date. (Public Hearing held on August 13, 2012.) (Regular Agenda Item "2")

Director of Budget and Research Rhodes-Whitley spoke to removal of a portion of funding for remodeling of Plano Centre and advised that the Community Investment Program totals \$88 million.

Upon a motion made by Council Member Davidson and seconded by Council Member Miner, the Council voted 7-0 to approve and adopt the Community Investment Program and set the appropriations for 2012-13; and further to adopt Ordinance No. 2012-9-9.

Ordinance No. 2012-9-10: To approve and adopt the Tax Rate for the fiscal year beginning October 1, 2012, and terminating September 30, 2013, and providing an effective date. (Public Hearings held on August 27, 2012 and September 5, 2012.) (Regular Agenda Item "3")

Director of Budget and Research Rhodes-Whitley advised that the City has been at the same tax rate for four years.

Mayor Dyer made a motion stating that the property tax revenue will be increased by the adoption of a tax rate of 48.86 cents which is effectively a 0.65% increase in the tax rate for the fiscal year beginning October 1, 2012, and terminating September 30, 2013; and further to adopt Ordinance No. 2012-9-10. Deputy Mayor Pro Tem Harris seconded the motion and the Council voted 7-0. The motion carried.

Ordinance No. 2012-9-11: To ratify the property tax revenue increase in the 2012-13 Budget as a result of the City receiving more revenues from property taxes in the 2012-13 Budget than in the previous fiscal year; and providing an effective date. (Public Hearings held on August 27, 2012 and September 5, 2012.) (Regular Agenda Item "4")

Director of Budget and Research Rhodes-Whitley spoke to collection of more property tax revenue due to an increase in commercial value of properties, the sunseting of Tax Increment Finance Zone No. 1, and the difference in the effective rate.

Upon a motion made by Mayor Pro Tem Smith and seconded by Council Member Miner, the Council voted 7-0 to ratify the property tax revenue increase in the 2012-13 Budget as a result of the City receiving more revenues from property taxes in the 2012-13 Budget than in the previous fiscal year; and further to adopt Ordinance No. 2012-9-11.

Consideration of a request for a revised site plan and to participate in a Parking Reduction Program for a Public Secondary School on one lot on 42.8± acres located at the northwest corner of Parker Road and Willow Bend Drive. Zoned Single-Family Residence-9 and Agricultural. Applicant: Plano Independent School District. (Regular Agenda Item “5”)

Planning Manager Firgens advised that the request is for a Parking Reduction Program at Plano West Senior High School and requires Council approval of the site plan. She spoke to the applicant’s plans for 1,572 spaces rather than the 2,134 required by the Zoning Ordinance. Ms. Firgens stated that the Planning and Zoning Commission recommended approval subject to: 1) City Council approval of the request for a parking reduction; 2) the applicant executing a performance agreement with the City, subject to approval by the City Attorney; and 3) dedication of parking easements for the new proposed offsite parking on Lot 2, and the deferred parking areas on Lots 1R and 2, Block A, Plano West Senior High School Addition. She responded to the Council, advising that there are no exemptions at Plano Senior or Plano East Senior High Schools and that there has been no parking issues in the area surrounding Plano West.

Upon a motion made by Mayor Pro Tem Smith and seconded by Council Member Davidson, the Council voted 7-0 to approve a request for a revised site plan and to participate in a Parking Reduction Program for a Public Secondary School on one lot on 42.8± acres located at the northwest corner of Parker Road and Willow Bend Drive as recommended by the Planning and Zoning Commission.

Public Hearing and adoption of Ordinance No. 2012-9-12 to designate a certain area within the City of Plano, Texas, as Reinvestment Zone No. 130 for tax abatement consisting of a 14.10 acre tract of land out of the Maria C. Vela Survey, Abstract No. 935 and the Obediah Epps Survey, Abstract No. 297, Collin County and described in Exhibit "A", attached hereto, in the City of Plano, Texas, establishing the boundaries of such zone; ordaining other matters related thereto; and providing an effective date. (Regular Agenda Item “6”)

Economic Development Director Bane spoke to statutes requiring the establishment of reinvestment zones which include a Public Hearing and to this agreement being based on an estimated \$11.5 million in real property improvements for a period of ten years from January 1, 2014, with an abatement at the rate of 50%.

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

Upon a motion made by Council Member Miner and seconded by Mayor Pro Tem Smith, the Council voted 7-0 to designate a certain area within the City of Plano, Texas, as Reinvestment Zone No. 130 for tax abatement consisting of a 14.10 acre tract of land out of the Maria C. Vela Survey, Abstract No. 935 and the Obediah Epps Survey, Abstract No. 297; and further to adopt Ordinance No. 2012-9-12.

Resolution No. 2012-9-13(R): To approve the terms and conditions of an agreement by and between the City of Plano, Texas and Tyler Technologies, Inc., a Delaware corporation, providing for real property tax abatement; and authorizing its execution by the City Manager; and providing an effective date. (Regular Agenda Item “7”)

Economic Development Director Bane advised that the agreement includes a new building and extensive remodeling of an existing structure for 139,000 square feet of office space, has a term of ten years and is based on 50% of real property.

Upon a motion made by Council Member Davidson and seconded by Deputy Mayor Pro Tem Harris, the Council voted 7-0 to approve the terms and conditions of an agreement by and between the City of Plano, Texas and Tyler Technologies, Inc., providing for real property tax abatement; and further to adopt Resolution No. 2012-9-13(R).

Public Hearing and adoption of Ordinance No. 2012-9-14 to designate a certain area within the City of Plano, Texas, as Reinvestment Zone No. 131 for tax abatement consisting of an 8.357 acre tract of land situated in the J. T. McCullough Survey, Abstract No. 633, Collin County and described in Exhibit "A", attached hereto, in the City of Plano, Texas, establishing the boundaries of such zone; ordaining other matters related thereto; and providing an effective date. (Regular Agenda Item “8”)

Economic Development Director Bane spoke to statutes requiring the establishment of reinvestment zones which include a Public Hearing and to this agreement being based on an estimated \$4.4 million in real and \$4 million in business personal property for a period of ten years from January 1, 2014, with an abatement at the rate of 50% for real and business personal property.

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

Upon a motion made by Deputy Mayor Pro Tem Harris and seconded by Council Member Gallagher, the Council voted 7-0 to designate a certain area within the City of Plano, Texas, as Reinvestment Zone No. 131 for tax abatement consisting of an 8.357 acre tract of land situated in the J. T. McCullough Survey, Abstract No. 633; and further to adopt Ordinance No. 2012-9-14.

Resolution No. 2012-9-15(R): To approve the terms and conditions of an agreement by and between the City of Plano, Texas, Winzer Corporation, a Texas corporation, and WR Plano Parkway, LLC, a Georgia limited liability company, providing for real and business personal property tax abatement; and authorizing its execution by the City Manager; and providing an effective date. (Regular Agenda Item “9”)

Economic Development Director Bane advised that the agreement includes 100,000 square feet of office space and warehouse space, has a term of ten years and is based on 50% of both real and business personal property.

Upon a motion made by Council Member Miner and seconded by Council Member Davidson, the Council voted 7-0 to approve the terms and conditions of an agreement by and between the City of Plano, Texas, Winzer Corporation and WR Plano Parkway, LLC providing for real and business personal property tax abatement; and further to adopt Resolution No. 2012-9-15(R).

Public Hearing and consideration of an Ordinance as requested in Zoning Case 2012-12 to amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, so as to amend Planned Development-374-Retail on 6.9± acres of land located at the northeast corner of Plano Parkway and Independence Parkway, in the City of Plano, Collin County, Texas, to modify the development standards of the district including amending or repealing the limitation on the hours of operation; 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: RaceTrac (Regular Agenda Item “10”)

Planning Manager Firgens advised the Council that the applicant has requested the item be tabled until the September 24, 2012 meeting.

Upon a motion made by Council Member Gallagher and seconded by Council Member Miner, the Council voted 7-0 to table the request until the September 24, 2012 Council Meeting.

Public Hearing and adoption of Ordinance No. 2012-9-16 as requested in Zoning Case 2012-22 to amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, granting Specific Use Permit No. 631 so as to allow the additional use of Superstore on 19.3± acres of land located at the southwest corner of Preston Road and Spring Creek Parkway, in the City of Plano, Collin County, Texas, presently zoned Planned Development-447-Retail/Multifamily Residence-2; 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: Margaret E. Turner (Regular Agenda Item “11”)

Planning Manager Firgens provided a description of “superstore,” spoke to companion preliminary site and concept plans, development design criteria and advised that the Planning and Zoning Commission recommended approval as submitted. She responded that the preliminary site plan has two points of access not including Baywater Drive.

Mayor Dyer opened the Public Hearing. John Rose, DCMS-Development and Construction Management Services, Inc., representing the applicant, spoke to discussions held with adjacent residential properties and advised that the property will be developer/owner occupied. He stated that the applicant has initiated a traffic warrant study for Baywater Drive. No one else spoke for or against the request. The Public Hearing was closed.

Upon a motion made by Deputy Mayor Pro Tem Harris and seconded by Mayor Pro Tem Smith, the Council voted 7-0 to grant Specific Use Permit No. 631 so as to allow the additional use of Superstore on 19.3± acres of land located at the southwest corner of Preston Road and Spring Creek Parkway, in the City of Plano, as recommended by the Planning and Zoning Commission and as requested in Zoning Case 2012-22 and further to adopt Ordinance No. 2012-9-16.

Public Hearing and adoption of Ordinance No. 2012-9-17 as requested in Zoning Case 2012-23 to amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, so as to rezone 4.5± acres of land located at the southeast corner of Silverglen Drive and Mapleshade Lane, in the City of Plano, Collin County, Texas, from Light Industrial-1 to Corridor Commercial; with Specific Use Permit No. 632 so as to allow the additional use of Assisted Living Facility; directing a change accordingly in the official zoning map of the City; and providing a publication clause, a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date. Applicant: University of Texas (Regular Agenda Item “12”)

Director of Planning Jarrell advised that the applicant is requesting a rezoning of the property to allow for an assisted living facility by specific use permit and that the request is in conformance with the Comprehensive Plan. She further stated that the Planning and Zoning Commission recommended approval as submitted and initiated a zoning case to rezone the remaining land south of the future extension of Mapleshade Lane from Light Industrial-1 to Corridor Commercial as plans are for the roadway to continue to the east and connect with S.H. 190.

Mayor Dyer opened the Public Hearing. Hillary VonAhsen, Kimley-Horn and Associates, advised that she was available for any questions. No one else appeared to speak for or against the request. The Public Hearing was closed.

Upon a motion made by Council Member Miner and seconded by Council Member Davidson, the Council voted 7-0 to rezone 4.5± acres of land located at the southeast corner of Silverglen Drive and Mapleshade Lane, in the City of Plano from Light Industrial-1 to Corridor Commercial; with Specific Use Permit No. 632 so as to allow the additional use of Assisted Living Facility as recommended by the Planning and Zoning Commission and as requested in Zoning Case 2012-23; and further to adopt Ordinance No. 2012-9-17.

Public Hearing and adoption Ordinance No. 2012-9-18 as requested in Zoning Case 2012-24 to amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, so as to rezone 34.0± acres of land located north of the intersection of Jeker Drive and Merriman Drive, in the City of Plano, Collin County, Texas, from Agricultural and Estate Development to Single-Family Residence-6; directing a change accordingly in the official zoning map of the City; and providing a publication clause, a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date. Applicant: Betty Merriman (Regular Agenda Item “13”)

Director of Planning Jarrell advised that the request is in conformance with the Future Land Use Plan and that the applicant intends to dedicate the eastern portion of the property that is within the floodplain to the City for park purposes. She advised that the school district has determined that there is available capacity for increased enrollment with the exception of Plano East Senior High School. She advised that the Planning and Zoning Commission recommended approval as submitted and responded to Mayor Dyer, advising that property to the southeast is floodplain and part of the park system.

Ordinance No. 2012-9-18 (cont'd)

Mayor Dyer opened the Public Hearing. Jim Douglas, Douglas Properties Inc., described the planned development, screening, preservation of the lake area, coordination of the hike and bike trail connection, and street layouts. No one else appeared to speak for or against the request. The Public Hearing was closed.

Upon a motion made by Council Member Miner and seconded by Mayor Pro Tem Smith, the Council voted 7-0 to rezone 34.0± acres of land located north of the intersection of Jeker Drive and Merriman Drive, in the City of Plano from Agricultural and Estate Development to Single-Family Residence-6; as recommended by the Planning and Zoning Commission and as requested in Zoning Case 2012-24; and further to adopt Ordinance No. 2012-9-18.

The following two items were considered concurrently.

Consideration of a Resolution to appoint a board member to serve on the Dallas Area Rapid Transit Authority (DART) Board of Directors as provided in Chapter 452 of the Texas Transportation Code and providing an effective date. (Regular Agenda Item "14")

Consideration of a Resolution to affirm the appointment of a shared board member with the City of Farmers Branch to serve on the Dallas Area Rapid Transit Authority (DART) Board of Directors as provided in Chapter 452 of the Texas Transportation Code and providing an effective date. (Regular Agenda Item "15")

Upon a motion made by Council Member Davidson and seconded by Mayor Pro Tem Smith, the Council voted 7-0 to table consideration of a Resolution to appoint a board member to serve on the Dallas Area Rapid Transit Authority (DART) Board of Directors and consideration of a Resolution to affirm the appointment of a shared board member with the City of Farmers Branch to serve on the Dallas Area Rapid Transit Authority (DART) Board of Directors until the September 24, 2012 meeting.

Nothing further was discussed. Mayor Dyer adjourned the Open Meeting at 8:33 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:		9/24/12		
Department:		Purchasing		
Department Head		Diane Palmer-Boeck		
Agenda Coordinator (include phone #): Earl S. Whitaker x7074				
CAPTION				
Bid No. 2012-288-B for the purchase of two (2) Trucks from Caldwell Country Automotive in the amount of \$65,176, for Fleet Services, to be utilized by Special Waste, and authorizing the City Manager 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: 2011-12	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	69,500	0	69,500
Encumbered/Expended Amount	0	0	0	0
This Item	0	-65,176	0	-65,176
BALANCE	0	4,324	0	4,324
FUND(s): EQUIPMENT REPLACEMENT FUND, SUSTAINABILITY & ENVIRONMENTAL SERVICES FUND				
<p>COMMENTS: Funds in the amount of \$69,500 are included in the FY 2011-12 Adopted Budget to purchase Two (2) 3/4-Ton Extended Cab Trucks with Litter Cage Bodies for the scheduled replacement of unit #02313 Cost Center #751/Special Waste, and a new addition to the same Cost Center. The remaining balance of \$4,324 will be used for other equipment replacement purchases.</p> <p>STRATEGIC PLAN GOAL: Providing 3/4-Ton Extended Cab Trucks w/Litter Cage Bodies for the City's Fleet Services Department relates to the City's Goal of a Financially Strong City with Service Excellence.</p>				
SUMMARY OF ITEM				
Staff recommends the bid of Caldwell Country Automotive in the amount of \$65,176, be accepted as the lowest responsive, responsible bid, and conditioned upon timely execution of any necessary contract documents. This purchase is for the Fleet Department to be utilized by Special Waste (2012-288-B).				
List of Supporting Documents: Award Memo, Bid Recap			Other Departments, Boards, Commissions or Agencies NA	



MEMORANDUM

Date: September 6, 2012,
To: Bruce D. Glasscock, City Manager
From: Reid Choate, Fleet Manager
Subject: **FY 11-12 MROW Cage Truck Purchase Recommendation**

After review of all bids received on City of Plano Bid #2012-288-B it is the recommendation of Fleet Services to award to Caldwell Country Automotive, the lowest responsive, responsible bidder meeting specifications, in the amount of \$65,176.00.

One of these units is for the scheduled replacement of unit 02313 in Cost Center 751/Special Waste.

The scheduled replacement is in the approved FY11-12 Equipment Replacement Fund. Equipment replacement is analyzed based on age, mileage, maintenance cost and re-sale value in determining the need for replacement. Fleet Services recommendation is based on the Equipment Replacement criteria for these types of vehicles. If these vehicles are not replaced we will incur additional maintenance cost and salvage value will greatly be depreciated.

The second unit is for a new addition in Cost Center Cost Center 751/Special Waste as approved by Deputy City Manager, Frank Turner.

Through the use of these two (2) extended-cab cage trucks, the Keep Plano Beautiful Median Right of Way (MROW) crews provides vital services as a part of helping to keep Plano looking clean and free of litter and debris along our major thoroughfares. In addition, to the litter collections, they:

- Provide the Downtown Plano merchants along the north side of 15th Street trash and recycling collection services,
- Respond to emergency calls of debris in roadways, illegal dumping and emergency residential evictions,
- Respond to residential collection vehicle hydraulic spills,
- Service the 196 MROW litter bins at specific major intersection areas, and
- Additional related activities that occur from time to time.

If these two units are not approved for purchase, it would lead to a direct impact to Plano's community appearance with litter and debris, the serviced Downtown merchants and our current level of residential services and operational protocols. Specifically there would be:

- Increase in cost due to high maintenance costs associated with existing aging units
- Increase in traffic accidents due to debris in roadways

- Increase in cost and possible environmental violations due to illegal dumping and emergency residential evictions
- Decrease in service level provided and increase in residential complaints due to delay in cleaning up hydraulic hoses failures
- Decrease in support to operational issues from other City departments

Feel free to contact me if you have any questions at extension 4182.

CITY OF PLANO

BID NO. 2012-288-B

¾ Ton LWB Crew Cab Pick-Up W/Flat Bed Caged Dump Body
BID RECAP

Bid opening Date/Time: August 24, 2012 @ 3:00 pm

Number of Vendors Notified: 620

Vendors Submitting "No Bids": 0

Number of Bids Submitted: 1

Caldwell Country Automotive

\$ 65,176.00

Recommended Vendor:

Caldwell Country Automotive

\$ 65,176.00

Earl S. Whitaker

Earl S. Whitaker
Buyer Supervisor

September 6, 2012

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:		9/24/12		
Department:		Facilities		
Department Head		Gerald Cosgrove		
Agenda Coordinator (include phone #): Michael Parrish x7554				
CAPTION				
Bid No. 2012-267-B for Gladys Harrington Library Restroom Renovation to Tegrity Contractors, Inc. in the amount of \$174,777, 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: 2011-12	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	6,995	200,000	0	206,995
Encumbered/Expended Amount	-6,995	-23,002	0	-29,997
This Item	0	-174,777	0	-174,777
BALANCE	0	2,221	0	2,221
FUND(S): LIBRARY FACILITIES CIP				
COMMENTS: Funds are included in the Library Facilities CIP. This item, in the amount of \$174,777, will leave a current year balance of \$2,221 for the Harrington Library project.				
STRATEGIC PLAN GOAL: Restroom renovations at Harrington Library relate to the City's Goal of Financially Strong City with Service Excellence.				
SUMMARY OF ITEM				
Staff recommends the bid of Tegrity Contractors, Inc. in the amount of \$174,777 be accepted as the lowest responsive, responsible bid, and conditioned upon timely execution of any necessary contract documents.				
List of Supporting Documents: Award Memo, Bid Recap			Other Departments, Boards, Commissions or Agencies	



TO: Michael Parrish, Buyer II

FROM: Richard Medlen
Facilities Maintenance Superintendent 

DATE: September 5, 2012

SUBJECT: 2012-267-B Gladys Harrington Library Restroom Renovation

I have reviewed the bids submitted for Gladys Harrington Library Restroom Renovation and recommend award to the lowest responsive responsible bid that meets specifications from Tegrity Contractors, Inc. for the amount of \$174,777. There were additional bids received from Concord Commercial Services for \$205,464, H-B Construction Inc for \$217,184. and LDM Design and Construction for \$242,960.

The existing restrooms are 19 years old and renovation is required to maintain appearance to the public and bring restrooms up to current ADA standards. The funding for the project is in the CIP account for Library Improvements.

Please contact me if you have any questions.

Thank you.

/lw

cc: Jim Razinha
Janette Weedon
Earl Whitaker
Steve Healy
Cathy Ziegler

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

Patrick Gallagher
Place 7

Lee Dunlap
Place 8

Bruce D. Glasscock
City Manager

CITY OF PLANO

BID NO. 2012-267-B GLADYS HARRINGTON LIBRARY RESTROOM RENOVATION BID RECAP

Bid opening Date/Time: August 28, 2012 @ 2:00 PM

Number of Vendors Notified: 3425

Vendors Submitting "No Bids": 0

Number of Bids Submitted: 4

Tegrity Contractors, Inc. \$174,777

Concord Commercial Services, Inc. \$205,464

H-B Construction, Inc. \$217,184

LDM Design and Construction \$242,960

Recommended Vendor:

Tegrity Contractors, Inc. \$174,777

Michael Parrish

September 7, 2012

Michael Parrish, Buyer II

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:		9/24/12		
Department:		Facilities		
Department Head		Gerald Cosgrove		
Agenda Coordinator (include phone #): Michael Parrish x7554				
CAPTION				
Approval of the purchase of Haggard Library Interior Improvements in the amount of \$70,855 from Williams and Thomas, L.P. d/b/a Jamail & Smith Construction through an existing contract/agreement with TCPN, and authorizing the City Manager or his designee to execute all necessary documents. (TCPN Contract # R5086)				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: 2011-12	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	1,058	190,000	0	191,058
Encumbered/Expended Amount	-1,058	-78,184	0	-79,242
This Item	0	-70,855	0	-70,855
BALANCE	0	40,961	0	40,961
FUND(s): LIBRARY FACILITIES CIP				
COMMENTS: Funds are included in the Library Facilities CIP. This item, in the amount of \$70,855, will leave a current year balance of \$40,961 for the Haggard Library project.				
STRATEGIC PLAN GOAL: Interior improvements at Haggard Library relate to the City's Goal of Financially Strong City with Service Excellence.				
SUMMARY OF ITEM				
Staff recommends the purchase of Haggard Library Interior Improvements in the amount of \$70,855 from Williams and Thomas, L.P. d/b/a Jamail & Smith Construction through an existing contract/agreement with TCPN. The City is authorized to purchase from a Local Cooperative Organization pursuant to Chapter 271 subchapter F of the Local Government Code and by doing so satisfies any State Law requiring local governments to seek competitive bids for items. (TCPN Contract # R5086 / City of Plano Internal Contract No. 2012-292-O)				
List of Supporting Documents: Award Memo			Other Departments, Boards, Commissions or Agencies	



TO: Michael Parrish, Buyer II

FROM: Richard Medlen
Facilities Maintenance Superintendent 

DATE: September 11, 2012

SUBJECT: **Haggard Library Improvements**

I have reviewed the bids submitted for the Haggard Library Improvements. I am recommending award to Williams and Thomas, LP dba Jamail & Smith Construction, who provided the lowest responsive, responsible bid for \$70,855. I have received proposals from Core Construction for \$98,119 and KBR for \$104,511.

The interior renovations are necessary to repair some sidewalks and ADA paving, change an existing area into a quiet room, and replace deteriorated counter tops and cabinets on the first floor and the basement kitchens, the basement work areas and basement restrooms. The funding for the project will come from the CIP Library Improvements Fund.

Please let me know if you have any questions.

Thanks

/liw

Xc: Earl Whitaker
Jim Razinha
Janette Weedon
Cathy Ziegler

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

Patrick Gallagher
Place 7

Lee Dunlap
Place 8

Bruce D. Glasscock
City Manager



**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:	9/24/12
Department:	Purchasing
Department Head	Diane Palmer-Boeck
Agenda Coordinator (include phone #): Earl S. Whitaker x7074	

CAPTION

To approve the purchase of six (6) Pick-Up Trucks for Fleet Services to be utilized by Ground Maintenance, Compost Operations, Utility Maintenance, Backflow Operations, & Police, in the amount of \$133,326 from Caldwell Country Automotive through an existing contract/agreement with TASB/BuyBoard, and authorizing the City Manager to execute all necessary documents. (TASB/BuyBoard Contract #358-10)

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR: 2011-12	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	135,500	0	135,500
Encumbered/Expended Amount	0	0	0	0
This Item	0	-133,326	0	-133,326
BALANCE	0	2,174	0	2,174

FUND(s): EQUIPMENT REPLACEMENT FUND

COMMENTS: Funds are included in the FY 2011-12 Budget to purchase Six (6) Pick-Up Trucks, from Caldwell Country Automotive for the scheduled replacements of units #02316, #00325, #02317, #08309, #08313. One un-scheduled replacement is for unit #02300. Remaining balance will be used for other Equipment Replacement purchases.

STRATEGIC PLAN GOAL: Providing replacement Pick-Up Trucks for the City's Fleet Services Department relates to the City's goal of Financially Strong City with Service Excellence.

SUMMARY OF ITEM

Staff recommends the purchase of six (6) Pick-Up Trucks for Fleet Services to be utilized by Ground Maintenance, Compost Operations, Utility Maintenance, Backflow Operations, & Police in the amount of \$133,326 from Caldwell Country Automotive through an existing contract/agreement with TASB/BuyBoard. The City is authorized to purchase from a Local Cooperative Organization pursuant to Chapter 271 subchapter F of the Local Government Code and by doing so satisfies any State Law requiring local governments to seek competitive bids for items. (TASB/BuyBoard Contract #358-10 / City of Plano Internal Contract No. 2012-272-B)



**CITY OF PLANO
COUNCIL AGENDA ITEM**

List of Supporting Documents: Award Memo, Bid Recap	Other Departments, Boards, Commissions or Agencies NA



MEMORANDUM

Date: September 7, 2012
To: Bruce D. Glasscock, City Manager
From: Reid Choate, Fleet Manager
Subject: FY 11-12 Pick-Up Purchase Recommendation

After review of all bids received on City of Plano Bid #2012-272-B and obtaining pricing from Cooperative Purchasing Contracts it is the recommendation of Fleet Services to award line items to Caldwell Country Automotive, in the amount of \$133,326.00 from the TASB/BuyBoard Contract #358-10. By searching the Cooperative Contracts we were able to purchase the units less than quoted on our bid Invitation.

These vehicles are for the replacement of the following vehicles:

- Item 1 Replacement of unit 02300 in Cost Center 648/Ground Maintenance District #2.
- Item 2 Replacement of unit 02316 in Cost Center 714/Compost Operations.
- Item 3 Replacement of unit 00325 in Cost Center 761/ Utility Maintenance.
- Item 4 Replacement of unit 02317 in Cost Center 769/Backflow Operations.
- Item 5 Replacement of unit 08309 in Cost Center 532/Police.
- Item 6 Replacement of unit 08313 in Cost Center 532/Police.

Item 1 is an un-scheduled replacement due to the need of major repairs and deemed not cost effective to repair due to age and mileage. All other items are scheduled replacements in the approved FY11-12 Equipment Replacement Fund. Equipment replacement is analyzed based of age, mileage, maintenance cost and re-sale value in determining the need for replacement. Fleet Services recommendation is based on the Equipment Replacement criteria for these types of vehicles. If these vehicles are not replaced we will incur additional maintenance cost and salvage value will greatly be depreciated. In addition the user departments will be limited in their ability to perform their duties to the City's infrastructure and public safety.

Feel free to contact me if you have any questions at extension 4182.

CITY OF PLANO

BID NO. 2012-272-B
¾ Ton and ½ Ton Pick Up Trucks
BID RECAP

Bid opening Date/Time: 8/20/2012 @ 2:00 pm

Number of Vendors Notified: 810

Vendors Submitting “No Bids”: 0

Number of Bids Submitted: 2

Bids:

Caldwell Country Automotive \$ 134,543.00

Reliable Chevrolet \$ 135,895.33

Cooperative Contract Bids:

Caldwell Country Automotive \$133,326.00

Reliable Chevrolet \$133,333.00

Recommended Vendor:

Caldwell Country Automotive
(Cooperative Contract Bid) \$133,326.00

Earl S. Whitaker

Earl S. Whitaker
Buyer Supervisor

September 6, 2012

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:		September 24, 2012			
Department:		Police			
Department Head		Greg Rushin			
Agenda Coordinator (include phone #): Kellie Boyer x7248					
CAPTION					
To approve a one (1) year contract with four (4) City optional renewals for the purchase of Blauer Police Uniforms for the Police Department in an estimated amount of \$100,000 from GST Public Safety Supply through an existing contract/agreement with Tarrant County (Tarrant County contract #2011-041), and authorizing the City Manager 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:	2011-12 thru 2015-16	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	282,890	350,000	632,890
Encumbered/Expended Amount		0	-182,890	0	-182,890
This Item		0	-100,000	-350,000	-450,000
BALANCE		0	0	0	0
FUND(s): GENERAL FUND					
COMMENTS: This item establishes an annual contract with four optional renewals for Plano Police Department uniforms. Expenditures will be made within the annually approved budget appropriations. The estimated annual amount is \$100,000.					
STRATEGIC PLAN GOAL: Using a cooperative purchasing program to obtain items necessary for daily Police operations relates to the City's Goal of Financially Strong City with Service Excellence and Safe, Large City.					
SUMMARY OF ITEM					
Police staff recommends the approval of a one (1) year contract with four (4) City optional renewals for the purchase of Blauer Police Uniforms in an estimated amount of \$100,000 from GST Public Safety Supply through an existing contract/agreement with Tarrant County (Tarrant County contract #2011-041).The City is authorized to purchase from a cooperative purchasing program with another local government or a local cooperative organization pursuant to Section 271 Subchapter F of the Local Government Code; and by doing so satisfies any State Law requiring local governments to seek competitive bids for items.					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		
Memorandum			N/A		



P.O. Box 860358
Plano, Texas 75086-0358
972-941-7000
Fax. No. 972-941-0099

MEMORANDUM

DATE: August 21, 2012
TO: Diane Palmer-Boeck, Purchasing Department
FROM: Gregory W. Rushin, Chief of Police *[Signature]*
SUBJECT: Police Uniform Contract

Police staff recommends the City of Plano participate in the Tarrant County Cooperative contract with GST Public Safety Supply for the purchase of Blauer police uniforms. The Plano Police Department has utilized Blauer uniforms since 2001 and it is the current standard issue uniform brand. Previously we conducted wear tests and found Blauer offered excellent durability in a cost effective manner. Further, we have a large investment in Blauer uniforms. Changing to another brand would negate that investment as other brands would not have that same shades of color and present a mismatched appearance among old and new uniforms. The Tarrant County Cooperative contract, bid number 2011-041, was awarded March 15, 2011, for a one-year period with an option of four, one-year renewals.

By participating in the Tarrant County Cooperative contract we will gain more advantageous pricing. Staff, along with City Purchasing personnel, has shopped other purchasing alternatives. Purchasing staff obtained a listing of all Blauer distributors in Texas, Oklahoma, Arkansas, and Louisiana. Further, they searched all distributors for available contracts and discovered only one distributor with an available co-op contract on BuyBoard. The discount offered on the BuyBoard contract for Blauer items is only 15 percent. The Tarrant County contract provides a discount of 36 percent.

Based on the proven history of the Blauer product and the advantageous pricing provided by the Tarrant County contract with GST Public Safety Supply, staff recommends participating in the Tarrant County contract. Failure to approve will result in the Police Department paying substantially more in uniform costs.

Approximate annual expenditures for this item will be \$100,000.



**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:		9/24/12		
Department:		Public Works		
Department Head:		Gerald P. Cosgrove		
Agenda Coordinator (include phone #): Kathleen Schonne ext. 7198				Project No. 6160
CAPTION				
To approve a Professional Services Agreement by and between the City of Plano and J. Volk Consulting, Inc., in the amount of \$100,260 for the Standard Details project; 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: 2011-12	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	101,000	0	101,000
Encumbered/Expended Amount	0	0	0	0
This Item	0	-100,260	0	-100,260
BALANCE	0	740	0	740
FUND(S): CAPITAL RESERVE				
<p>COMMENTS: Funds are included in the 2011-12 Capital Reserve Fund. This item, in the amount of \$100,260, will leave a current year balance of \$740 for the Design Standards project.</p> <p>STRATEGIC PLAN GOAL: Updating standard construction details relates to the City's Goal of Financially Strong City with Service Excellence.</p>				
SUMMARY OF ITEM				
<p>This agreement is for engineering and drafting services required to update the Public Works Department Standard Construction Details. The project includes drafting details for paving, drainage, water, and sewer construction. Approximately 125 details will be provided in CAD format.</p> <p>The contract fee is \$100,260.00. This dollar amount is a lump sum price for the work described above. The amount was arrived at by estimating the man hours of drafting time and engineering review required of the consultant. A break down of the figures is further detailed in Exhibit C of the attached agreement.</p> <p>Funding is available from the 2011-12 Capital Reserve Fund.</p>				
List of Supporting Documents: Professional Engineering Services Agreement			Other Departments, Boards, Commissions or Agencies N/A	

STANDARD DETAILS

PROJECT NO. 6160

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 **J. VOLK CONSULTING, INC.**, a **TEXAS** Corporation, 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 **STANDARD DETAILS** project 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: Tim Bennett, P.E.

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

J. Volk Consulting, Inc.
800 East Campbell Road, Suite 120
Richardson, TX 75081
Attn: Matt Atkins, P.E.

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 and/or Denton 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.

DATE: 9/6/12

BY: 
Matt Atkins, P.E.
VICE PRESIDENT

J. VOLK CONSULTING, INC.

A Texas Corporation

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 6 day of September, 2012, by **MATT ATKINS, P.E., Vice President**, of **J. Volk Consulting, Inc.**, a Texas corporation, on behalf of said corporation.



Stacey Colodi

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2012, 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**

**STANDARD DETAILS
PROJECT No. 6160
C.I.P. No. 35-51145**

PROJECT DESCRIPTION:

The project consists of the preparation of Standard Construction Details for the City of Plano. Using existing hardcopy standard construction details, new details will be created or replicated in AutoCAD drawing format. The details will be reformatted to fit on standard letter size paper and produced in both AutoCAD drawing format and PDF format for publishing.

The standards will include paving, pedestrian, drainage, water, sewer, erosion control, and traffic standard construction details as well as miscellaneous construction details and general notes currently in use by the City of Plano Engineering Department. Individual detail sheets will be created from the current Standard Construction Details, sketches from City Staff, and current TxDOT details. A list of anticipated details can be found in Exhibit C.

BASIC SERVICES:

For each individual detail, several tasks are required along with some project setup and planning in order to organize the details. A standard border sheet and CAD/file standard system will be developed for ease of publishing to the selected media. Additionally, the details will need to be divided and grouped to minimize the number of individual sheets while maintaining a logical and useful arrangement for publishing.

In order to provide standard construction details that reflect current City requirements, we have anticipated a couple of reviews and revisions. With each review, we anticipate meeting with various staff members to compile comments. These reviews may be scheduled after submitting groups of similar details in order to expedite completion of certain groups of details.

Individually, we expect to provide the following services on each detail:

- Analyze and interpret markups of the existing detail to ready for drafting.
- Draft the detail utilizing the CAD standards setup at the beginning of the project to digitally reflect the current detail as well as any markups and notes. Where practical, the detail will be drawn to scale.
- Provide a review of the CAD version compared to the original and make any changes as well as checking for visual clarity.
- Review all notes and dimensions for applicability to the detail, consistency with other standards and grammatical or technical errors in the notes.

- Review all notes and dimensions for applicability to the detail, consistency with other standards and grammatical or technical errors in the notes.
- Provide a Reference Inventory Table that lists each reference found in the detail. Many details will reference various standards such as City Ordinances, City Design Manuals, NCTCOG standards, APWA standards, ASTM standards, etc. Each of these references will be cataloged for easy reference to allow for ease of ongoing maintenance of the standard details.
- Cross-check every reference in each detail to ensure accuracy and applicability as well as checking the detail for any conflicting reference material.
- It is anticipated that several TxDOT standard construction details will be selected as part of the standard detail set. These details will be added to the set as 11"x17" as drawn by TxDOT and labeled on the table of contents. Modification of these details is not included.

DELIVERABLES:

Provide two (2) printed sets of details for the initial review as well as a CD with PDF's of each detail for distribution to various City of Plano Staff members for a total of two reviews per grouping of details. Groups of details shall consist of like details for each discipline of construction such as paving, water, sanitary sewer, etc. Upon completion of the reviews, provide AutoCAD 2012 (.dwg) files of each detail, plot configuration files, one printed set of details ready for seal and signature, and a CD with PDF's of each detail.

EXHIBIT B COMPLETION SCHEDULE

Initial delivery of schedule shall be in groups of 20-30 details of like type every forty-five (45) days with all the details delivered within 180 days of notice to proceed. Pending review, comments shall be addressed and returned within 30 days of review meeting, unless otherwise agreed upon.

EXHIBIT C COMPENSATION

Payment for the services performed under this Engineering Services Agreement shall be a lump sum fee for General Project Setup and Management of \$10,435.00 and fee per each as indicated on the following pages. The details listed on the following pages are an estimate of the details that will be provided. The fee paid will be based on the actual details provided to the City of Plano. The hours associated with each detail on the following pages are for reference only and shall NOT be a basis of payment. Basis of payment shall be PER EACH detail. The total estimated fee for Detail Preparation based on 125 details is \$89,825 and the total contract amount shall not exceed \$100,260.

PLANO CIP - STANDARD DETAILS
 ENGINEERING MANHOUR ESTIMATE

TASK	ENGINEER	TECH	TOTAL HOURS	TOTAL COST
GENERAL PROJECT SETUP AND MANAGEMENT				
DEVELOP CITY DRAFTING STANDARDS	10	10	20	\$2,050
SET UP CAD STANDARDS FOR DETAILS	2	4	6	\$580
PREPARE STANDARD SHEET BORDERS	1	4	5	\$460
PREPARE FILE MANAGEMENT	2	2	4	\$410
PROJECT MANAGEMENT & COORDINATION	12		12	\$1,440
GENERAL NOTES - RECONCILE & COMPILE	6	1	7	\$805
COMPILE TXDOT DETAILS	1	4	5	\$460
PREPARE 1ST SUBMITTAL	4	8	12	\$1,160
1ST CITY REVIEW MEETING	2	2	4	\$410
PREPARE 2ND SUBMITTAL	2	6	8	\$750
2ND CITY REVIEW MEETING	2	2	4	\$410
FINAL SUBMITTAL (FORMAT DIGITAL SUBMITTAL)	4	12	16	\$1,500
SUBTOTAL HOURS	48	55	103	
RATE	\$120	\$85		
SUBTOTAL MAN-HOUR COST	\$5,760	\$4,675		\$10,435
DETAIL PREPARATION				
ASSESSMENT & BREAKDOWN	32.50	0.00	32.5	\$3,900
INITIAL DRAFTING	5.00	457.50	462.5	\$39,488
QA/QC REVIEW	68.25	174.50	242.75	\$23,023
CHECK NOTES	21.50	30.00	51.5	\$5,130
INVENTORY REFERENCES	30.00	2.00	32	\$3,770
CROSS-CHECK REFERENCES	30.50	2.00	32.5	\$3,830
ADDRESS CITY COMMENTS	0.50	125.00	125.5	\$10,685
SUBTOTAL HOURS	188.25	791	979.25	
RATE	\$120	\$85		
SUBTOTAL MAN-HOUR COST	\$22,590	\$67,235		\$89,825
TOTAL FEE				\$100,260

PLANO CP - STANDARD DETAILS
 ENGINEERING MANHOURLY ESTIMATE

ENGINEER RATE \$ 120.00
 TECH RATE \$ 85.00

DUTY PREPARATION										
	ASSESSMENT & BREAKDOWN	DRAW DETAIL	QA/QC REVIEW	CHECK NOTES	INVENTORY REFERENCES	CROSS-CHECK REFERENCES	ADDRESS QTY COMMENTS	QA/QC REVIEW	TOTAL HOURS	TOTAL
1	PAVING SECTION (130' ROW)									
	ENGINEER	0.25	0.25	0.25	0.25	0.25		0.25	1.5	\$180
	TECH						1	0.5	5.75	\$480
	SUBTOTAL	3	1	0.25					7.25	\$660
2	PAVING SECTION - RIGHT TURN/DECEL									
	ENGINEER	0.25	0.25	0.25	0.25	0.25		0.25	1.5	\$180
	TECH						1	0.5	5.75	\$480
	SUBTOTAL	3	1	0.25					7.25	\$660
3	PAVING SECTION - 6 LANES									
	ENGINEER	0.25	0.25	0.25	0.25	0.25		0.25	1.5	\$180
	TECH						1	0.5	5.75	\$480
	SUBTOTAL	3	1	0.25					7.25	\$660
4	PAVING SECTION - 6-LANE LEFT TURN SECTION									
	ENGINEER	0.25	0.25	0.25	0.25	0.25		0.25	1.5	\$180
	TECH						1	0.5	5.75	\$480
	SUBTOTAL	3	1	0.25					7.25	\$660
5	PAVING SECTION - 4 LANES									
	ENGINEER	0.25	0.25	0.25	0.25	0.25		0.25	1.5	\$180
	TECH						1	0.5	5.75	\$480
	SUBTOTAL	3	1	0.25					7.25	\$660
6	PAVING SECTION - 4 LANE LEFT TURN SECTION									
	ENGINEER	0.25	0.25	0.25	0.25	0.25		0.25	1.5	\$180
	TECH						1	0.5	5.75	\$480
	SUBTOTAL	3	1	0.25					7.25	\$660
7	TYPE A, B, & C PAVEMENT PLAN/MARKINGS									
	ENGINEER	0.25	0.25	0.25	0.25	0.25		0.25	1.5	\$180
	TECH						1	0.5	5.75	\$480
	SUBTOTAL	3	1	0.25					7.25	\$660
8	TYPE D PAVEMENT PLAN/MARKINGS									
	ENGINEER	0.25	0.25	0.25	0.25	0.25		0.25	1.5	\$180
	TECH						1	0.5	5.75	\$480
	SUBTOTAL	3	1	0.25					7.25	\$660
9	STREET HEADERS									
	ENGINEER	0.25	0.25	0.25	0.25	0.25		0.25	1.75	\$195
	TECH						1	0.5	6.25	\$510
	SUBTOTAL	4	1	0.25					7.5	\$681
10	COLLECTOR STREET									
	ENGINEER	0.25	0.25	0.25	0.25	0.25		0.25	1.5	\$180
	TECH						1	0.5	5.75	\$480
	SUBTOTAL	3	1	0.25					7.25	\$660
11	CURB DETAILS									
	ENGINEER	0.25	0.25	0.25	0.25	0.5		0.25	1.5	\$180
	TECH						1	0.5	6.75	\$570
	SUBTOTAL	4	1	0.25					8.25	\$750
12	BARBICADE DETAILS									
	ENGINEER	0.25	0.25	0.25	0.25	0.5		0.25	1.75	\$210
	TECH						0.5	0.5	6	\$510
	SUBTOTAL	4	1	0.25					7.75	\$720

PLANO CP - STANDARD DETAILS ENGINEERING MANHOUR ESTIMATE										
	ASSESSMENT & BREAKDOWN	DRAW DETAIL	QA/QC REVIEW	CHECK NOTES	INVENTORY REFERENCES	CROSS-CHECK REFERENCES	ADDRESS QTY COMMENTS	QA/QC REVIEW	TOTAL HOURS	TOTAL
13	FOUNDING PLAN									
	ENGINEER		0.25			0.25		0.25	1.75	\$210
	TECH	3	1	0.25		0.5	1	0.5	5.75	\$489
	SUBTOTAL								7.5	\$
14	MEDIAN NODES									
	ENGINEER		0.25	0.25	0.25	0.25		0.25	1.5	\$180
	TECH	3	0.5				1	0.25	1.75	\$146
	SUBTOTAL								6.25	\$
15	DRY DETAILS									
	ENGINEER		0.25	0.25	0.25	0.25		0.25	1.25	\$150
	TECH	3	1	0.25			1	0.5	3.75	\$489
	SUBTOTAL								7	\$
16	ALLEY SECTIONS - SHEET 1 (DWG PROVIDED BY CITY OF PLANO)									
	ENGINEER		0.25	0.25	0.25	0.25		0.25	1.5	\$180
	TECH	2	0.5				0.5	0.5	3.5	\$489
	SUBTOTAL								5	\$
17	ALLEY SECTIONS SHEET 2 (DWG PROVIDED BY CITY OF PLANO)									
	ENGINEER		0.25	0.25	0.25	0.25		0.25	1.5	\$180
	TECH	2	0.5				0.5	0.5	3.5	\$489
	SUBTOTAL								5	\$
18	ALLEY RETURNS									
	ENGINEER		0.25	0.25	0.25	0.25		0.25	1.5	\$180
	TECH	3	1	0.25			1	0.5	3.75	\$489
	SUBTOTAL								7.25	\$
19	DRIVEWAY DETAILS									
	ENGINEER		0.25	0.25	0.25	0.25		0.25	1.25	\$150
	TECH	4	1	0.25			1	0.5	3.75	\$489
	SUBTOTAL								5	\$
20	LANDSCAPE MAINTENANCE RAMP									
	ENGINEER		0.25	0.25		0.25		0.25	1	\$120
	TECH	3	1	0.25			0.5	0.25	5	\$425
	SUBTOTAL								6	\$
21	ALLEY TURNS									
	ENGINEER		0.25	0.25	0.25	0.25		0.25	1.25	\$150
	TECH	3	1	0.25			1	0.5	3.75	\$489
	SUBTOTAL								7	\$
22	ALLEY INTERSECTIONS									
	ENGINEER		0.25	0.25	0.25	0.25		0.25	1.25	\$150
	TECH	3	1	0.25			1	0.5	3.75	\$489
	SUBTOTAL								7	\$
23	ALLEY - STREET INTERSECTION									
	ENGINEER		0.25	0.25	0.25	0.25		0.25	1.25	\$150
	TECH	3	1	0.25			1	0.5	3.75	\$489
	SUBTOTAL								7	\$
24	STREET LIGHT FOUNDATION									
	ENGINEER		0.25	0.25	0.25	0.5		0.25	1.75	\$210
	TECH	2	0.25				1	0.25	3.25	\$268
	SUBTOTAL								5.25	\$
25	RETAINING WALL DETAIL									
	ENGINEER		0.25	0.25	0.25	0.5		0.25	1.75	\$210
	TECH	4	1	0.25			1	0.5	3.75	\$489
	SUBTOTAL								6.5	\$
26	SIDEWALK DETAIL									
	ENGINEER		0.25	0.25	0.25	0.25		0.25	1.5	\$180
	TECH	3	1	0.25			1	0.5	3.75	\$489
	SUBTOTAL								7.25	\$
27	CONCRETE FLUME									
	ENGINEER		0.25	0.25	0.25			0.25	1.25	\$150
	TECH	3	0.5	0.25			1	0.5	3.25	\$446
	SUBTOTAL								6.5	\$

PLANO CP - STANDARD DETAILS ENGINEERING MANHOURLY ESTIMATE										
	ASSESSMENT & BREAKDOWN	DRAW DETAIL	QA/QC REVIEW	CHECK NOTES	INVENTORY REFERENCES	CROSS-CHECK REFERENCES	ADDRESS-QTY COMMENTS	QA/QC REVIEW	TOTAL HOURS	TOTAL
21	TYPE A MANHOLE									
	ENGINEER		0.25	0.25	0.25	0.5		0.25	1.75	\$210
	TECH	4	1	0.25			1	0.5	6.75	\$574
	SUBTOTAL								8.5	\$
22	TYPE B MANHOLE									
	ENGINEER		0.25	0.25	0.25	0.25		0.25	1.5	\$180
	TECH	4	1	0.25			1	0.5	6.75	\$574
	SUBTOTAL								8.25	\$
30	CONCRETE COLLAR & WYE									
	ENGINEER		0.25	0.25	0.25	0.25		0.25	1.5	\$180
	TECH	3	1	0.25			1	0.5	5.75	\$485
	SUBTOTAL								7.25	\$
31	UTILITY SUPPORT AND LOWERING									
	ENGINEER		0.25	0.25	0.25	0.25		0.25	1.5	\$180
	TECH	3	1	0.25			1	0.5	5.75	\$485
	SUBTOTAL								7.25	\$
32	PAVEMENT REPAIR & EMBEDMENT									
	ENGINEER		0.25	0.25	0.25	0.5		0.25	1.75	\$210
	TECH	8	1	0.25			1	0.5	5.75	\$485
	SUBTOTAL								7.5	\$
33	CURB INLET - PLAN									
	ENGINEER		0.25	0.25	0.25	0.5		0.25	1.75	\$210
	TECH	4	1	0.25			1	0.5	6.75	\$574
	SUBTOTAL								8.5	\$
34	CURB INLET - SECTIONS									
	ENGINEER		0.25	0.25	0.25	0.5		0.25	1.75	\$210
	TECH	4	1	0.25			1	0.5	6.75	\$574
	SUBTOTAL								8.5	\$
35	CURB INLET - BAR DIAGRAMS & COVER									
	ENGINEER		0.25	0.25	0.25	0.5		0.25	1.75	\$210
	TECH	8	1	0.25			1	0.5	6.75	\$574
	SUBTOTAL								8.5	\$
36	COMBINATION INLET - PLAN									
	ENGINEER		0.25	0.25	0.25	0.5		0.25	1.75	\$210
	TECH	4	1	0.25			1	0.5	6.75	\$574
	SUBTOTAL								8.5	\$
37	COMBINATION INLET - SECTIONS									
	ENGINEER		0.25	0.25	0.25	0.5		0.25	1.75	\$210
	TECH	4	1	0.25			1	0.5	6.75	\$574
	SUBTOTAL								8.5	\$
38	COMBINATION INLET - BAR DIAGRAMS & COVER									
	ENGINEER		0.25	0.25	0.25	0.5		0.25	1.75	\$210
	TECH	4	1	0.25			1	0.5	6.75	\$574
	SUBTOTAL								8.5	\$
39	COMBINATION INLETS - ALLEY SECTION									
	ENGINEER		0.25	0.25	0.25	0.5		0.25	1.75	\$210
	TECH	4	1	0.25			1	0.5	6.75	\$574
	SUBTOTAL								8.5	\$

PLANO CP - STANDARD DETAILS ENGINEERING MANHOLES ESTIMATE										
	ASSESSMENT & BREAKDOWN	DRAW DETAIL	QA/QC REVIEW	CHECK NOTES	INVENTORY REFERENCES	CROSS-CHECK REFERENCES	ADDRESS-CITY COMMENTS	QA/QC REVIEW	TOTAL HOURS	TOTAL
42	GRATE INLET - PLAN									
	ENGINEER	0.25	0.25	0.25	0.25	0.5		0.25	1.75	\$110
	TECH		4	0.25	0.25		1	0.5	6.75	\$474
	SUBTOTAL								8.5	\$784
43	GRATE INLET - SECTIONS									
	ENGINEER	0.25	0.25	0.25	0.25	0.5		0.25	1.75	\$110
	TECH		4	1	0.25		1	0.5	6.75	\$474
	SUBTOTAL								8.5	\$784
44	GRATE INLET - BAR DIAGRAMS & COVER									
	ENGINEER	0.25	0.25	0.25	0.25	0.5		0.25	1.75	\$110
	TECH		4	1	0.25		1	0.5	6.75	\$474
	SUBTOTAL								8.5	\$784
45	COLLUMET RAILING WITH MILSP-STONE (1 of 2)									
	ENGINEER	0.25	0.25	0.25	0.25	0.5		0.25	1.75	\$110
	TECH		5	0.75	0.25		1	0.5	7.5	\$525
	SUBTOTAL								9.75	\$688
46	COLLUMET RAILING WITH MILSP-STONE (2 of 2)									
	ENGINEER	0.25	0.25	0.25	0.25	0.5		0.25	1.75	\$110
	TECH		5	0.75	0.25		1	0.5	7.5	\$525
	SUBTOTAL								9.75	\$688
47	BARRIER FREE RAMP									
	ENGINEER	0.25	0.5	0.5				0.25	1.5	\$100
	TECH		4	1	0.25	0.25	1	0.5	7.25	\$515
	SUBTOTAL								8.75	\$715
48	BARRIER FREE RAMP									
	ENGINEER	0.25	0.5	0.5				0.25	1.5	\$100
	TECH		4	1	0.25	0.25	1	0.5	7.25	\$515
	SUBTOTAL								8.75	\$715
49	BARRIER FREE RAMP									
	ENGINEER	0.25	0.5	0.5				0.25	1.5	\$100
	TECH		4	1	0.25	0.25	1	0.5	7.25	\$515
	SUBTOTAL								8.75	\$715
50	BARRIER FREE RAMP									
	ENGINEER	0.25	0.5	0.5				0.25	1.5	\$100
	TECH		4	1	0.25	0.25	1	0.5	7.25	\$515
	SUBTOTAL								8.75	\$715
51	BARRIER FREE RAMP									
	ENGINEER	0.25	0.5	0.5				0.25	1.5	\$100
	TECH		4	1	0.25	0.25	1	0.5	7.25	\$515
	SUBTOTAL								8.75	\$715
52	BARRIER FREE RAMP									
	ENGINEER	0.25	0.5	0.5				0.25	1.5	\$100
	TECH		4	1	0.25	0.25	1	0.5	7.25	\$515
	SUBTOTAL								8.75	\$715
53	TYPE CHEADWALL									
	ENGINEER	0.25	0.25	0.25	0.25	0.25		0.25	1.5	\$100
	TECH		3	1	0.25		1	0.5	5.75	\$410
	SUBTOTAL								7.25	\$610

PLANO CP - STANDARD DETAILS ENGINEERING MANHOURLY ESTIMATE										
	ASSESSMENT & BREAKDOWN	DRAW DETAIL	QA/QC REVIEW	CHECK NOTES	INVENTORY REFERENCES	CROSS-CHECK REFERENCES	ADDRESS-CITY COMMENTS	QA/QC REVIEW	TOTAL HOURS	TOTAL
54 SURVEY MARKER	ENGINEER		0.25	0.25	0.25	0.25		0.25	1.0	\$100
	TECH			0.25			1	0.5	1.75	\$175
	SUBTOTAL	3							7.25	\$ 699
53 TYPICAL UTILITY LOCATIONS	ENGINEER		0.25	0.25	0.25	0.25		0.25	1.5	\$150
	TECH			1	0.25		1	0.5	3.75	\$375
	SUBTOTAL	3							7.25	\$ 699
58 AIR/VACUUM RELEASE VALVE	ENGINEER		0.25	0.25	0.25	0.5		0.25	1.75	\$175
	TECH			1	0.25		1	0.5	2.75	\$275
	SUBTOTAL	4							8.5	\$ 784
59 BLOW OFF VALVE	ENGINEER		0.25	0.25	0.25	0.5		0.25	1.75	\$175
	TECH			1	0.25		1	0.5	2.75	\$275
	SUBTOTAL	4							8.5	\$ 784
58 GATE VALVE	ENGINEER		0.25	0.25	0.25	0.5		0.25	1.75	\$175
	TECH			1	0.25		1	0.5	2.75	\$275
	SUBTOTAL	4							8.5	\$ 784
58 FIRE HYDRANT	ENGINEER		0.25	0.25	0.25	0.5		0.25	1.75	\$175
	TECH			1	0.25		1	0.5	2.75	\$275
	SUBTOTAL	5							9.5	\$ 899
62 FIRE HYDRANT LOCATION & PAD (DWG PROVIDED BY CITY OF PLANO)	ENGINEER		0.25	0.25	0.25			0.25	1.25	\$125
	TECH			1	0.5		0.5	0.5	2.25	\$225
	SUBTOTAL	1							4	\$ 350
61 WATER LINE FITTINGS & THRUST BLOODING	ENGINEER		0.25	0.25	0.25	0.25		0.25	1.5	\$150
	TECH			1	0.25		1	0.5	2.75	\$275
	SUBTOTAL	6							10.25	\$ 974
60 WATER SERVICE	ENGINEER		0.25	0.5	0.25	0.5		0.25	1.75	\$175
	TECH			1	0.25		1	0.5	3.75	\$375
	SUBTOTAL	3							7.5	\$ 699
61 CHECK CROSSING	ENGINEER		0.25	0.5	0.25	0.25		0.25	1.5	\$150
	TECH			1	0.25		1	0.5	2.75	\$275
	SUBTOTAL	4							8.25	\$ 784
64 WATER VAULT	ENGINEER		0.25	0.5	0.25	0.25		0.25	1.5	\$150
	TECH			1	0.25		1	0.5	3.75	\$375
	SUBTOTAL	3							7.25	\$ 699
62 WATER LINE BORE & SLEEVE	ENGINEER		0.25	0.5	0.25	0.25		0.25	1.5	\$150
	TECH			1	0.25		1	0.5	3.75	\$375
	SUBTOTAL	4							8.25	\$ 784
60 WATER PIPE CONNECTION DETAILS	ENGINEER		0.25	0.5	0.25	0.25		0.25	1.5	\$150
	TECH			1	0.25		1	0.5	3.75	\$375
	SUBTOTAL	3							7.25	\$ 699
60 WATER LINE EMBODIMENT	ENGINEER		0.25	0.5	0.25	0.25		0.25	1.5	\$150
	TECH			1	0.25		1	0.5	3.75	\$375
	SUBTOTAL	4							8.25	\$ 784

PLANO CP - STANDARD DETAILS ENGINEERING MANHOLES ESTIMATE										
	ASSESSMENT & BREAKDOWN	DRAW DETAIL	QA/QC REVIEW	CHECK NOTES	INVENTORY REFERENCES	CROSS-CHECK REFERENCES	ADDRESS-QTY COMMENTS	QA/QC REVIEW	TOTAL HOURS	TOTAL
65	WATER VAULT LID									
	ENGINEER	0.25	0.25	0.25	0.25	0.5	1	0.25	1.8	\$180
	TECH		2	0.5				0.5	4.25	\$425
	SUBTOTAL								5.75	\$575
66	SLUTTERLY VALVE									
	ENGINEER	0.25	0.25	0.25	0.25	0.25		0.25	1.5	\$150
	TECH		3	1			1	0.5	7.75	\$775
	SUBTOTAL								9.25	\$925
70	MANHOLE LIDS									
	ENGINEER	0.25	0.25	0.25	0.25	0.25		0.25	1.25	\$125
	TECH		3	0.5			1	0.5	3.25	\$325
	SUBTOTAL								4.5	\$450
71	MANHOLE LEAKOUT									
	ENGINEER	0.25	0.25	0.25	0.25	0.25		0.25	1.5	\$150
	TECH		2	0.5			1	0.5	4	\$400
	SUBTOTAL								5.5	\$550
72	STANDARD SANITARY MANHOLE									
	ENGINEER	0.25	0.25	0.25	0.25	0.5		0.25	1.75	\$175
	TECH		3	1			1	0.5	7.25	\$725
	SUBTOTAL								9	\$900
73	SANITARY SEWER DROP MANHOLE									
	ENGINEER	0.25	0.25	0.25	0.25			0.25	1.25	\$125
	TECH		3	1			1	0.5	7.25	\$725
	SUBTOTAL								8.5	\$850
74	PRECAST SANITARY SEWER MANHOLE									
	ENGINEER	0.25	0.25	0.25	0.25			0.25	1.25	\$125
	TECH		3	1			1	0.5	7.75	\$775
	SUBTOTAL								9	\$900
75	SANITARY SEWER SERVICE & CLEANOUT									
	ENGINEER	0.25	0.25	0.25	0.25	0.25		0.25	1.5	\$150
	TECH		3	1			1	0.5	7.75	\$775
	SUBTOTAL								9.25	\$925
76	CREEK CROSSING - SANITARY									
	ENGINEER	0.25	0.25	0.25	0.25	0.25		0.25	1.5	\$150
	TECH		4	1			1	0.5	6.75	\$675
	SUBTOTAL								8.25	\$825
77	TEMPORARY CONSTRUCTION ENTRANCE									
	ENGINEER	0.25	0.25	0.25	0.25			0.25	1	\$100
	TECH		2	0.5			1	0.5	4.25	\$425
	SUBTOTAL								5.25	\$525
78	TEMPORARY DIVERSION									
	ENGINEER	0.25	0.25	0.25	0.25			0.25	1	\$100
	TECH		2	0.5			1	0.5	4.25	\$425
	SUBTOTAL								5.25	\$525
79	SALT FENCE									
	ENGINEER	0.25	0.25	0.25	0.25			0.25	1	\$100
	TECH		1.5	0.5			0.5	0.5	3.25	\$325
	SUBTOTAL								4.25	\$425
80	STONE OVERFLOW									
	ENGINEER	0.25	0.25	0.25	0.25			0.25	1	\$100
	TECH		2	0.5			1	0.5	4.25	\$425
	SUBTOTAL								5.25	\$525
81	PIPE OUTLET W/ CALCULATION TABLES									
	ENGINEER	0.5	1	0.5	1	0.25	0.5	0.25	4.5	\$450
	TECH		4	0.5	0.25		1	0.5	6.25	\$625
	SUBTOTAL								10.75	\$1075
82	EXCAVATED INLET PROTECTION									
	ENGINEER	0.25	0.25	0.25	0.25			0.25	1	\$100
	TECH		2	0.5			1	0.5	4.25	\$425
	SUBTOTAL								5.25	\$525
83	FILTER TUBES									
	ENGINEER	0.25	0.25	0.25	0.25			0.25	1	\$100
	TECH		2	0.5			1	0.5	4.25	\$425
	SUBTOTAL								5.25	\$525
84	FILTER TUBE INLET PROTECTION - EARTH									
	ENGINEER	0.25	0.25	0.25	0.25			0.25	1	\$100
	TECH		2	0.5			1	0.5	4.25	\$425
	SUBTOTAL								5.25	\$525

PLANO CIP - STANDARD DETAILS ENGINEERING MANHOUR ESTIMATE										
	ASSESSMENT & BREAKDOWN	DRAW DETAIL	QA/QC REVIEW	CHECK NOTES	INVENTORY REFERENCES	CROSS-CHECK REFERENCES	ADDRESS-QTY COMMENTS	QA/QC REVIEW	TOTAL HOURS	TOTAL
88	88 BLOCK & GRAVEL INLET PROTECTION									
	ENGINEER	0.25	0.25	0.25	0.25			0.25	1	\$120
	TECH	2	0.5	0.25			1	0.5	4.25	\$363
	SUBTOTAL								5.25	\$
89	89 FILTER FABRIC INLET PROTECTION									
	ENGINEER	0.25	0.25	0.25	0.25			0.25	1	\$120
	TECH	2	0.5	0.25			1	0.5	4.25	\$363
	SUBTOTAL								5.25	\$
90	90 TYPE A CURB INLET PROTECTION									
	ENGINEER	0.25	0.25	0.25	0.25			0.25	1	\$120
	TECH	2	0.5	0.25			1	0.5	4.25	\$363
	SUBTOTAL								5.25	\$
91	91 TYPE B CURB INLET PROTECTION									
	ENGINEER	0.25	0.25	0.25	0.25			0.25	1	\$120
	TECH	2	0.5	0.25			1	0.5	4.25	\$363
	SUBTOTAL								5.25	\$
92	92 TYPE A PIPE PROTECTION									
	ENGINEER	0.25	0.25	0.25	0.25			0.25	1	\$120
	TECH	2	0.5	0.25			1	0.5	4.25	\$363
	SUBTOTAL								5.25	\$
93	93 TYPE B PIPE PROTECTION									
	ENGINEER	0.25	0.25	0.25	0.25			0.25	1	\$120
	TECH	2	0.5	0.25			1	0.5	4.25	\$363
	SUBTOTAL								5.25	\$
94	94 BROOK CHECK DAM									
	ENGINEER	0.25	0.25	0.25	0.25			0.25	1	\$120
	TECH	2	0.5	0.25			1	0.5	4.25	\$363
	SUBTOTAL								5.25	\$
95	95 STONE OUTLET SEDIMENT TRAP									
	ENGINEER	0.25	0.25	0.25	0.25			0.25	1	\$120
	TECH	2	0.5	0.25			1	0.5	4.25	\$363
	SUBTOTAL								5.25	\$
96	96 FILTER TUBES CHECK DAM									
	ENGINEER	0.25	0.25	0.25	0.25			0.25	1	\$120
	TECH	2	0.5	0.25			1	0.5	4.25	\$363
	SUBTOTAL								5.25	\$
97	97 CONFINED STONE OUTLET SEDIMENT TRAP									
	ENGINEER	0.25	0.25	0.25	0.25			0.25	1	\$120
	TECH	2	0.5	0.25			1	0.5	4.25	\$363
	SUBTOTAL								5.25	\$
98	98 DEPRESSED TRACK OF CURB SEDIMENT TRAP									
	ENGINEER	0.25	0.25	0.25	0.25			0.25	1	\$120
	TECH	2	0.5	0.25			1	0.5	4.25	\$363
	SUBTOTAL								5.25	\$
99	99 PAVEMENT REPLACEMENT SEDIMENT TRAP									
	ENGINEER	0.25	0.25	0.25	0.25			0.25	1	\$120
	TECH	1	0.5	0.25			0.5	0.5	2.75	\$234
	SUBTOTAL								3.75	\$
99	99 SEDIMENT CONTROL AT LOW POINTS (2)									
	ENGINEER	0.25	0.25	0.25	0.25			0.25	1	\$120
	TECH	3	1	0.25			2	0.5	6.75	\$574
	SUBTOTAL								7.75	\$
99	99 CURB INLET PHANING									
	ENGINEER	0.25	0.25	0.25	0.25			0.25	1	\$120
	TECH	2	0.5	0.25			1	0.5	4.25	\$363
	SUBTOTAL								5.25	\$
99	99 SEDIMENT BAIN									
	ENGINEER	0.25	0.25	0.25	0.25			0.25	1	\$120
	TECH	2	0.5	0.25			1	0.5	4.25	\$363

PLANO CP - STANDARD DETAILS ENGINEERING MANHOUR ESTIMATE										
	ASSESSMENT & BREAKDOWN	DRAW DETAIL	QA/QC REVIEW	CHECK NOTES	INVENTORY REFERENCES	CROSS-CHECK REFERENCES	ADDRESS QTY	QA/QC REVIEW	TOTAL HOURS	TOTAL
96 PEDESTRIAN & LEFT TURN SIGNAL POLE DETAILS										
ENGINEER	0.25		0.25	0.25	0.25	0.25		0.25	1.5	\$180
TECH		5		0.25			1	0.5	7.75	\$659
SUBTOTAL									9.25	\$ 839
97 POWER SOURCE DETAILS										
ENGINEER	0.25		0.25	0.25	0.25	0.25		0.25	1.5	\$180
TECH		3	1	0.25			1	0.5	7.75	\$659
SUBTOTAL									9.25	\$ 839
98 CONTROLLER DETAILS										
ENGINEER	0.25		0.25	0.25	0.25	0.25		0.25	1.5	\$180
TECH		5	1	0.25			1	0.5	7.75	\$659
SUBTOTAL									9.25	\$ 839
99 WIND STABILIZER										
ENGINEER	0.25		0.25	0.25	0.25	0.25		0.25	1.5	\$180
TECH		2	0.5				0.5	0.5	3.5	\$293
SUBTOTAL									5	\$ 478
100 PULL BOX										
ENGINEER	0.25		0.25	0.25	0.25	0.25		0.25	1.5	\$180
TECH		2	0.5				0.5	0.5	3.5	\$293
SUBTOTAL									5	\$ 478
101 FOUNDATION DETAILS (SHEET 1)										
ENGINEER	0.25		0.25	0.25	0.25	0.25		0.25	1.5	\$180
TECH		4	1	0.25			1	0.5	6.75	\$574
SUBTOTAL									8.25	\$ 754
102 FOUNDATION DETAILS (SHEET 2)										
ENGINEER	0.25		0.25	0.25	0.25	0.25		0.25	1.5	\$180
TECH		4	1	0.25			1	0.5	6.75	\$574
SUBTOTAL									8.25	\$ 754
103 MAINT ARM ASSEMBLY & STRAN POLE ASSEMBLY										
ENGINEER	0.25		0.25	0.25	0.25	0.25		0.25	1.5	\$180
TECH		2	0.5				0.5	0.5	3.5	\$293
SUBTOTAL									5	\$ 478
104 SIGNAL DETAIL (SHEET 1)										
ENGINEER	0.25		0.25	0.25	0.25	0.25		0.25	1.5	\$180
TECH		5	1	0.25			1	0.5	7.75	\$659
SUBTOTAL									9.25	\$ 839
105 SIGNAL DETAIL (SHEET 2)										
ENGINEER	0.25		0.25	0.25	0.25	0.25		0.25	1.5	\$180
TECH		5	1	0.25			1	0.5	7.75	\$659
SUBTOTAL									9.25	\$ 839
106 SIGNAL DETAIL (SHEET 3)										
ENGINEER	0.25		0.25	0.25	0.25	0.25		0.25	1.5	\$180
TECH		5	1	0.25			1	0.5	7.75	\$659
SUBTOTAL									9.25	\$ 839
107 SIGNAL DETAIL (SHEET 4)										
ENGINEER	0.25		0.25	0.25	0.25	0.25		0.25	1.5	\$180
TECH		5	1	0.25			1	0.5	7.75	\$659
SUBTOTAL									9.25	\$ 839
108 TRAFFIC SIGNAL ARM										
ENGINEER	0.25		0.25	0.25	0.25	0.25		0.25	1.5	\$180
TECH		5	1	0.25			1	0.5	7.75	\$659
SUBTOTAL									9.25	\$ 839
109 TRAFFIC SIGNAL STRUCTURE ASSEMBLY										
ENGINEER	0.25		0.25	0.25	0.25	0.25		0.25	1.5	\$180
TECH		5	1	0.25			1	0.5	7.75	\$659
SUBTOTAL									9.25	\$ 839
110 COUPLING & NIP JOINT DETAILS										
ENGINEER	0.25		0.25	0.25	0.25	0.25		0.25	1.5	\$180
TECH		5	1	0.25			1	0.5	7.75	\$659
SUBTOTAL									9.25	\$ 839
111 SIGNAL HEADS FOR SPAN WIRE (SHEET 1)										
ENGINEER	0.25		0.25	0.25	0.25	0.25		0.25	1.5	\$180
TECH		5	1	0.25			1	0.5	7.75	\$659
SUBTOTAL									9.25	\$ 839
112 SIGNAL HEADS FOR SPAN WIRE (SHEET 2)										
ENGINEER	0.25		0.25	0.25	0.25	0.25		0.25	1.5	\$180
TECH		5	1	0.25			1	0.5	7.75	\$659
SUBTOTAL									9.25	\$ 839

PLANO CP - STANDARD DETAILS ENGINEERING MANHOUR ESTIMATE										
	ASSESSMENT & BREAKDOWN	DRAW/DETAIL	QA/QC REVIEW	CHECK NOTES	INVENTORY REFERENCES	CROSS-CHECK REFERENCES	ADDRESS/CTY COMMENTS	QA/QC REVIEW	TOTAL HOURS	TOTAL
113	TRAFFIC SIGNAL SUPPORT STRUCTURE (SHEET 1)									
	ENGINEER	0.25	0.25	0.25	0.25	0.25		0.25	1.5	\$180
	TECH		1	0.25			1	0.5	7.75	\$600
	SUBTOTAL								9.25	\$ 780
114	TRAFFIC SIGNAL SUPPORT STRUCTURE (SHEET 2)									
	ENGINEER	0.25	0.25	0.25	0.25	0.25		0.25	1.5	\$180
	TECH		1	0.25			1	0.5	7.75	\$600
	SUBTOTAL								9.25	\$ 780
115	SPAN WIRE MOUNTED SIGNALS (SHEET 1)									
	ENGINEER	0.25	0.25	0.25	0.25	0.25		0.25	1.5	\$180
	TECH		1	0.25			1	0.5	7.75	\$600
	SUBTOTAL								9.25	\$ 780
116	SPAN WIRE MOUNTED SIGNALS (SHEET 2)									
	ENGINEER	0.25	0.25	0.25	0.25	0.25		0.25	1.5	\$180
	TECH		1	0.25			1	0.5	7.75	\$600
	SUBTOTAL								9.25	\$ 780
117	SPAN WIRE MOUNTED SIGNALS (SHEET 3)									
	ENGINEER	0.25	0.25	0.25	0.25	0.25		0.25	1.5	\$180
	TECH		1	0.25			1	0.5	7.75	\$600
	SUBTOTAL								9.25	\$ 780
118	SPAN WIRE MOUNTED SIGNALS (SHEET 4)									
	ENGINEER	0.25	0.25	0.25	0.25	0.25		0.25	1.5	\$180
	TECH		1	0.25			1	0.5	7.75	\$600
	SUBTOTAL								9.25	\$ 780
119	MOUNTING DETAILS (SHEET 1)									
	ENGINEER	0.25	0.25	0.25	0.25	0.25		0.25	1.5	\$180
	TECH		1	0.25			1	0.5	7.75	\$600
	SUBTOTAL								9.25	\$ 780
120	MOUNTING DETAILS (SHEET 2)									
	ENGINEER	0.25	0.25	0.25	0.25	0.25		0.25	1.5	\$180
	TECH		1	0.25			1	0.5	7.75	\$600
	SUBTOTAL								9.25	\$ 780
121	MOUNTING DETAILS (SHEET 3)									
	ENGINEER	0.25	0.25	0.25	0.25	0.25		0.25	1.5	\$180
	TECH		1	0.25			1	0.5	7.75	\$600
	SUBTOTAL								9.25	\$ 780
122	MOUNTING DETAILS (SHEET 4)									
	ENGINEER	0.25	0.25	0.25	0.25	0.25		0.25	1.5	\$180
	TECH		1	0.25			1	0.5	7.75	\$600
	SUBTOTAL								9.25	\$ 780
123	MOUNTING DETAILS (SHEET 5)									
	ENGINEER	0.25	0.25	0.25	0.25	0.25		0.25	1.5	\$180
	TECH		1	0.25			1	0.5	7.75	\$600
	SUBTOTAL								9.25	\$ 780
124	MOUNTING DETAILS (SHEET 6)									
	ENGINEER	0.25	0.25	0.25	0.25	0.25		0.25	1.5	\$180
	TECH		1	0.25			1	0.5	7.75	\$600
	SUBTOTAL								9.25	\$ 780
125	MOUNTING DETAILS (SHEET 7)									
	ENGINEER	0.25	0.25	0.25	0.25	0.25		0.25	1.5	\$180
	TECH		1	0.25			1	0.5	7.75	\$600
	SUBTOTAL								9.25	\$ 780
	ENGINEER	32.5	5	36	21.5	30	30.5	0.5	32.25	\$22,200
	TECH	0	49.5	110.75	30	2	125	69.75	791	\$67,200
	TOTAL	32.5	46.5	146.75	51.5	32	155.5	70	919.25	\$ 89,400

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."
- 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 J. Volk Consulting, Inc. and I have made a reasonable inquiry and, to the best of my knowledge, no person or officer of J. Volk Consulting, 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.

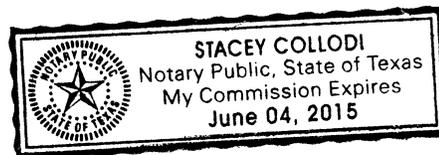
J. Volk Consulting, Inc.
Name of Consultant

By: *Matt Atkins*
Signature

MATT ATKINS
Print Name

VICE President
Title

9/6/12
Date



STATE OF TEXAS §
 §
COUNTY OF DALLAS §

SUBSCRIBED AND SWORN TO before me this 6 day of September, 2012.

Stacey Colloidi
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:		September 24, 2012		
Department:		Environmental Health		
Department Head		Brian Collins		
Agenda Coordinator (include phone #): Nancy Corwin X7137				
CAPTION				
A Resolution of the City Council of the City of Plano, Texas, approving the appointment of the Health Authority for the City of Plano in accordance with Section 121.033 of the Texas Health and Safety Code; approving the Agreement between the City of Plano and Allan R. deVilleneuve, M.D. for Professional Services; 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:	2012-13	Prior Year (CIP Only)	Current Year	Future Years
	2013-14			TOTALS
Budget		0	0	12,000
Encumbered/Expended Amount		0	0	0
This Item		0	0	-12,000
BALANCE		0	0	0
FUND(s): GENERAL FUND				
COMMENTS: Funding for this Resolution is included in the 2012-13 Budget. Expenditures will be made in the Health Department based on need for professional services within the approved budget appropriations for each year of the contract. The estimated annual amount to be spent in 2012-13 is \$6,000 and the estimated annual amount to be spent in 2013-14 is \$6,000.				
STRATEGIC PLAN GOAL: Providing Professional Services for the Health Department relates to the City's goal of Partnering for Community Benefit.				
SUMMARY OF ITEM				
Approval of the appointment of the Health Authority for the City of Plano, a Professional Services Agreement with Allan R. deVilleneuve, M.D. in the amount of \$12,000, and providing an effective date.				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Resolution, Professional Services Agreement				

A Resolution of the City Council of the City of Plano, Texas, approving the appointment of the Health Authority for the City of Plano in accordance with Section 121.033 of the Texas Health and Safety Code; approving the Agreement between the City of Plano and Allan R. deVilleneuve, M.D. for Professional Services; and providing an effective date.

WHEREAS, state law requires a director of a local health department who is not a physician to appoint a physician as the Health Authority in the local health department's jurisdiction, subject to the approval of the City Council; and

WHEREAS, the director of the City of Plano Health Department has appointed Allan R. deVilleneuve, M.D. to serve as the Health Authority for the City of Plano; and

WHEREAS, Dr. Allan R. deVilleneuve meets the requirements of Section 121.022, Health and Safety Code, to serve as the Health Authority for the City; and

WHEREAS, the City Council is of the opinion that it is appropriate and in the best interest of the public to approve Dr. Allan R. deVilleneuve's appointment as the City of Plano Health Authority, and that the City Manager or his 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 City Council of the City of Plano hereby approves the appointment of Dr. Allan R. deVilleneuve as the Health Authority for the City of Plano pursuant to Section 121.033 of the Health and Safety Code.

Section II. This appointment shall be for a term of two years pursuant to Section 121.023 of the Health and Safety Code.

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

DULY PASSED AND APPROVED this the 24th of September, 2012.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

**AGREEMENT BETWEEN THE CITY OF PLANO
AND ALLAN R. deVILLENEUVE, M.D. FOR PROFESSIONAL SERVICES**

THIS CONTRACT is made and entered by and between **ALLAN R. deVILLENEUVE, M.D.**, whose address is 4112 West 15th Street Suite 100, Plano, Texas 75075, hereinafter referred to as "Professional" and the **CITY OF PLANO, TEXAS** a Home Rule Municipal Corporation, hereinafter referred to as "CITY", to be effective from and after the date as provided herein.

WITNESETH:

WHEREAS, pursuant to section 121.033 of the Texas Health and Safety Code the City may appoint a physician as the Health Authority for the City; and

WHEREAS, City has appointed the Professional as its Health Authority and desires to engage the services of the Professional on the terms and conditions provided in this Agreement; and

WHEREAS, the Professional meets the requirements of Section 121.022 of the Texas Health and Safety Code and is willing to render professional services for the City as provided herein;

THEREFORE, City hereby engages the services of Professional, and in consideration of the mutual promises herein contained, the parties agree as follows:

**I.
SCOPE OF WORK**

Professional shall provide during the term of this Agreement services as set forth in the Texas Health and Safety Code, Chapter 121, "Local Public Health Reorganization Act", to the City as may be required and/or as requested by City. Such services shall include, but are not limited to: establishing, maintaining and enforcing quarantine orders; and advise and assist with infectious disease control, suppression and prevention services, and general sanitation.

**II.
TERM**

The term of this Contract shall be a period of two years beginning on October 10, 2012 and ending on October 9, 2014. This Agreement may be terminated by City as provided herein.

**III.
COMPENSATION**

3.01 Compensation. In consideration for the services to be rendered under this Agreement, including all expenses, the Professional shall be paid a fee not to exceed **FIVE AND 00/100 DOLLARS (\$500.00) PER MONTH, FOR A TOTAL AMOUNT NOT TO EXCEED SIX THOUSAND AND 00/100 DOLLARS (\$6,000.00) PER YEAR.** Professional may invoice City on a monthly basis. Such invoices shall be itemized to show services performed, expenses and corresponding charges. Professional shall

keep accurate records of its services and expenses incurred in the performance of this Agreement and shall make the same available to City for inspection and copying upon five (5) days notice thereof. These records shall be kept by professional for three (3) years following the expiration of this Agreement.

3.02 Fiscal Funding. Professional recognizes that this agreement shall commence upon the effective date herein and continue in full force and effect until termination in accordance with its provisions. Professional and City herein recognize that the continuation of any agreement after the close of any given fiscal year of the City of Plano, which fiscal year ends on September 30th of each year, shall be subject to Plano City Council approval. In the event that the Plano City Council does not approve the appropriation of funds for this agreement, the Agreement shall terminate at the end of the fiscal year for which funds were appropriated and the parties shall have no further obligations hereunder.

3.03 Maximum Compensation upon Termination. In the event of termination by City with or without cause and subject to the terms listed in paragraph 3.02 herein, the Professional shall be compensated only for actual expenses and fees incurred by Professional in providing those services acceptable to City which are within the scope of work under this Agreement to date of notice of termination. Expenses do not include overhead such as utilities, rent, insurance and shall not exceed the total amount due under this Agreement.

IV. OWNERSHIP OF DOCUMENTS

All information and other data given to, prepared or assembled by Professional under this Agreement, and other related items, shall become the sole property of City and shall be delivered to City without restriction on future use subject to any applicable laws regarding the privacy of health-related information, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Upon termination of this Agreement, Professional shall transfer, assign and make available to City, or its representatives, all property and materials in its possession or control belonging to the City and paid for by the City. In the event that the material, which is the subject of this Agreement, is copyrightable subject matter, Professional and City agree that for the purposes of this order the material shall be a work made for hire and the property of the City. In the event that the material which is the subject of this Agreement is not copyrightable subject matter, or for any reason is determined not to be a work made for hire, then and in such event Professional hereby assigns all right, title and interest to said material to City. Any use by Professional of the information developed hereunder, whether for publication or for work with other clients, must receive prior written permission from City.

V. SUCCESSORS AND ASSIGNS/AGENTS OR ASSISTANTS

Professional agrees that neither this Agreement nor the work to be performed hereunder will be assigned, sublet, subcontract or transfer any interest in this Agreement without the prior written consent of the City. Professional 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 Professional from its full obligations

to the City as provided by this Agreement. This agreement shall be binding on the administrators, legal representatives, successors, and assigns of the respective parties.

Subject to the forgoing, to the extent reasonably necessary for the Professional to perform its duties hereunder, Professional may engage, or retain the services of such other persons or corporations to aid or assist it in the proper performance of its duties. Professional shall be compensated only for actual expenses and fees for supplies and materials incurred by Professional in providing services to the City which are within the scope of work under this Agreement. The cost of the services of such agents or assistants shall be borne by Professional at its sole cost and expense.

VI. FACILITIES

Professional shall be responsible for providing all necessary facilities, personnel, equipment, materials or other items necessary to perform the services required of it hereunder; provided, however, that City shall cooperate with Professional by providing space it has available for meetings, conferences, and presentations.

VII. INSURANCE AND CERTIFICATES OF INSURANCE

Professional shall not start work under this Agreement until Professional has obtained at Professional's expense all of the insurance required hereunder and such insurance has been approved by the City. Any subcontractor of the Professional shall be required to carry the same insurance as the Professional.

Professional Errors and Omissions insurance, which will pay for injuries arising out of errors or omissions in the rendering, or failure to render, professional services under this contract, for the term of the contract and up to two (2) years after the contract is terminated with limits of \$500,000 per occurrence/aggregate.

City will be provided with a ten (10) day notice of material change or cancellation of any of the insurance policies applicable to this contract. The City prefers that all insurance companies be rated B+ or better by AM Best or Standard & Poor's Rating Services. The above referenced Certificates of Insurance shall be attached hereto as **Exhibit "A"** and incorporated herein.

VIII. INDEMNIFICATION

PROFESSIONAL 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 PROFESSIONAL'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

PROFESSIONAL, 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 PROFESSIONAL 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 CONTRACTORS. 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.

PROFESSIONAL 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 PROFESSIONAL'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF PROFESSIONAL'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. PROFESSIONAL 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 PROFESSIONAL FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND PROFESSIONAL SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY.

IX.
INDEPENDENT CONTRACTOR

Professional covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that it 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 respondent superior shall not apply as between City and Professional its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Professional.

X.
CONTRACT TERMINATION

The parties agree that City shall have the right to terminate this Agreement with or without cause and without prejudice to any other remedy it may be entitled to at law, in equity, or otherwise under this Contract upon thirty (30) days written notice to Professional with the understanding that all services being provided by Professional shall cease upon the date such notice is received.

City reserves the right to terminate this contract immediately upon breach of any term or provision of this Contract by professional; or if at any time during the term of this contract, Professional shall fail to commence the work in accordance with the provisions of the Contract or fail to diligently provide services in an efficient, timely and careful manner and in strict accordance with the provisions of this Contract, or fail to use an adequate number or quality of personnel or equipment to complete the work or fail to perform any of its obligations under this Contract, then City shall the right, if Professional shall not cure any such default after thirty (30) days written notice thereof, to terminate this contract and complete the work in any manner it deems desirable, including engaging the services of other parties thereof. Any such act by City shall not be deemed a waiver of any other right or remedy of City.

If after exercising any remedy provided herein, the cost to City of the performance of the balance of the work is in excess of that part of the contract sum which has not therefore been paid to Professional hereunder, Professional shall be liable for an shall reimburse City for such excess.

XI.
COMPLIANCE WITH APPLICABLE LAWS

Professional shall at all times observe and comply with all Federal, State, and local laws, ordinances and regulations including all amendments and revisions thereto, which in any manner affect Professional's work, and **SHALL INDEMNIFY AND SAVE HARMLESS CITY AGAINST ANY CLAIMS RELATED TO OR ARISING FROM THE VIOLATION OF ANY SUCH LAWS, ORDINANCES AND REGULATIONS WHETHER BY PROFESSIONAL, ITS EMPLOYEES, OFFICERS, AGENTS, SUBCONTRACTORS, OR REPRESENTATIVES.** If Professional observes that the work is at variance, Professional shall promptly notify City in writing.

XII.
PROHIBITED INTEREST

Professional 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 Professional shall execute the affidavit shown in **Exhibit "B"**. Professional understands and agrees that the existence of a prohibited interest during the term of this Agreement will render the Agreement voidable.

XIII.
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.

XIV.
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. Agreement Interpretation:

This is a negotiated Agreement, should any part be in dispute, the parties agree that the terms of 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. 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.

SIGNED on the date indicated below.

ALLAN R. deVILLENEUVE, M.D.

Date: _____

BY: _____
Allan R. deVilleneuve, M.D.
PROFESSIONAL

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 _____ §

This instrument was acknowledged before me on the _____ day of _____, 2012, by **ALLAN R. deVILLENEUVE, M.D.** on behalf on said individual.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the ____ day of _____, 2012 by **BRUCE D. GLASSCOCK**, City Manager of the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, on behalf of said corporation.

Notary Public, State of Texas

INSURANCE REQUIREMENTS

1.0 General Provisions

- 1.1 The Contractor shall obtain and maintain the minimum insurance coverage set forth in this section. By requiring such minimum insurance, City shall not be deemed or construed to have assessed the risk that may or may not be applicable to the Contractor. The Contractor shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. The Contractor is not relieved of any liability or other obligation assumed or pursuant to the Contract by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. The insurance requirements listed below do not replace any warranty or surety (performance, payment, or maintenance) bonds if required by preceding or subsequent sections of this contract.
- 1.2 Contractor shall cause each subcontractor employed by Contractor to purchase and maintain insurance of the type specified herein or cover such subcontractors under its insurance coverage.
- 1.3 The Contractor agrees that the insurance requirements specified in this section do not reduce the liability Contractor has assumed in any indemnification/hold harmless section of this contract.
- 1.4 City reserves the right to approve the security of the insurance coverage provided pursuant to this section by insurers including terms, conditions and the Certificate of Insurance. Failure of the Contractor to fully comply with requirements of this section during the term of the contract will be considered a material breach of contract and will be cause for immediate termination of the contract at the option of City.
- 1.5 Insurance coverage required by this section shall:
- 1.5.1 Be on a primary basis, non-contributory with any other insurance coverage and/or self-insurance carried by City
 - 1.5.2 Be with an insurer possessing an A-VII. A. M. Best Rating
- 1.6 **Subcontractor Insurance.** If the contractor utilizes the services of another company or subcontractor, affiliate or non-affiliate, in order to fulfill the requirements covered under this Agreement, then those other companies or subcontractors must comply with the insurance provisions within this Agreement.

2.0 Minimum Insurance Coverage & Limits

2.1 Professional Liability-Errors and Omissions. Contractor shall maintain commercial professional liability insurance covering errors, including omissions, due to performance or failure to perform professional services under this contract.

2.1.1 Limits of Insurance

- 2.1.1.1 \$200,000 Per Claim
- 2.1.1.2 \$600,000 Aggregate

2.2 If coverage required by this section is written on a claims-made basis, the Contractor warrants that any applicable retroactive date under the policy precedes the effective date of this Agreement; and that continuous coverage will be maintained or an extended reporting period will be exercised for a period of one (1) year beginning from the time that work under the Agreement is completed.

2.3 Contractor may obtain coverage for the above required sections in any combination of mono-line policies and/or endorsements to their General Liability policy.

3.0 Evidence of Insurance

3.1 Prior to commencement of work, and thereafter upon renewal or replacement of coverage required by this section, Contractor shall furnish City a certificate(s) of insurance, including for subcontractors cited in Section 1.6, executed by a duly authorized representative of each insurer, showing compliance with this section. **Contractor shall furnish copies of all endorsement to insurance policies as required by each section herein to the City.**

3.2 Failure of City to demand such certificate(s) or other evidence of full compliance with these insurance requirements or failure of City to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

3.3 City shall have the right, but not the obligation, of prohibiting Contractor or any subcontractor from entering the project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the City.

3.4 Failure to maintain required insurance may result in termination of this contract at sole option of the City.

3.5 The Contractor shall furnish a Certificate of Insurance (COI) evidencing insurance coverage required by this section ten (10) business days preceding commencement of contracted service(s). The COI shall:

- 3.5.1 List each insurers' NAIC Number or FEIN
- 3.5.2 List **contract number, project name**/number, name of event, location (building name, building address, etc.), date(s) of event or service being performed
- 3.5.3 State insurance is on a primary basis and non-contributory with any insurance/or self-insurance carried by City
- 3.5.4 Specifically list reference to all endorsements required herein
- 3.5.5 List the specific number of days cancellation provided pursuant to policy language for notice of cancellation on certificate
- 3.5.6 List City of Plano, Risk Management Division, 7501 A Independence Parkway, Plano, Texas, 75025 in the Certificate Holder Section

AFFIDAVIT OF NO PROHIBITED INTEREST

I, the undersigned declare that I am authorized to make this statement on behalf of **ALLAN R. deVILLENEUVE, M.D.** and I have made a reasonable inquiry and, to the best of my knowledge, no person or officer of **ALLAN R. deVILLENEUVE, M.D.**, 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.

ALLAN R. deVILLENEUVE, M.D.

By: _____
Signature

ALLAN R. deVILLENEUVE, M.D.
Print Name

Title

Date

STATE OF TEXAS §
 §
COUNTY OF _____ §

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2012.

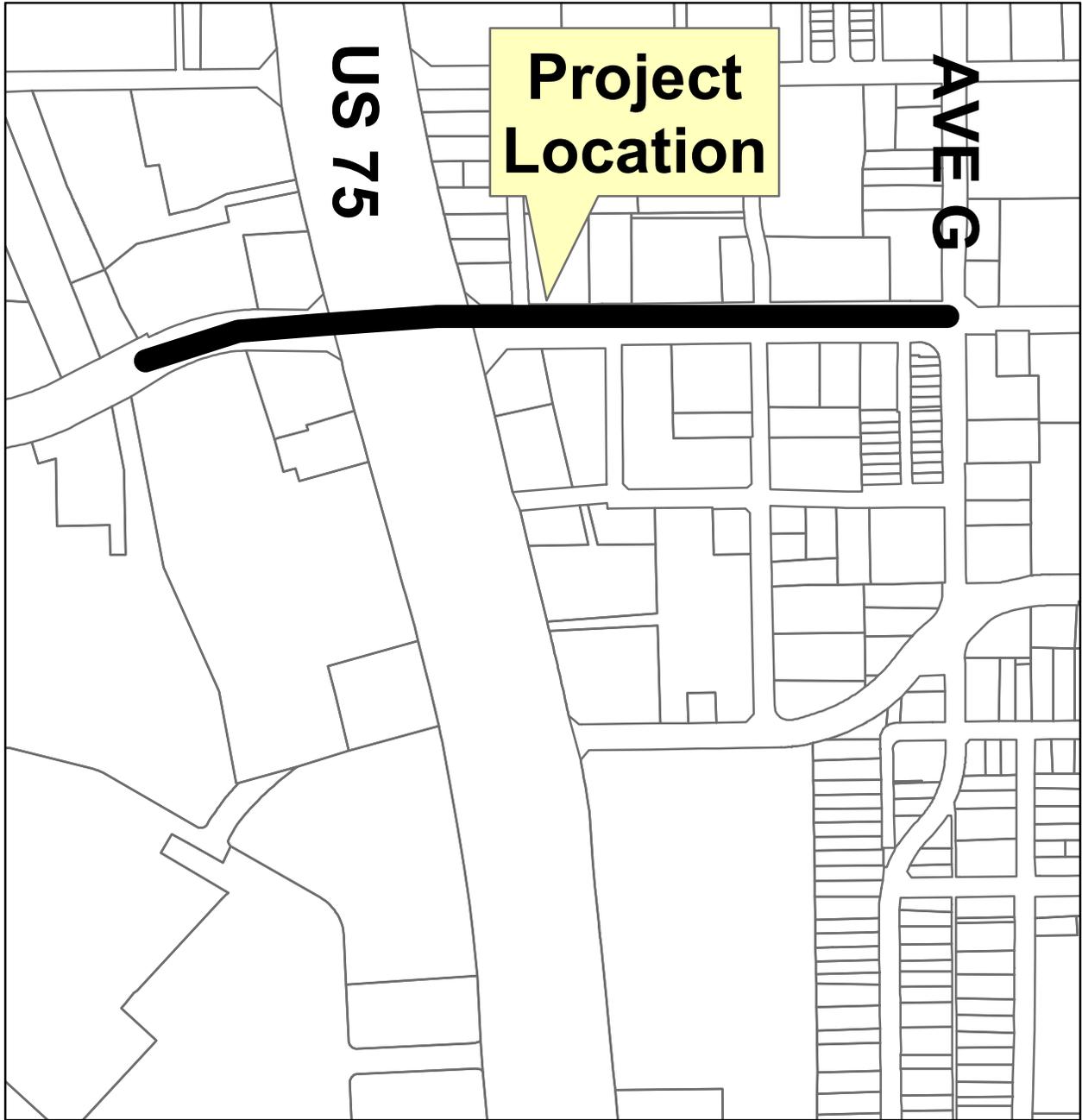
Notary Public, State of Texas



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:		09/24/12		
Department:		Public Works		
Department Head:		Gerald P. Cosgrove		
Agenda Coordinator (include phone #):			Kathleen Schonke (7198)	
			Project No. 5623	
CAPTION				
<p>A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Advance Funding Agreement for project using funds held in the State Highway 121 Sub-account – City Street Improvements – Off System Project; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.</p>				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input checked="" type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: 2011-12	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	1,160,000	0	1,160,000
BALANCE	0	1,160,000	0	1,160,000
FUND(S): STREET IMPROVEMENT CIP				
<p>COMMENTS: This item allows the City to approve the terms and conditions of an Advance Funding Agreement with TxDOT. If approved, the City will receive \$1,160,000 from the State Highway 121 project for the 15th Street – G Avenue to Chisholm Trail project.</p> <p>STRATEGIC PLAN GOAL: An Advance Funding Agreement with TxDOT relates to the City's Goal of Financially Strong City with Service Excellence.</p>				
SUMMARY OF ITEM				
<p>The attached resolution authorizes the City Manager to execute an Advance Funding Agreement with TxDOT to provide funding from the SH 121 project for 15th Street from G Avenue to Chisholm Trail. TxDOT will provide up to \$1,160,000 or 80% of the construction cost of the project for bicycle and pedestrian improvements. The City will be responsible for the remaining 20%.</p> <p>Later this year, an amendment to this contract will be presented to City Council to provide up to \$900,000 for right of way and utility relocation cost and modify the original allocation to include the cost of the street improvements.</p>				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Resolution			N/A	
Location Map				

15TH STREET AVENUE G TO CHISHOLM TRAIL



CITY OF PLANO



A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Advance Funding Agreement for project using funds held in the State Highway 121 Sub-account – City Street Improvements – Off System Project; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

WHEREAS, the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, authorizes governmental entities to contract with each other to perform government functions and services under the terms thereof; and

WHEREAS, the City Council has been presented a proposed Advance Funding Agreement for a project using funds held in the State Highway 121 Sub-account – City Street Improvements – Off System Project, a substantial copy of which is attached hereto as Exhibit “A” and incorporated herein by reference (hereafter called “agreement”); and

WHEREAS, the project to be funded in the agreement is 15th Street from Avenue G to Chisholm Trail; 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 the Agreement 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 interest 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 24th day of September, 2012.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

CSJ: 0918-24-144

Project: 15th Street Avenue G to Chisholm Trail

District: 18-Dallas

Code Chart #: 33100

Funding Category: RTR (SH 121 Subaccount)

STATE OF TEXAS §

COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT
FOR PROJECT USING FUNDS HELD IN THE
STATE HIGHWAY 121 SUBACCOUNT**

City Street Improvements

Off-System Project

THIS AGREEMENT (the Agreement) is between the State of Texas, acting by and through the Texas Department of Transportation (the State), and the City of Plano (Local Government), collectively, the “Parties.”

WITNESSETH

WHEREAS, the State has received money from the North Texas Tollway Authority for the right to develop, finance, design, construct, operate, and maintain the SH 121 toll project from Business SH 121 in Denton County to US 75 in Collin County (“SH 121 payments”); and

WHEREAS, pursuant to Transportation Code, 228.006 the State shall authorize the use of surplus revenue of a toll project for a transportation project, highway project, or air quality project within the district of the Texas Department of Transportation in which any part of the toll project is located; pursuant to Transportation Code, §228.012 the State has created a separate subaccount in the state highway fund to hold such money (SH 121 Subaccount), and the State shall hold such money in trust for the benefit of the region in which a project is located, and may assign the responsibility for allocating money in the subaccount to a metropolitan planning organization (MPO); and

WHEREAS, in Minute Order 110727, dated October 26, 2006, the Texas Transportation Commission (the “Commission”) approved a memorandum of understanding (MOU) with the Regional Transportation Council (RTC), which is the transportation policy council of the North Central Texas Council of Governments (NCTCOG) and a federally designated MPO, concerning in part the administration, sharing, and use of surplus toll revenue in the region; under the MOU the RTC shall select projects to be financed using surplus revenue from a toll project, subject to Commission concurrence; and

WHEREAS, the Local Government has requested money from the SH 121 Subaccount for: to construct bicycle and pedestrian improvements along 15th Street from Avenue G to Chisholm Trail in the City of Plano, (CSJ 0918-24-144) (Project); the RTC has selected the Project to be funded from the SH 121 Subaccount; and the Commission concurred in

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the selection and authorized the expenditure of money in Minute Order 112844, dated September 29, 2011;

WHEREAS, the Local Government is a political subdivision and governmental entity by statutory definition; and

WHEREAS, Government Code, Chapter 791, and Transportation Code, §201.209 authorize the State to contract with municipalities and political subdivisions to perform governmental functions and services; and

WHEREAS, NCTCOG and the RTC should have authority to assist the Local Government's implementation of financial reporting and environmental review related to a transportation project funded by the State using money from the SH 121 Subaccount.

NOW, THEREFORE, the Parties agree as follows:

AGREEMENT

Article 1. Time Period Covered

This Agreement becomes effective when signed by the last party whose signing makes the agreement fully executed, and the State and the Local Government will consider it to be in full force and effect until the Project described herein has been completed and accepted by all parties or unless terminated, as hereinafter provided.

Article 2. Project Funding

The State will pay money to the Local Government from the SH 121 Subaccount in the amounts specified in Attachment A, Payment Provision and Work Responsibilities. Except as provided in the next succeeding sentence, the payments will begin no later than upon the later of the following: (1) fifteen days after the Legislative Budget Board and the Governor each approve the expenditure, in accordance with Rider 18 of the Texas Department of Transportation bill pattern in House Bill 1, 82nd Legislature; and (2) thirty days after execution of this Agreement. If Attachment A shows that the RTC has allocated payments to the Local Government for a certain expenditure (e.g. construction) for the Project in a certain fiscal year, then the State will make the payment from the SH 121 Subaccount to the Local Government for such expenditure no later than 30 days after the beginning of the designated Fiscal Year. A Fiscal Year begins on September 1 (for example, the 2012 Fiscal Year began September 1, 2011).

Article 3. Separate Account; Interest

All funds paid to the Local Government shall be deposited into a separate account, and interest earned on the funds shall be kept in the account. Interest earned may be used only for the purposes specified in Attachment A, Payment Provision and Work Responsibilities, and only after obtaining the written approval of the RTC. The Local Government's use of interest earned will not count towards the 20 percent local match requirement set forth in this Agreement.

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Article 4. Shortfalls in Funding

The Local Government shall apply all funds to the scope of work of the Projects described in Attachment A, Payment Provisions and Work Responsibilities, and to none other. All cost overruns are the responsibility of the Local Government. However, should the funds be insufficient to complete the work contemplated by the Project, the Local Government may make further request to the RTC and the State for additional funds from the SH 121 Subaccount. Funds may be increased only through an amendment of this Agreement. If the SH 121 Subaccount does not contain sufficient funds to cover the balance necessary to complete the Project, or if the RTC or the Commission decline the request for any other reason, then the Local Government shall be responsible for any shortfall.

Article 5. Return of Project Funding

The Local Government shall reimburse the State for any funds paid under this Agreement that are not expended in accordance with the requirements of this Agreement. Upon completion of the Project, the Local Government will issue a signed "Notification of Completion" document to the State acknowledging the Project's completion. If at Project's end, or upon termination of this Agreement, excess SH 121 Subaccount funds exist, including interest earned, such funds shall be returned to the State within 30 days. Except for funds the Local Government has already expended in accordance with the Agreement, the Local Government shall return to the State the funds paid under this Agreement together with any interest earned on the funds if the Project is not completed within 10 years of execution of the Agreement.

Article 6. Local Match

The Local Government shall be responsible for the required 20 percent local match as described in Attachment A, Payment Provisions and Work Responsibilities. The costs incurred by the Local Government prior to the execution of this Agreement will count towards the 20 percent local match requirement provided such costs are for RTC-approved phases as shown in Attachment A. At the end of each Fiscal Year the Local Government's cumulative expenditures of local match funds must be no less than 20 percent of the cumulative SH 121 Funds received by the Local Government up to that date under the Agreement, and must be for the uses approved for payments of SH 121 Funds up to that date as specified in Attachment A, Payment Provision and Work Responsibilities.

Article 7. Procurement and Contracting Process

The State may review the Local Government's procurement of professional services for engineering, surveying, and right of way acquisition, letting of construction contracts, and conduct of construction management and inspection. The Local Government shall certify compliance with state law and regulations, and with local laws, regulations, rules, policies, and procedures. The Local Government shall maintain a copy of the certification in the Project's files.

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Article 8. Design Standards and Construction Specifications

The Local Government shall implement the Project using the Local Government's established design standards, construction specifications, procurement processes, and construction management and inspection procedures.

Article 9. Right of Way

Except for right of way owned by the State or to be acquired by the State according to the plans of the Project as approved by the State, the Local Government shall acquire all necessary right of way needed for the Project. Right of way acquisition is an eligible cost for reimbursement provided such cost is an RTC-approved phase as shown in Attachment A.

Article 10. Utilities

The Local Government shall be responsible for the adjustment, removal, or relocation of utility facilities in accordance with State laws and regulations and local laws, regulations, rules, policies, and procedures applicable to the Local Government. The Local Government must obtain advance approval for any variance from established procedures. The RTC-approved costs for utilities as shown in Attachment A, if any, shall be used to adjust, remove, or relocate utility facilities.

Article 11. Compliance with Laws; Environmental Review and Public Involvement

The Local Government shall ensure that the Project complies with all environmental review and public involvement requirements applicable to the Local Government under state and federal law in connection with the Project including, but not limited to, 43 T.A.C. Section 2.41 et seq. Each Party shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts, administrative bodies or tribunals affecting the performance of this Agreement as applicable to it. When required, the Local Government shall furnish the State with satisfactory proof of compliance. The Local Government shall obtain the opinion of legal counsel showing the Local Government's environmental review and public involvement for the Project to comply with state law and regulations, and with local laws, regulations, rules, policies, and procedures applicable to the Local Government. The Local Government shall maintain a copy of the certification in the project files.

Article 12. Compliance with Texas Accessibility Standards and ADA

The Local Government shall ensure that the plans for and the construction of the Project is in compliance with the Texas Accessibility Standards (TAS) issued by the Texas Department of Licensing and Regulation, under the Architectural Barriers Act, Article 9102, Texas Civil Statutes. The TAS establishes minimum accessibility requirements to be consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336).

Article 13. Work Outside the Project Site

The Local Government shall provide both the necessary right of way and any other property interests needed for the Project.

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Article 14. Insurance

If this agreement authorizes the Local Government or its contractor to perform any work on State right of way, before beginning work the entity performing the work shall provide the State with a fully executed copy of the State's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on the State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and the State may recover damages and all costs of completing the work.

Article 15. Audit

Within 120 days of completion of the Project, the Local Government shall perform an audit of the costs of the Project. Any funds due to the State will be promptly paid by the Local Government.

Article 16. Maintenance

The Local Government shall be responsible for maintenance of the Project.

Article 17. Responsibilities of the Parties

- a. The State and the Local Government agree that neither party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds, as well as the acts and deeds of its contractors, employees, representatives, and agents.
- b. To the extent permitted by law, the Local Government agrees to indemnify and save harmless the State, its agents and employees from all suits, actions or claims and from all liability and damages resulting from any and all injuries or damages sustained by any person or property in consequence of any neglect, error, or omission in the performance of the design, construction, maintenance or operation of the Project by the Local Government, its contractor(s), subcontractor(s), agents and employees, and from any claims or amounts arising or recovered under the "Workers' Compensation laws"; the Texas Tort Claims Act, Chapter 101, Texas Civil Practice and Remedies Code; or any other applicable laws or regulations, all as from time to time may be amended.
- c. The Parties expressly agree that the Project is not a joint venture or enterprise. However, if a court should find that the Parties are engaged in a joint venture or enterprise, then the Local Government, to the extent provided by law, agrees to pay any liability adjudicated against the State for acts and deeds of the Local Government, its employees or agents during the performance of the Project.
- d. To the extent provided by law, the Local Government shall also indemnify and save harmless the State from any and all expense, including, but not limited to, attorney's fees which may be incurred by the State in litigation or otherwise resisting said claim or liabilities which may be imposed on the State as a result of such activities by the Local Government, its agents, or employees.

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Article 18. Notices

All notices to either party by the other required under this Agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid or sent by electronic mail, (electronic notice being permitted to the extent permitted by law but only after a separate written consent of the parties), addressed to such party at the following addresses:

Local Government:	State:
City of Plano Attn: City Manager 1520 Avenue K Plano, Texas 75086-0358	Texas Department of Transportation Attn: Director of Contract Services 125 East 11 th Street Austin, Texas 78701

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that such notices shall be delivered personally or by certified U.S. mail and such request shall be honored and carried out by the other party.

Article 19. Right of Access

If the Local Government is the owner or otherwise controls access to any part of site of the Project, the Local Government shall permit the State or its authorized representative access to the site to perform any activities authorized in this Agreement.

Article 20. Project Documents

Upon completion or termination of this Agreement, all documents prepared by the State shall remain the property of the State. All data prepared under this Agreement by the Local Government shall be made available to the State without restriction or limitation on their further use. All documents produced or approved or otherwise created by the Local Government shall be transmitted to the State in the form of photocopy reproduction as required by the State. The originals shall remain the property of the Local Government. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

Article 21. Inspection of Books and Records

The Local Government shall keep a complete and accurate record to document the performance of the work on the Project and to expedite any audit that might be conducted. The Local Government shall maintain records sufficient to document that funds provided under the Agreement were expended only for eligible costs that were incurred in accordance with all applicable state and local laws, rules, policies, and procedures, and in accordance with all applicable provisions of this Agreement. The Local Government shall maintain all books, documents, papers, accounting records and other documentation relating to costs incurred under this Agreement and shall make such materials available to the State for review and inspection during the contract period and for four (4) years from

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the date of completion of work defined under this Agreement or until any pending litigation or claims are resolved, whichever is later. Additionally, the State shall have access to all governmental records that are directly applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

Article 22. NCTCOG

Acceptance of funds directly under the Agreement or indirectly through a subcontract under the Agreement acts as acceptance of the authority of NCTCOG and RTC to assist the Local Government's implementation of financial reporting and environmental review concerning the Project. The Local Government shall provide to NCTCOG on a monthly basis a report of expenses, including the Local Government's expenditure of local match funds. The report shall list separately the expenditures by Project's phase as shown in Attachment A, including but not limited to engineering, environmental review, right of way acquisition, and construction. The report shall also describe interest earned on money from the SH 121 Subaccount, including the interest rate, interest earned during the month, and cumulative interest earned. The report shall further describe the status of developing the Project. Not less than 60 days before the environmental review document is submitted to the governing body of the Local Government for final approval, the Local Government shall submit the document to NCTCOG for review and comment. NCTCOG may provide the Local Government technical assistance on the environmental review of the Project as mutually agreed between NCTCOG and the Local Government.

Article 23. State Auditor

The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under the Agreement or indirectly through a subcontract under the Agreement. Acceptance of funds directly under the Agreement or indirectly through a subcontract under this Agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

Article 24. Amendments

By mutual written consent of the Parties, this contract may be amended prior to its expiration.

Article 25. Termination

The Agreement may be terminated in the following manner:

- by mutual written agreement and consent of both parties;
- by either party upon the failure of the other party to fulfill the obligations set forth herein, after a 45 day period to cure after receiving written notice of non-compliance;
- by the State if the Local Government does not let the construction contract for the Project within one year after the State first provides 121 Funds for construction as shown in Attachment A, Payment Provision and Work Responsibilities;

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- by the State if the Local Government does not complete the Project within ten years after the effective date of the Agreement;

Article 26. Work by Debarred Person

The Local Government shall not contract with any person that is suspended, debarred, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal agency or that is debarred or suspended by the State.

Article 27. Sole Agreement

The Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the Agreement's subject matter.

Article 28. Successors and Assigns

The State and the Local Government each binds itself, its successors, executors, assigns, and administrators to the other party to this agreement and to the successors, executors, assigns, and administrators of such other party in respect to all covenants of this agreement. The Local Government may assign its interests under the Agreement only with the written approval of the State.

Article 29. Remedies

The Agreement shall not be considered as specifying an exclusive remedy for a breach of the Agreement. All remedies existing at law or in equity are available to either Party and are cumulative.

Article 30. Legal Construction

If a provision of the Agreement shall be held invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other provision, and the Agreement shall be construed as if it did not contain the invalid, illegal or unenforceable provision.

Article 31. Signatory Warranty

The signatories to this agreement warrant that each has the authority to enter into this agreement on behalf of the party they represent.

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IN WITNESS WHEREOF, THE STATE AND THE LOCAL GOVERNMENT have executed duplicate counterparts to effectuate this Agreement.

THE STATE OF TEXAS

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By _____ Date _____
Janice Mullenix
Director, Contract Services Section, General Services Division

THE LOCAL GOVERNMENT – CITY OF PLANO

By: _____
Bruce Glasscock
City Manager

Date: _____

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ATTACHMENT A

Payment Provision and Work Responsibilities

For CSJ# **0918-24-144**, the State will pay **\$1,160,000** from the SH 121 Subaccount for: to construct bicycle and pedestrian improvements along 15th Street from Avenue G to Chisholm Trail in the City of Plano.

In accordance with the allocation of funds approved by the RTC, and concurred with by the Texas Transportation Commission, the State will apply SH 121 Subaccount funds for the following work in the following Fiscal Years:

PROJECT COSTS						
Description	Fiscal Year	Total Estimate Cost	Regional Toll Revenue (RTR) SH 121 Subaccount Funds Participation		Local Government Participation	
Construction	2013	\$1,450,000	80%	\$1,160,000	20%	\$290,000
TOTAL		\$1,450,000		\$1,160,000		\$290,000

The Local Government required Local Match is \$290,000

Upon completion of the Project, the Local Government will issue a signed "Notification of Completion" document to the State. The notice shall certify that the Project has been completed, all necessary inspections have been conducted, and the Project is open to traffic.



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		September 24, 2012		
Department:		Planning		
Department Head		Phyllis Jarrell		
Agenda Coordinator (include phone #): Karen Suiter x7566				
CAPTION				
<p>A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of Agreements between the City of Plano and various community organizations, providing for the expenditure of Buffington Community Services funds in the amount of \$263,500 for the provision of various community services; authorizing its execution by the City Manager or his authorized designee; and providing the effective date.</p>				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2012-2013	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	263,500	0	263,500
Encumbered/Expended Amount	0	0	0	0
This Item	0	-263,500	0	-263,500
BALANCE	0	0	0	0
FUND(S): GENERAL FUND				
<p>COMMENTS: Funds are included in the 2012-13 Budget for the Buffington Community Services Grants. STRATEGIC PLAN GOAL: Community Services grants relates to the City's goal of Partnering for Community Benefit.</p>				
SUMMARY OF ITEM				
<p>This Resolution establishes agreements for BCSG funding with various agencies. Approval of the resolution will enable the agencies to begin using BCSG grant funds effective October 1, 2012. The 2012 funding amounts and recipients were considered by City Council at the August 8, 2012 Work Session.</p>				
List of Supporting Documents: Resolution, Sample Agreement			Other Departments, Boards, Commissions or Agencies Community Relations Commission	

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of Agreements between the City of Plano and various community organizations, providing for the expenditure of Buffington Community Services funds in the amount of \$263,500 for the provision of various community services; authorizing its execution by the City Manager or his authorized designee; and providing the effective date.

WHEREAS, the City Council has been presented proposed Agreements by and between the City of Plano and the Assistance League of Greater Collin County, CASA of Collin County, Children's Advocacy Center of Collin County, City House, Inc., Collin County Committee on Aging, Dental Health Programs dba Community Dental Care, Family Outreach Richardson-Plano, Inc., Health Services of North Texas, Inc., Hope's Door, Jewish Family Service of Dallas, Journey of Hope Grief Support Center, Inc., Plano Children's Medical Clinic, The Samaritan Inn, and The Turning Point Rape Crisis Center, and a sample copy of which is attached hereto as "Exhibit A", which establish the terms and conditions of funding; and

WHEREAS, the City has determined that it is in the best interests of the citizens of Plano that the Buffington Community Services funds be utilized for the purposes for which they were granted to each of the entities listed herein, and that each such purpose is a valid public purpose; and

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

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

Section I. - The terms and conditions of the Agreements, 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 Agreements 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 Agreements.

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

**DULY PASSED AND APPROVED THIS THE 24TH DAY OF SEPTEMBER,
2012.**

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

Approved as to form:

Diane C. Wetherbee, CITY ATTORNEY



**Funding Agreement Between the City of Plano
and
Subrecipient Name**

Buffington Community Services Grant 2012-2013

This Agreement, entered this 1st day of October, 2012, by and between the City of Plano (herein called the “City”) and **Subrecipient name** (herein called “Subrecipient”).

WHEREAS, the City has determined that funding programs intended to achieve Consolidated Plan goals and objectives constitutes a valid public purpose;

WHEREAS, the City has designated Buffington Community Service (“BCSG”) monies to carry out such goals and objectives;

WHEREAS, the City is in need of assistance to further these objectives and it is the desire of the Subrecipient to engage in the performance of certain activities related to the City of Plano’s Consolidated Plan; and

WHEREAS, it is in the best interests of the citizens of Plano that the Buffington Community Services funds be utilized for the purposes listed herein,

NOW THEREFORE, the parties hereto mutually agree as follows:

I. SCOPE OF SERVICES

A. Objectives

The Subrecipient certifies that the activities carried out with funds provided under this Agreement will meet the City of Plano’s objectives and goals to provide community services to its citizens.

The Agreement consists of this written agreement and the following items which are attached hereto and incorporated herein by reference:

- (a) Grant Budget (**Exhibit “A”**);
- (b) Current Year Consolidated Grant Application, Section 2, Program To Be Funded (**Exhibit “B”**);
- (c) Insurance Requirements (**Exhibit “C”**);
- (d) Affidavit of No Prohibited Interest (**Exhibit “D”**); and
- (e) Application for Use of City Logo (**Exhibit “E”**)

These documents make up the Agreement Documents and what is called for by one shall be as binding as if called for by all. In the event of an inconsistency or conflict in any of the provisions of the Agreement Documents, the inconsistency or conflict shall be resolved by

giving precedence first to this written agreement then to the Agreement Documents in the order in which they are listed above. These documents shall be referred to collectively as the "Agreement Documents."

B. Program Delivery Activities

Subrecipient will carry out activities as described in Section 2 of their Consolidated Grant Application, and provided in **Exhibit B** attached hereto and incorporated herein by reference. Modifications to the activities described in **Exhibit B** prior to or during the term of the contract that impact the quality, quantity or availability of services to Plano clients are acceptable only as agreed by the City, per the Community Services Manager's written approval.

C. Levels of Accomplishment

The Subrecipient agrees to provide the following levels of program service:

<u>Activity</u>	<u>Total Persons Families Households/Year</u>
Activity 1	X
Activity 2 (if needed)	X

D. Conditions of Use

Subrecipient shall use any and all funds furnished by City for purposes set forth in this Agreement and for no other purpose. The Subrecipient further agrees to utilize funds available under this Agreement rather than supplanting otherwise available funds. Subrecipient agrees the expenditure of the funds shall be completed on or before September 30, 2013. If, during the term of this Agreement, Subrecipient wishes to utilize funds for purposes other than the activities noted above, such change will be allowed only if the proposed change is approved by the City Manager or his/her designee. No expenditure of funds in performance any proposed change is permitted until written approval is executed by the City Manager or his/her designee. The following activities are not acceptable expenditures under this Agreement and funds shall not be applied to: social functions, parties, receptions, refreshments or beverages; licensing fees of any kind; underwriting, investments, stocks, bonds, or other financial obligation; and interest and/or depreciation on loans, fines, penalties, or costs of litigation.

II. TIME OF PERFORMANCE

Services of the Subrecipient shall start on the 1st day of October, 2012, and terminate on the 30th day of September 30, 2013.

III. BUDGET

See **Exhibit A** attached hereto and incorporated herein by reference for line item budget. In addition, the City may require a more detailed budget breakdown than the one contained herein, and the Subrecipient shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the City. Any amendments to **Exhibit A** must be approved in writing by the Community Services Manager before the budget revision can be effective and

cannot change the scope of the project funded under this contract.

IV. PAYMENT

It is expressly agreed and understood that the total amount to be paid by the City under this contract shall not exceed \$**(amount)** for the payment of eligible expenses and shall be made against the line item budgets specified in **Exhibit A** herein and in accordance with performance.

V. NOTICES

Communication and details concerning this contract shall be directed to the following contract representatives, or their designee:

<u>City</u>	<u>Subrecipient</u>
Christina Day, Manager	Name
Community Services	Title
City of Plano	Organization
1520 K Avenue	Address
Plano, Texas 75074	City, State ZIP
972-941-7151	Phone
chrisd@plano.gov	E-mail

VI. GENERAL CONDITIONS

A. General Compliance

The Subrecipient agrees to comply with all other applicable Federal, State and local laws, regulations, and policies governing the funds provided under this contract, including but not limited to the City of Plano’s guidelines and restrictions for the use of BCSG funds.

The Subrecipient further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

B. Independent Contractor

Nothing contained in the Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Subrecipient shall at all times remain an “independent contractor” with respect to the services to be performed under this Agreement. The Grantee shall be exempt from all unemployment compensation, FICA, retirement, life and/or medical insurance and worker’s compensation insurance, as the Subrecipient.

C. Insurance

Subrecipient agrees to maintain during the term of this Agreement, or any extension thereof, insurance in the type and amounts as shown in **Exhibit C** attached hereto and incorporated herein by reference. Such insurance shall be evidenced by certificates, a copy of which shall be

provided to the Community Development Coordinator prior to execution of this Agreement. Insurance provided by Agency is subject to approval by City.

D. Indemnification

THE CONTRACTOR 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 CONTRACTOR'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 CONTRACTOR, 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 CONTRACTOR 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 IT OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS. 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.

CONTRACTOR 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 CONTRACTOR'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF CONTRACTOR'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. CONTRACTOR SHALL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT INDEMNIFICATION UNDER THIS AGREEMENT. IF CONTRACTOR FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND CONTRACTOR SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY.

E. Grantee Recognition

The Subrecipient shall insure recognition of the role of the City in providing Buffington Community Service Grant resources for this contract. All activities, facilities, and items utilized pursuant to this contract shall be prominently labeled as to funding source. In addition, the Subrecipient will include a reference to the support provided herein in all publications made possible with funds made available under this contract. To this end, Subrecipient is authorized to utilize the City's logo through the duration of this contract, per Exhibit E attached hereto and incorporated herein by reference, once approved by the Public Information Officer of the City of Plano by receipt of an approval form.

F. Amendments

The City and Subrecipient may amend this Agreement at any time, provided that such amendments make specific reference to this Agreement and are executed in writing, signed by a duly authorized representative of both organizations. Such amendments shall not invalidate this Agreement nor relieve or release the City or Subrecipient from their respective obligations under this Agreement.

The City may, in its discretion, amend this Agreement to conform with Federal, State, or local guidelines, policies, and available funding amounts, or for other reasons. If such amendments result in a change in the funding or the scope of services, such modifications will be incorporated only by written amendment and will not become effective until signed by both City and the Subrecipient.

G. Suspension or Termination

1. Failure to Comply with Terms

If Subrecipient materially fails to comply with any term of this contract, the City may take one or more of the following actions, as appropriate in the circumstances: (1) disallow all or part of the cost of the activity or action not in compliance resulting in the return of funds related to any non-compliant activities; (2) wholly or partly suspend or terminate the current award for the Subrecipient's program, (3) withhold further awards for the program, or (4) take other remedies that are legally available.

2. Termination

If Subrecipient materially fails to comply with any term of this agreement, this agreement may be terminated by the City upon thirty (30) day written notification to the Subrecipient, setting forth the reasons for such termination, and in the case of partial termination, the portion to be terminated. All services being terminated shall cease upon the date such notice is received.

This agreement may be terminated by Subrecipient upon thirty (30) day written notification to the City, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination,

the City determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the City may terminate the award in its entirety.

VII. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

1. Accounting Standards

The Subrecipient agrees to comply with and adhere to generally accepted accounting principles and procedures (“GAAP”), utilize adequate internal controls, and maintain complete source documentation for all costs incurred.

B. Documentation and Record-Keeping

1. Records to be Maintained

The Subrecipient shall maintain all records that are pertinent to the activities to be funded under this Agreement. Such records shall include, but are not limited to, records providing a full description of each activity undertaken and records required to determine the eligibility of activities.

2. Retention

The Subrecipient shall retain all records pertinent to expenditures incurred under this contract for a period of five (5) years after the termination of the Agreement. Records for non-expendable property acquired with funds under this contract shall be retained for five (5) years after final disposition of such property. Records for any displaced person must be kept for five (5) years after he/she has received final payment. Notwithstanding the above, if there are litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the five-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the five-year period, whichever occurs later.

3. Client Data

The Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to: client name, address, ethnic breakdown, and description of service provided. Such information shall also be made available to City monitors or their designees for review upon request within five (5) business days.

4. Disclosure

The Subrecipient understands that client information collected under this contract is private, and the use or disclosure of such information, when not directly connected with the administration of the City’s or Subrecipient’s responsibilities with respect to services provided under this contract, is prohibited unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian, unless otherwise required by law.

5. Audits and Inspections

All Subrecipient records with respect to any matters covered by this Agreement shall be made available to the City, grantor Subrecipient or their designees at any time during normal business hours, as often as the City or grantor Subrecipient deems necessary, to audit, examine, and make copies or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Subrecipient within thirty (30) days after receipt by the Subrecipient. Failure of the Subrecipient to comply with the above audit requirements will constitute a violation of this contract and may result in the withholding of future payments.

6. Access to Records

The Subrecipient shall furnish and cause each of its own subrecipients or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts with respect to any matters covered by this agreement by the City or its agent, for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein related to this contract.

C. Reporting and Payment Procedures

Subrecipient shall submit to City a quarterly Performance Report in a format prescribed by City and shall include the amount of funds obligated and expended for each of the eligible activity and number of beneficiaries served. Subrecipient shall submit a Performance Report quarterly no later than the final day of the following month after the completion of the quarter until all Buffington Community Service Grant amounts are reported and expended.

VIII. GENERAL PROVISIONS

A. Article and Section Headings

The Article and Section headings contained herein are for convenience and reference and are not intended to define or limit the scope of any provision of this agreement.

B. Partial Invalidity

If any term, provision, covenant, or condition of this agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

C. Severability

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby, and all other parts of this Agreement shall nevertheless be in full force and effect.

D. Assignability

The Subrecipient shall not assign or transfer any interest in this contract without the prior written consent of the City thereto; provided, however, that claims for money due or to become due to

the Subrecipient from the City under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the City.

E. Subcontracts

1. Approvals

The Subrecipient shall not enter into any subcontracts with any Subrecipient or individual in the performance of this contract without the written consent of the City prior to the execution of such agreement.

2. Payment Obligations to Third Parties

The City shall not be obligated or liable under this Agreement to any party other than the instant subrecipient for payment of any monies or for provision of any goods or services.

3. Monitoring

The Subrecipient will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

4. Content

The Subrecipient shall cause all of the provisions of this contract in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

5. Selection Process

The Subrecipient shall undertake to insure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis. Executed copies of all subcontracts shall be forwarded to the City along with documentation concerning the selection process.

F. Affidavit of No Prohibited Interest

Subrecipient acknowledges and represents it is aware of all applicable laws, City Charter, and City Code of Conduct regarding prohibited interests and that the existence of a prohibited interest at any time will render the Contract voidable. Subrecipient has executed the Affidavit of No Prohibited Interest, attached and incorporated herein as **Exhibit D** attached hereto and incorporated herein by reference.

G. Lobbying

The Subrecipient hereby certifies that none of the funds provided under this Agreement shall be used for publicity or propaganda designed to support or defeat legislation pending before the U.S. Congress, a State Legislature, County Commissioners Court, or City Council.

H. Religious Organization

The Subrecipient agrees that funds provided under this contract will not be utilized for religious activities, to promote religious beliefs, or for the benefit of a religious organization.

I. Venue

The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this Agreement. The parties agree that this Agreement is performable in Collin County, Texas, and that exclusive venue shall lie in Collin County, Texas.

IX. 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.

X. EFFECTIVE DATE

This Agreement shall be effective from and after execution by both parties hereto. Signed on the date indicated below.

Subrecipient Name

Date: _____

**Name
Title**

City of Plano, Texas

Date: _____

Christina Day
Community Services Manager

Approved as to Form

Diane C. Wetherbee
City Attorney

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2012, Name, Title of Subrecipient, a non-profit organization on behalf of said organization.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2012, Christina Day, Community Services 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

2012 BUDGET – (ORGANIZATION NAME)

Expenses	2012-2013 Budget
Line item consistent with and not to exceed application Section 4.F.	\$0
Line item consistent with and not to exceed application Section 4.F.	\$0
Total	\$0

Exhibit B

PROGRAM DELIVERY ACTIVITIES PER
SECTION 2 OF CURRENT YEAR CONSOLIDATED GRANT APPLICATION

Exhibit C

INSURANCE REQUIREMENTS

1. General Provisions

- 1.1. The Agency shall obtain and maintain the minimum insurance coverage set forth in this section. By requiring such minimum insurance, City shall not be deemed or construed to have assessed the risk that may or may not be applicable to the Agency. The Agency shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. The Agency is not relieved of any liability or other obligation assumed or pursuant to the Contract by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. The insurance requirements listed below do not replace any warranty or surety (performance, payment, or maintenance) bonds if required by preceding or subsequent sections of this contract.
- 1.2. Agency shall cause each subcontractor employed by Agency to purchase and maintain insurance of the type specified herein or cover such subcontractors under its insurance coverage.
- 1.3. The Agency agrees that the insurance requirements specified in this section do not reduce the liability Agency has assumed in any indemnification/hold harmless section of this contract.
- 1.4. City reserves the right to approve the security of the insurance coverage provided pursuant to this section by insurers including terms, conditions and the Certificate of Insurance. Failure of the Agency to fully comply with requirements of this section during the term of the contract will be considered a material breach of contract and will be cause for immediate termination of the contract at the option of City.
- 1.5. Insurance coverage required by this section shall:
 - 1.5.1. Be on a primary basis, non-contributory with any other insurance coverage and/or self-insurance carried by City, and
 - 1.5.2. Be with an insurer possessing an A-VII. A. M. Best Rating.

2. Minimum Insurance Coverage & Limits

- 2.1. Commercial General Liability. Agency shall maintain commercial general liability and, if necessary commercial umbrella insurance as specified below.
 - 2.1.1. Commercial general liability insurance shall be written on an ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, product-completed operations, personal and advertising injury and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

2.1.2. Minimum Limits of Insurance

- 2.1.2.1. \$1,000,000 Per Occurrence
- 2.1.2.2. \$1,000,000 Personal/Advertising Injury
- 2.1.2.3. \$2,000,000 General Aggregate
- 2.1.2.4. \$2,000,000 Products/Completed Operations Aggregate

2.2. Commercial Automobile Liability. Contractor shall maintain business automobile liability insurance and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident.

2.2.1. Such automobile liability insurance shall cover liability arising out of any auto (including owned, hired, and non-owned automobiles).

2.2.2. Commercial automobile coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to the provided in ISO form CA 00 01.

2.2.3. Contractor waives all rights against City and its agents, officers, directors and employees for recovery by the commercial automobile liability or commercial umbrella liability insurance obtained by Contractor pursuant to this section or under any applicable automobile physical damage coverage.

3. Evidence of Insurance

3.1. Prior to commencement of work, and thereafter upon renewal or replacement of coverage required by this section, Contractor shall furnish City a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with this section. **Contractor shall furnish copies of all endorsement to insurance policies as required by each section herein to the City.**

3.2. Failure of City to demand such certificate(s) or other evidence of full compliance with these insurance requirements or failure of City to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

3.3. City shall have the right, but not the obligation, of prohibiting Contractor or any subcontractor from entering the project site or commencing any service pursuant to this contract until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the City.

3.4. Failure to maintain required insurance may result in termination of this contract at sole option of the City.

3.5. The Contractor shall furnish a Certificate of Insurance (COI) evidencing insurance coverage required by this section ten (10) business days preceding commencement of contracted service(s). The COI shall:

- 3.5.1. List each insurers' NAIC Number or FEIN,
- 3.5.2. List **2012 Buffington Community Services Grant, program name, location of service, and services dates of October 1, 2012 through September 30, 2013.**
- 3.5.3. State waiver of subrogation is in favor of City with regard to Workers' Compensation Coverage if required listed as required in Section 2.0, Minimum Coverage & Limits of this document,
- 3.5.4. List the specific number of days cancellation provided pursuant to policy language for notice of cancellation to certificate, and
- 3.5.5. List City of Plano, Office of Risk Management, 7501 A Independence Parkway, Plano, Texas, 75025 in the Certificate Holder Section.

Exhibit D

AFFIDAVIT OF NO PROHIBITED INTEREST

I, the undersigned declare that I am authorized to make this statement on behalf of _____ and I have made a reasonable inquiry and, to the best of my knowledge, no person or officer of _____ 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 Subrecipient

By: _____
Signature

Print Name

Title

Date

STATE OF _____ §

§

COUNTY OF _____ §

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 20____.

Notary Public, State of _____

Exhibit E

APPLICATION FOR USE OF CITY LOGO

**Application for Use of
the City of Plano Logo
For Buffington Community Services Grant Recipients**



The City of Plano Logo may only be used in accordance with Section 2-1 of the City of Plano Code of Ordinances, Section 130.000 of the City of Plano Policies and Procedures, Specific Use Guidelines for Official City Logo Use, and in accordance with the purposes set out in this contract.

Indicate specifically how your organization will use the City of Plano logo consistent with the Grantee Recognition requirements of your contract.

Insert response

Type of product/signage logo is to be used upon (attach a sample/photo/drawing depicting the proposed usage of the logo to this application and explain each example if there is more than one):

Insert response

Quantity to be printed:

Insert response

Will this be distributed free*? (circle one) Yes No

*this includes Internet, schools, local business, etc.

If so, where, how and by whom?

Insert response

If you plan to use the logo on items for sale, explain the use and how profits will be used.

Insert response

The City of Plano is the exclusive trademarked owner of the official City of Plano logo. Approval to use the official City logo is at the sole discretion of the City of Plano. Permission to use the logo may be revoked by the City at any time without liability on the part of the City for said revocation.

Note: If the application requires a City Council hearing, the applicant must be available for the public hearing on the submitted application. The Public Information Office will contact the applicant regarding the date and time that the application is posted on a City Council agenda for the hearing. Non-profit agencies receiving City grant funds and contractors providing goods, services, or materials do not require City Council approval.

REQUIREMENTS OF USAGE

1. Only the official City of Plano logo may be used. It must be used in its entirety and without distortion or alteration. Example provided.
2. The official City of Plano logo consists of two colors, PMS 300 and PMS 185, and the colors may not be changed for usage without permission.
3. The official City logo may not be copied from any source and must be obtained in digital format from the City of Plano Director of Public Information.
4. The official City logo may not be combined or superimposed with any other symbols. The logo should always stand alone from its surroundings (text, graphics, visual elements, etc.).
5. Applicant must indemnify the City of Plano against any claims or damages arising out of use of the logo.
6. The official City of Plano logo should not be used in any way implying endorsement of any item or thing by the City of Plano.
7. The application is limited solely to City of Plano logo usage. The All-America City logo, sometimes depicted in conjunction with the City of Plano logo, may not be used without clearance through the City of Plano Director of Public Information for authorized uses and/or obtaining the proper consent from the National Civic League.

I, on behalf of my organization, agree to abide by the Requirements of Usage and regulations under the City of Plano ordinances and policies pertaining to use of the City of Plano official logo.

Organization

Print Name Authorized Representative

Signature

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:		September 24, 2012		
Department:		Planning		
Department Head		Phyllis Jarrell		
Agenda Coordinator (include phone #): Karen Suiter x7566				
CAPTION				
A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of Agreements between the City of Plano and various community organizations, providing for the expenditure of Community Development Block Grant funds in the amount of \$183,344 and HOME funds in the amount of \$276,533 for the provisions of various community services and developments; authorizing the execution by the City Manager or his authorized designee; and providing the effective dates.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	2012-13 2013-14	Prior Year (CIP Only)	Current Year	Future Years
		TOTALS		
Budget	0	344,908	114,969	459,877
Encumbered/Expended Amount	0	0	0	0
This Item	0	-344,908	-114,969	-459,877
BALANCE	0	0	0	0
FUND(S): HUD GRANT FUND				
COMMENTS: This item, in the total amount of \$459,877 is included in the 2012-13 Budget. Of the total amount, \$344,908 will be expended in 2012-13 while \$114,969 will be expended in 2013-14.				
STRATEGIC PLAN GOAL: Funding for various community organizations relates to the City's goal of Partnering for Community Benefit.				
SUMMARY OF ITEM				
This Resolution establishes agreements for CDBG and HOME funding with various agencies. Approval of the resolution will enable the agencies to begin using CDBG and HOME grant funds effective October 1, 2012. These funding amounts and recipients were approved by City Council on June 25, 2012, meeting as part of the City's Action Plan, which details the annual use of U.S. Department of Housing and Urban Development funds.				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Resolution, Sample Agreements			Community Relations Commission	

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of Agreements between the City of Plano and various community organizations, providing for the expenditure of Community Development Block Grant funds in the amount of \$183,344 and HOME funds in the amount of \$276,533 for the provisions of various community services and developments; authorizing the execution by the City Manager or his authorized designee; and providing the effective dates.

WHEREAS, the City Council has determined that various social service agencies operating within the City of Plano should receive a portion of the Community Development Block Grant funds and HOME funds received from the U. S. Department of Housing and Urban Development; and

WHEREAS, the City Council has been presented proposed CDBG public service, CDBG construction, and HOME agreements by and between the City of Plano and various social service agencies, sample copies of which are attached hereto as Exhibits "A", "B", and "C" respectively, which establish the general terms and conditions of funding; and

WHEREAS, the City Council has determined that it is in the best interests of the citizens of Plano that the Community Development Block Grant funds and HOME funds be utilized for the purposes for which they were granted to each of the agencies listed herein, and that each such purpose is a valid public purpose; and

WHEREAS, upon full review and consideration of the Agreements, 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 them 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 Agreements with the below-named agencies in the amounts specified; having been reviewed by the City Council and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things approved:

Community Development Block Grant Funds:	
Boys and Girls Clubs of Collin County	\$ 30,000
Communities in Schools Dallas Region	\$ 15,000
LaunchAbility	\$ 10,000
Maurice Barnett Geriatric Wellness Center – Gatekeeper	\$ 22,000
Maurice Barnett Geriatric Wellness Center – PHC	\$ 33,344
Plano Housing Corporation	\$ 25,000
The Samaritan Inn – Homelessness Prevention	\$ 48,000
Total:	\$183,344

HOME Funds:	
Christ United Methodist Church	\$ 42,000
Habitat for Humanity of South Collin County	\$134,533
Plano Housing Corporation	\$100,000
Total:	\$276,533

Section II. - The City Manager, or his authorized designee, is hereby authorized to execute the Agreements 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 Agreements.

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

DULY PASSED AND APPROVED THIS THE 24TH DAY OF SEPTEMBER, 2012.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

Approved as to form:

Diane C. Wetherbee, CITY ATTORNEY



**Funding Agreement Between the City of Plano
and
(Insert SUBRECIPIENT's Name)**

**U.S. Department of Housing & Urban Development
Community Development Block Grant, CFDA Title 14-218, B-12-MC-48-0035**

This Agreement, entered this 1st day of October, 2012 by and between the City of Plano (herein called the "City") and (Insert SUBRECIPIENT's Name) (herein called "Subrecipient").

WHEREAS, the City has received Federal grant monies to carry out the goals and objectives of the City of Plano's Consolidated Plan;

WHEREAS, the City is in need of assistance to further this program; and

WHEREAS, it is the desire of the parties hereto that Subrecipient engage in the performance of certain activities and in the development of programs related to the City of Plano's Consolidated Plan;

NOW THEREFORE, the parties hereto mutually agree as follows:

I. SCOPE OF SERVICES

A. National Objectives

The Subrecipient certifies that the activities carried out with funds provided under this Agreement will meet the Community Development Block Grant ("CDBG") program's National Objective of (Insert objective, ex. benefiting low-and moderate-income persons, limited clientele), as defined in (Insert reference, ex. 24 CFR Part 570.208(a)(2)). The activity is eligible for funding under (Insert reference, ex. 24 CFR 570.201(e)). This program is a Public Service activity being reported with an objective of (Insert objective, ex. Suitable Living Environment) and an outcome of (Insert outcome, ex. Availability/Accessibility (SL-1)) in the Performance Measurements Standards set forth by HUD.

The Agreement consists of this written agreement and the following items which are attached hereto and incorporated herein by reference:

1. Grant Budget (**Exhibit "A"**);
2. Current Year Consolidated Grant Application, Section 2, Program To Be Funded (**Exhibit "B"**);
3. Insurance Requirements (**Exhibit "C"**); and
4. Affidavit of No Prohibited Interest (**Exhibit "D"**).

These documents make up the Agreement Documents and what is called for by one shall be binding as if called for by all. In the event of an inconsistency or conflict in any of the provisions of the Agreement Documents, the inconsistency or conflict shall be resolved by giving precedence first to this written agreement then to the Agreement Documents in the order in which they are listed above. These documents shall be referred to collectively as the "Agreement Documents."

B. Activities

Subrecipient will carry out activities as described in Section 2 of their Consolidated Grant Application, and provided in **Exhibit B** attached hereto and incorporated herein by reference. **(INSERT ANY KNOWN CHANGES OR EXCEPTIONS HERE)** Modifications to the activities described in Exhibit B prior to or during the term of the contract that impact the quality, quantity or availability of services to Plano clients are acceptable only as agreed by the City, per the Community Services Manager's written approval.

C. Levels of Accomplishment

<u>Activity</u>	<u>Total (Persons/Families or Households)/Year</u>
<u>(Activity 1)</u>	<u>(X)</u>
<u>(Activity 2)</u>	<u>(X)</u>

D. Conditions of Use

Subrecipient shall use any and all funds furnished by City for purposes set forth in this Agreement and for no other purpose. Subrecipient agrees the expenditure of the funds shall be completed on or before September 30, 2013. Any grant funds remaining with Subrecipient which are not expended or encumbered on September 30, 2013 will be returned to the City unless otherwise extended in writing. If, during the term of this Agreement, Subrecipient wishes to utilize funds for purposes other than the activities noted above, such change will be allowed only if the proposed change is not in violation of Community Development Block Grant Regulations. Such change may be allowed only after approval by Subrecipient's Board, as evidenced by the official minutes of the board authorizing the change, and by the City Manager. No expenditure of funds in performance with the proposed change is permitted until written approval is executed by the City Manager or his designee.

E. Performance Monitoring

The City will monitor the performance of the Subrecipient against goals and performance standards as required herein once annually or as deemed necessary by the City. Performance determined by the City to be substandard will constitute non-compliance with this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period of time after being notified by the City, contract suspension or termination procedures will be initiated. If compliance is not feasible as determined by the City, Subrecipient is obligated to reimburse the City the

amount funded for the particular activity.

F. Eligibility of Clients

In accordance with 24 CFR Part 570.208(a)(2)(A), the activity carried out with the funds provided under this agreement **(Insert is or is not)** for a presumed benefit clientele as defined by the U.S. Department of Housing and Urban Development (HUD). All applicable documentation will be maintained by the Subrecipient to document **(Insert limited clientele or income qualification)** eligibility.

II. TIME OF PERFORMANCE

Services of the Subrecipient shall start on the 1st day of October 2012 and terminate on the 30th day of September, 2013. The term of this agreement and the provisions herein may be extended to cover any additional time period during which the Subrecipient remains in control of CDBG funds or other assets, including program income. If an extension is needed, written requests should be submitted by August 15, 2013.

III. BUDGET

See **Exhibit A** attached hereto and incorporated herein by reference for line item budget. In addition, the City may require a more detailed budget breakdown than the one contained herein, and the Subrecipient shall provide such supplementary budget information in a timely fashion in the form and with the content prescribed by the City. Any amendments to this budget must be approved in writing by the Community Services Manager before the budget revision can be effective and cannot change the scope of the project funded under this contract.

IV. PAYMENT

It is expressly agreed and understood that the total amount to be paid by the City under this contract shall not exceed **(Insert Amount)**. Drawdowns for the payment of eligible expenses shall be made against the line item budgets specified in **Exhibit A** herein and in accordance with performance. The Subrecipient will be reimbursed within 30 days after submission of all proper documentation, including but not limited to original monthly bills and supporting documentation for services described in Section I.B, *supra*, to the City.

ALL REQUESTS FOR FINAL REIMBURSEMENT MUST BE SUBMITTED TO THE CITY WITHIN THREE (3) DAYS AFTER THE LAST DATE OF THE CONTRACT. Payments may be contingent upon certification of the Subrecipient's financial management system in accordance with the standards specified in OMB Circular A-110.

V. NOTICES

Communication and details concerning this contract shall be directed to the following contract representatives:

City
Christina Day, Manager
Community Services
City of Plano
1520 Avenue K
Plano, Texas 75074
972-941-5262
Fax: 972-941-7396

Subrecipient
(Insert contact information)

VI. GENERAL CONDITIONS

A. General Compliance

The Subrecipient agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the Housing and Urban Development regulations concerning Community Development Block Grants (CDBG)). The Subrecipient also agrees to comply with all other applicable Federal, State and local laws, regulations, and policies governing the funds provided under this contract, including but not limited to the City of Plano's Subrecipient Compliance Manual, as updated. The Subrecipient further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

B. Independent Contractor

Nothing contained in the Agreement is intended to, or shall be construed in any manner, as creating or establishing any employer/employee relationship between the parties. The Subrecipient shall at all times remain an independent contractor with respect to the services to be performed under this Agreement. The City shall be exempt from any and all duties to provide unemployment compensation, FICA, retirement, life and/or medical insurance and worker's compensation insurance to Subrecipient and its employees, agents, and contractors.

C. Insurance

Subrecipient agrees to maintain during the term of this Agreement, or any extension thereof, insurance in the type and amounts as shown in **Exhibit C** attached hereto and incorporated herein by reference. Such insurance shall be evidenced by certificates, a copy of which shall be provided to the CDBG Administrator at the execution of this Agreement. Insurance provided by Agency is subject to approval by City.

D. INDEMNIFICATION

SUBRECIPIENT 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 SUBRECIPIENT'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 SUBRECIPIENT, 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 CONTRACTOR 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 CONTRACTORS. 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.

SUBRECIPIENT 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 SUBRECIPIENT'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF SUBRECIPIENT'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. SUBRECIPIENT 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 SUBRECIPIENT FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND SUBRECIPIENT SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY.

THE INDEMNIFICATION HEREIN SURVIVES THE TERMINATION OF THE CONTRACT AND/OR DISSOLUTION OF THIS AGREEMENT.

E. Grantee Recognition

The Subrecipient shall insure recognition of the role of the City in providing Community Development Block Grant resources for this contract. All activities, facilities, and items utilized pursuant to this contract shall be prominently labeled as to funding source. In addition, the Subrecipient will include a reference to the support provided herein in all publications made possible with funds made available under this contract.

F. Amendments

The City or Subrecipient may amend this Agreement at any time, provided that such amendments make specific reference to this Agreement and are executed in writing, signed by a duly authorized representative of both parties. Such amendments shall neither invalidate this Agreement nor relieve or release the City or Subrecipient from their respective obligations under this Agreement.

The City may, in its discretion, amend this Agreement to conform with federal, state, or local governmental guidelines, policies, and available funding amounts, or for other reasons. If such amendments result in a change in the funding or the scope of services, such modifications will be incorporated only by written amendment and will not become effective until signed by both City and the Subrecipient.

Any request for transfer of funds among the contract budget categories submitted by the Subrecipient will require written approval from the City, before the transfer can be effective. The Subrecipient may make transfer of CDBG funds between or among budget categories of **Exhibit A** attached hereto and incorporated herein by reference without requiring a formal amendment to this contract provided:

1. The cumulative dollar amount of all transfers among budget categories is equal to or less than ten percent (10%) of the total amount of the budget;
2. The transfer will not change the scope of the project funded under this contract; and
3. The Subrecipient submits to City a written statement specifying reason for transfer request, amount of funds to be transferred and identification of effected budget categories.

All other transfer of funds will require a formal amendment

G. Suspension or Termination

1. Failure to Comply with Terms

In accordance with 24 CFR 85.43, if Subrecipient materially fails to comply with any term of this contract, the City may take one or more of the following actions, as appropriate in the circumstances: (1) temporarily withhold cash payments pending correction of the deficiency by the Subrecipient or other more severe enforcement action by the City; (2) disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance; (3) wholly or partly suspend or terminate the current award for the Subrecipient's program, (4) withhold further awards for the program, or (5) pursue any other legally available remedies.

2. Termination

In accordance with 24 CFR 85.44(a), this contract may be terminated at any time by the City with the consent of Subrecipient, in which case the City and Subrecipient shall agree

upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

In accordance with 24 CFR 85.44(b), this contract may be terminated by Subrecipient upon written notification to the City, setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, in the case of a partial termination, if the City determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the City may terminate the award in its entirety.

In accordance with 24 CFR 85.43, if Subrecipient materially fails to comply with any term of this contract, this contract may be terminated by the City upon written notification to the Subrecipient, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated.

In the event of termination, whether voluntary or involuntary, all finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials prepared by the Subrecipient under this Agreement shall, at the option of the City, become the property of the City, and the Subrecipient shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents or materials prior to the termination.

H. Reversion of Assets

Upon the expiration of this agreement based on the time limits set forth in Section I.D. or termination as set forth in section I.E., the Subrecipient shall transfer to the City any CDBG funds on hand at the time of expiration or termination and any accounts receivable attributable to the use of CDBG funds. Any real property under the subrecipient's control that was acquired or improved in whole or in part with CDBG funds (including CDBG funds provided to the subrecipient in the form of a loan) in excess of \$25,000 must be either:

1. Used to meet one of the national objectives in 24 CFR §570.208 for a term ending five years after expiration of the agreement, or for such longer period of time as determined to be appropriate by the City; or
2. If not used in accordance with paragraph (1) of this section, the Subrecipient shall pay to the City an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG fund for the acquisition of, or improvement to, the property. The payment is program income to the recipient. (No payment is required after the period of time specified in paragraph (1) of this section.)

VII. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

1. Accounting Standards

The Subrecipient agrees to comply with OMB Circular A-110 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

2. Cost Principles

The Subrecipient shall administer its program in conformance with OMB Circular A-122, “Cost Principles for Non-Profit Organizations,” or A-21, “Cost Principles for Educational Institutions,” as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

B. Documentation and Record-Keeping

1. Records to be Maintained

The Subrecipient shall maintain all records required by the Federal regulations specified in 24 CFR Part 570.506, that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

- a. Records providing a full description of each activity undertaken;
- b. Records demonstrating that each activity undertaken meets the CDBG program’s national objective of benefiting low/moderate income persons;
- c. Records required to determine the eligibility of activities;
- d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
- e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
- f. Financial records as required by 24 CFR Part 570.502, and OMB Circular A-110; and
- g. Other records necessary to document compliance with Subpart K of 24 CFR 570.

2. Retention

The Subrecipient shall retain all records pertinent to expenditures incurred under this contract for a period of five (5) years after the termination or expiration of the Agreement. Records for non-expendable property acquired with funds under this contract shall be retained for five (5) years after final disposition of such property.

Records for any displaced person must be kept for five (5) years after he/she has received final payment. Notwithstanding the above, if there are litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the five-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the five-year period, whichever occurs later.

3. Client Data

The Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to: client name, address, ethnicity, income, and description of service provided. Such information shall also be made available to City monitors or their designees for review upon request within five (5) business days.

4. Disclosure

The Subrecipient understands that client information collected under this contract is private, and the use or disclosure of such information, when not directly connected with the administration of the City's or Subrecipient's responsibilities with respect to services provided under this contract, is prohibited unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian, unless otherwise required by law.

5. Property Records

The Subrecipient shall maintain real property inventory records which clearly identify properties purchased, improved or sold. Properties retained shall continue to meet eligibility criteria and shall conform with the "changes in use" restrictions specified in 24 CFR Parts 570.503(b)(8), as applicable.

6. Close-Outs

The Subrecipient's obligation to the City shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the City), final close-out reports and determining the custodianship of records. ALL REQUESTS FOR FINAL REIMBURSEMENT MUST BE SUBMITTED TO THE CITY WITHIN THREE (3) DAYS AFTER THE LAST DATE OF THE CONTRACT.

7. Audits and Inspections

All Subrecipient records with respect to any matters covered by this Agreement shall be made available to the City, Subrecipient, their designees or the Federal Government, at any time during normal business hours, as often as the City or Subrecipient deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Subrecipient within 30 days after receipt by the Subrecipient. Failure of the Subrecipient to comply with the above audit requirements will constitute a violation of this contract and may result in the

withholding of future payments.

In accordance with the Single Audit Act of 1984, the Single Audit Act Amendments of 1996 (Public Law 104-156), and revised OMB Circular A-133, subrecipients expending Federal Funds of \$500,000 or more in a fiscal year, are required to have an annual independent audit and a copy of the audit is to be forwarded to Housing & Community Development Services upon completion.

C. Reporting and Payment Procedures

1. Program Income

The Subrecipient shall report monthly all program income as defined at 24 CFR 570.500(a) generated by activities carried out with CDBG funds made available under this contract. In the event that any program income is derived from the activities specified in this Agreement, such income shall be transferred to the City's Grant Fund.

2. Payment Procedures

The City will pay to the Subrecipient funds available under this contract, based upon information submitted by the Subrecipient and consistent with any approved budget and City policy concerning payments. Payments will be made for eligible expenses actually incurred by the Subrecipient, and shall not exceed expenditures. Payments will be adjusted by the City in accordance with program income balances available in Subrecipient accounts. In addition, the City reserves the right to apply funds available under this contract for costs incurred by the City on behalf of the Subrecipient.

3. Performance Reports

Subrecipient shall submit a quarterly Performance Report to City in a format prescribed by City that shall include the amount of funds obligated and expended for each eligible activity and number of beneficiaries served.

Subrecipient shall submit a Performance Report quarterly no later than thirty (30) days after the end of the quarter until all CDBG amounts are reported and expended, and all close-out requirements have been met. The Subrecipient shall submit Progress Reports to the City in a form and containing information as required by the City.

D. Procurement

1. Compliance

Subrecipient shall establish procurement procedures to ensure that materials and services are obtained in a cost-effective manner. When procuring services to be provided under this Agreement Subrecipient shall comply at a minimum with the non-profit procurement standards at 24 CFR 84.40-48.

Sealed bids are required for purchases of items costing \$25,000 or more. The sealed bid process can be complicated; therefore, the Subrecipient is required to contact the City of Plano Grants Coordinator's office for assistance prior to starting the bid process.

Three (3) written quotes are required for purchases of items costing between \$3,000 and

\$25,000. These quotes should be placed in the Subrecipient's project file. If the Subrecipient is unable to obtain three (3) quotes, a list of the vendors contacted should be placed in the file, noting those vendors who did submit quotes. If there is only one vendor who makes the item to be purchased, this should be noted in the file with an explanation of what was done to determine there was only one vendor available.

For purchases costing less than \$3,000, only one quote is required. The receipt or invoice from the store where the item was bought will suffice. Subrecipient is not precluded from obtaining several quotes to obtain the best price, even for low-cost items.

2. OMB Standards

The Subrecipient shall procure all materials, property, or services in accordance with the requirements of OMB Circular A-110, Procurement Standards, and shall subsequently follow Property Management Standards as modified by 24CFR 570.502(b)(3)(vi) covering utilization and disposal of property.

VIII. PERSONNEL & PARTICIPANT CONDITIONS

A. Civil Rights

1. Compliance

The Subrecipient agrees to comply with all applicable provisions of Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063 Executive Order 11246 (as amended by Executive Orders 11375 and 12086), and with fair housing and nondiscrimination provisions set forth in 24 CFR 570.601 and 24 CFR 570.602.

2. Nondiscrimination

The Subrecipient will not discriminate against any employee or applicant for employment because of race, color, ancestry, national origin, sex, disability or other handicap, age, marital/familial status, or status with regard to public assistance. The Subrecipient agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting SUBRECIPIENT setting forth the provisions of this nondiscrimination clause.

3. Access to Records

The Subrecipient shall furnish and cause each of its own subrecipients or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts with respect to any matters covered by this agreement by the City, HUD or its agent, or other authorized federal agencies or officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions governing or related to this contract.

4. EEO/AA Statement

The Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.

5. Subcontract Provisions

The Subrecipient will include the provisions of Paragraphs VIII.A., Civil Rights, and B., Employment Restrictions, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own subrecipients or subcontractors.

B. Employment Restrictions

1. Prohibited Activity

The Subrecipient is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; sectarian or religious activities; and lobbying political patronage, and nepotism activities.

2. Labor Standards

The Subrecipient agrees to comply with the labor standards as set forth in 24 CFR 570.603.

3. “Section 3” Clause

a. Compliance

Compliance with the provisions of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u)(section 3), the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this contract, shall be a condition of the federal financial assistance provided under this contract and binding upon the City, the Subrecipient and any of the Subrecipient’s subrecipients and subcontractors.

The Subrecipient further agrees to ensure that, to the greatest extent feasible, opportunities for training and employment arising in connection with this project be given to low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

b. Subcontracts

The Subrecipient will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon any finding that the subcontractor is in violation of regulations issued by the grantor Subrecipient.

C. Conduct

1. Assignability

The Subrecipient shall not assign or transfer any interest in this contract without the prior written consent of the City thereto; provided, however, that claims for money due or to become due to the Subrecipient from the City under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the City.

2. Subcontracts

a. Approvals

The Subrecipient shall not enter into any subcontracts with any Subrecipient or individual in the performance of this contract without the written consent of the City prior to the execution of such agreement. Subrecipient shall also comply with 24 CFR 570.609 with regard to debarment, suspension, or ineligibility status of selected subcontractors.

b. Payment obligations to third parties

The City shall not be obligated or liable under this Agreement to any party other than the Subrecipient for payment of any monies or for provision of any goods or services.

c. Monitoring

The Subrecipient will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct any areas of noncompliance.

d. Content

The Subrecipient shall cause all of the provisions of this contract to be included in and made a part of any subcontract executed in the performance of this Agreement.

e. Selection Process

The Subrecipient shall undertake to insure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis. Executed copies of all subcontracts shall be forwarded to the City along with documentation concerning the selection process.

3. Hatch Act

The Subrecipient agrees that neither funds provided, nor personnel employed under this contract, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V United States Code.

4. Affidavit of No Prohibited Interest

Subrecipient acknowledges and represents it is aware of all applicable laws, City Charter, and City Code of Conduct regarding prohibited interests and that the existence of a prohibited interest at any time will render the Contract voidable. Subrecipient has executed the Affidavit of No Prohibited Interest, attached and incorporated herein as **Exhibit D**.

5. Lobbying

The Subrecipient hereby certifies that none of the funds provided under this Agreement shall be used for publicity or propaganda designed to support or defeat legislation pending before the U.S. Congress, a State Legislature, County Commissioners Court, or City Council.

6. Copyright

If this contract results in any copyrightable material or inventions, the City and/or grantor Subrecipient reserves the right to a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for government purposes.

7. Religious Organization

The Subrecipient agrees that funds provided under this contract will not be utilized for religious activities, to promote religious interests, or for the benefit of a religious organization in accordance with the Federal regulations specified in 24 CFR 570.200(j).

IX. GENERAL PROVISIONS

A. Article and Section Headings

The Article and Section headings contained herein are for convenience and reference and are not intended to define or limit the scope of any provision of this agreement.

B. Partial Invalidity

If any term, provision, covenant, or condition of this agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

C. Severability

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby, and all other parts of this Agreement shall nevertheless be in full force and effect.

D. Venue

The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this Agreement. The parties agree that this Agreement is performable in Collin County, Texas, and that exclusive venue shall lie in Collin County, Texas.

X. 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.

XI. EFFECTIVE DATE

This Agreement shall be effective from and after execution by both parties hereto. **SIGNED** on the date indicated below.

(SUBRECIPIENT)

(Name)
(Title)

Date: _____

CITY OF PLANO, TEXAS

Christina Day
Community Services Manager

Date: _____

APPROVED AS TO FORM

Diane C. Wetherbee
CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2012, by **(Individual), (Title) of (Name of Recipient Agency), a (Type of Organization, for example, non-profit organization), on behalf of said (Organization).**

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2012, by Christina Day, Community Services 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

2012 BUDGET: (INSERT SUBRECIPIENTS NAME)

Exhibit B

PROGRAM DELIVERY ACTIVITIES PER
SECTION 2 OF CURRENT YEAR CONSOLIDATED GRANT APPLICATION

Exhibit C

INSURANCE REQUIREMENTS

1. General Provisions

- 1.1. The Agency shall obtain and maintain the minimum insurance coverage set forth in this section. By requiring such minimum insurance, City shall not be deemed or construed to have assessed the risk that may or may not be applicable to the Agency. The Agency shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. The Agency is not relieved of any liability or other obligation assumed or pursuant to the Contract by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. The insurance requirements listed below do not replace any warranty or surety (performance, payment, or maintenance) bonds if required by preceding or subsequent sections of this contract.
- 1.2. Agency shall cause each subcontractor employed by Agency to purchase and maintain insurance of the type specified herein or cover such subcontractors under its insurance coverage.
- 1.3. The Agency agrees that the insurance requirements specified in this section do not reduce the liability Agency has assumed in any indemnification/hold harmless section of this contract.
- 1.4. City reserves the right to approve the security of the insurance coverage provided pursuant to this section by insurers including terms, conditions and the Certificate of Insurance. Failure of the Agency to fully comply with requirements of this section during the term of the contract will be considered a material breach of contract and will be cause for immediate termination of the contract at the option of City.
- 1.5. Insurance coverage required by this section shall:
 - 1.5.1. Be on a primary basis, non-contributory with any other insurance coverage and/or self-insurance carried by City, and
 - 1.5.2. Be with an insurer possessing an A-VII. A. M. Best Rating.

2. Minimum Insurance Coverage & Limits

- 2.1. Commercial General Liability. Agency shall maintain commercial general liability and, if necessary commercial umbrella insurance as specified below.
 - 2.1.1. Commercial general liability insurance shall be written on an ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, product-completed operations, personal and advertising injury and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

2.1.2. Minimum Limits of Insurance

- 2.1.2.1. \$1,000,000 Per Occurrence
- 2.1.2.2. \$1,000,000 Personal/Advertising Injury
- 2.1.2.3. \$2,000,000 General Aggregate
- 2.1.2.4. \$2,000,000 Products/Completed Operations Aggregate

2.2. Commercial Automobile Liability. Contractor shall maintain business automobile liability insurance and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident.

- 2.2.1. Such automobile liability insurance shall cover liability arising out of any auto (including owned, hired, and non-owned automobiles).
- 2.2.2. Commercial automobile coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to the provided in ISO form CA 00 01.
- 2.2.3. Contractor waives all rights against City and its agents, officers, directors and employees for recovery by the commercial automobile liability or commercial umbrella liability insurance obtained by Contractor pursuant to this section or under any applicable automobile physical damage coverage.

3. Evidence of Insurance

- 3.1. Prior to commencement of work, and thereafter upon renewal or replacement of coverage required by this section, Contractor shall furnish City a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with this section. **Contractor shall furnish copies of all endorsement to insurance policies as required by each section herein to the City.**
- 3.2. Failure of City to demand such certificate(s) or other evidence of full compliance with these insurance requirements or failure of City to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- 3.3. City shall have the right, but not the obligation, of prohibiting Contractor or any subcontractor from entering the project site or commencing any service pursuant to this contract until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the City.
- 3.4. Failure to maintain required insurance may result in termination of this contract at sole option of the City.
- 3.5. The Contractor shall furnish a Certificate of Insurance (COI) evidencing insurance coverage required by this section ten (10) business days preceding commencement of contracted service(s). The COI shall:

- 3.5.1. List each insurers' NAIC Number or FEIN,
- 3.5.2. List **2012 Community Development Block Grant, program name, location of service, and services dates of October 1, 2012 through September 30, 2013.**
- 3.5.3. State waiver of subrogation is in favor of City with regard to Workers' Compensation Coverage if required listed as required in Section 2.0, Minimum Coverage & Limits of this document,
- 3.5.4. List the specific number of days cancellation provided pursuant to policy language for notice of cancellation to certificate, and
- 3.5.5. List City of Plano, Office of Risk Management, 7501 A Independence Parkway, Plano, Texas, 75025 in the Certificate Holder Section.

Exhibit D

AFFIDAVIT OF NO PROHIBITED INTEREST

I, the undersigned, declare and affirm that no person or officer of _____ (herein "Subrecipient") is either employed by the City of Plano or is an elected official of the City of Plano and who has a financial interest, direct or indirect, in any contract with the City of Plano or has a financial interest, directly or indirectly, in the sale to the City of Plano of any land, or rights or interest in any land, materials, supplies or service. As per Section 11.02 of the Plano City Charter, interest represented by ownership of stock by a City of Plano employee or official is permitted if the ownership amounts to less than one (1) per cent of the corporation stock.

I further understand and acknowledge that the existence of a prohibited interest at any time during the term of this contract will render the contract voidable.

Name of Subrecipient

By: _____
Signature

Print Name

Title

Date

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2012.

Notary Public, State of _____



**Funding Agreement Between the City of Plano
and
(Insert SUBRECIPIENT's Name)**

**U.S. Department of Housing & Urban Development
Community Development Block Grant, CFDA Title 14-218, B-12-MC-48-0035**

This Agreement, entered this 1st day of October, 2012 by and between the City of Plano (herein called the "City") and (Insert SUBRECIPIENT's Name) (herein called "Subrecipient")

WHEREAS, the City has received federal grant monies to carry out the goals and objectives of the City of Plano's Consolidated Plan.

WHEREAS, the City is in need of assistance to further this program; and

WHEREAS, it is the desire of the parties hereto that Subrecipient engage in the performance of certain activities and in the development of programs related to the City of Plano's Consolidated Plan.

NOW THEREFORE, the parties hereto mutually agree as follows:

I. SCOPE OF SERVICES

A. National Objectives

The Subrecipient certifies that the activities carried out with funds provided under this Agreement will meet the Community Development Block Grant ("CDBG") program's National Objective of (Insert objective, ex. benefiting low-and moderate-income persons, limited clientele), as defined in (Insert reference, ex. 24 CFR Part 570.208(a)(2)). The activity is eligible for funding under (Insert reference, ex. 24 CFR 570.201(e)). This program is an activity being reported with an objective of (Insert objective, ex. Suitable Living Environment) and an outcome of (Insert outcome, ex. Availability/Accessibility (SL-1)) in the Performance Measurements Standards set forth by HUD.

The Agreement consists of this written agreement and the following items which are attached hereto and incorporated herein by reference:

- (a) The Budget (**Exhibit "A"**);
- (b) Insurance Requirements (**Exhibit "B"**); and
- (c) Affidavit of No Prohibited Interest (**Exhibit "C"**).

These documents make up the Agreement Documents and what is called for by one shall be binding as if called for by all. In the event of an inconsistency or conflict in any of the

provisions of the Agreement Documents, the inconsistency or conflict shall be resolved by giving precedence first to this written agreement then to the Agreement Documents in the order in which they are listed above. These documents shall be referred to collectively as the “Agreement Documents.”

B. Activities

The Subrecipient shall be responsible for administering the **(Insert Project)**, in a manner satisfactory to the City and consistent with any standards required as a condition of providing these funds.

(Describe project/ Describe the clients served from grant request.)

C. Levels of Accomplishment

The Subrecipient agrees to provide the following levels of program service:

<u>Activity</u>	-	<u>Total Units/Year</u>
Decent, Affordable Housing Units		(insert)

D. Conditions of Use

Subrecipient shall use any and all funds furnished by City for purposes set forth in this Agreement and for no other purpose. Subrecipient agrees the expenditure of the funds shall be completed on or before September 30, 2014. Any grant funds remaining with Subrecipient which are not expended or encumbered on September 30, 2014 will be returned to the City unless otherwise authorized in writing by the City. If, during the term of this Agreement, Subrecipient wishes to utilize funds for purposes other than the activities noted above, such change will be allowed only if the proposed change is not in violation of Community Development Block Grant Regulations. Such change may be allowed only after approval by Subrecipient’s Board, as evidenced by the official minutes of the board authorizing the change, and by the City Manager. No expenditure of funds in performance with the proposed change is permitted until written approval is executed by the City Manager or his designee.

E. Performance Monitoring

The City will monitor the performance of the Subrecipient against goals and performance standards as required herein once annually or as deemed necessary by the City. Performance determined by the City to be substandard will constitute non-compliance with this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period of time after being notified by the City, contract suspension or termination procedures will be initiated. If compliance is not feasible as determined by the City, Subrecipient is obligated to reimburse the City the amount funded for the particular activity.

F. Eligibility of Clients

In accordance with 24 CFR Part 570.208(a)(2)(A), the activity carried out with the funds provided under this agreement **(Insert is or is not)** for a presumed benefit clientele as defined by the U.S. Department of Housing and Urban Development (HUD). All applicable documentation will be maintained by the Subrecipient to document **(Insert limited clientele or income qualification)** eligibility.

II. TIME OF PERFORMANCE

Services of the Subrecipient shall start on the 1st day of October, 2012 and terminate on the 30th day of September, 2014. The term of this agreement and the provisions herein may be extended to cover any additional time period during which the Subrecipient remains in control of CDBG funds or other assets, including program income. If an extension is needed, written requests should be submitted by August 15, 2014.

III. BUDGET

See **Exhibit A** attached hereto and incorporated herein by reference for line item budget. In addition, the City may require a more detailed budget breakdown than the one contained herein, and the Subrecipient shall provide such supplementary budget information in a timely fashion in the form and with the content prescribed by the City. Any amendments to **Exhibit A** must be approved in writing by the City's Neighborhood Services Manager before the amendment can be effective and cannot change the scope of the project funded under this contract.

IV. PAYMENT

It is expressly agreed and understood that the total amount to be paid by the City under this contract shall not exceed **(Insert amount)**. Drawdowns for the payment of eligible expenses shall be made against the line item budgets specified in **Exhibit A** herein and in accordance with performance. The Subrecipient will be reimbursed within 30 days after submission of all proper documentation, including, but not limited to original monthly bills and supporting documentation for services described in Section I.B, *supra*, to the City.

ALL REQUESTS FOR FINAL REIMBURSEMENT MUST BE SUBMITTED TO THE CITY NO LATER THAN THREE (3) DAYS AFTER THE LAST DATE OF THE CONTRACT. Payments may be contingent upon certification of the Subrecipient's financial management system in accordance with the standards specified in OMB Circular A-110.

V. NOTICES

Communication and details concerning this contract shall be directed to the following contract representatives:

City
Christina Day, Manager
Community Services
City of Plano
1520 Avenue K
Plano, Texas 75074
972-941-5262
Fax: 972-941-7396

Subrecipient
(Insert)

VI. SPECIAL CONDITIONS

A. Use of Property

Except as provided in 24 CFR 570.505. (a)-(d), and prior written approval of the City of Plano, Subrecipient may not change the use of the property located at **(Insert)** within five (5) years of the contract close-out date.

B. Obligation to Meet National Objective

If the funding is in excess of \$25,000, the real property that was acquired or improved in whole or in part with CDBG funds, located at **(Insert location)** must continue to meet the National Objective specified in Section 1.A, *supra*, until five years after the expiration of the agreement.

VII. GENERAL CONDITIONS

A. General Compliance

The Subrecipient agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the Housing and Urban Development regulations concerning Community Development Block Grants (CDBG)). The Subrecipient also agrees to comply with all other applicable Federal, State and local laws, regulations, and policies governing the funds provided under this contract, including but not limited to the City of Plano's Subrecipient Compliance Manual, as updated. The Subrecipient further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

B. Independent Contractor

Nothing contained in the Agreement is intended to, or shall be construed in any manner, as creating or establishing any employer/employee relationship between the parties. The Subrecipient shall at all times remain an independent contractor with respect to the services to be performed under this Agreement. The City shall be exempt from any and all duties to provide unemployment compensation, FICA, retirement, life and/or medical insurance and worker's compensation insurance to Subrecipient and its employees, agents and contractors.

C. Insurance Requirements

Subrecipient agrees to maintain during the term of this Agreement, or any extension thereof, insurance in the type and amounts as shown in **Exhibit B** attached hereto and incorporated herein by reference. Such insurance shall be evidenced by certificates, a copy of which shall be provided to the CDBG Administrator at the execution of this Agreement. Insurance provided by Agency is subject to approval by City. The Subrecipient shall comply with the bonding and insurance requirements of OMB Circular A-110 Insurance.

D. INDEMNIFICATION

SUBRECIPIENT 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 SUBRECIPIENT'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 SUBRECIPIENT, 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 SUBRECIPIENT 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 CONTRACTORS. 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.

SUBRECIPIENT 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 SUBRECIPIENT'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF SUBRECIPIENT'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. SUBRECIPIENT 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 SUBRECIPIENT FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND SUBRECIPIENT SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY.

THE INDEMNIFICATION HEREIN SURVIVES THE TERMINATION OF THE CONTRACT AND/OR DISSOLUTION OF THIS AGREEMENT.

E. Grantee Recognition

The Subrecipient shall insure recognition of the role of the City in providing Community Development Block Grant resources for this contract. All activities, facilities, and items utilized pursuant to this contract shall be prominently labeled as to funding source. In addition, the Subrecipient will include a reference to the support provided herein in all publications made possible with funds made available under this contract.

F. Amendments

The City or Subrecipient may amend this Agreement at any time, provided that such amendments make specific reference to this Agreement and are executed in writing, signed by a duly authorized representative of both parties. Such amendments shall neither invalidate this Agreement nor relieve or release the City or Subrecipient from their respective obligations under this Agreement.

The City may, in its discretion, amend this Agreement to conform with federal, state, or local governmental guidelines, policies, and available funding amounts, or for other reasons. If such amendments result in a change in the funding or the scope of services, such modifications will be incorporated only by written amendment and will not become effective until signed by both City and the Subrecipient.

Any request for transfer of funds among the contract budget categories submitted by the Subrecipient will require written approval from the City, before the transfer can be effective. The Subrecipient may make transfer of CDBG funds between or among budget categories of **Exhibit A**, attached hereto and incorporated herein by reference, without requiring a formal amendment to this contract provided:

1. The cumulative dollar amount of all transfers among budget categories is equal to or less than ten percent (10%) of the total amount of the budget;
2. The transfer will not change the scope of the project funded under this contract; and
3. The Subrecipient submits to City a written statement specifying reason for transfer, request, amount of funds to be transferred, and identification of affected budget categories.

All other transfer of funds will require a formal amendment.

G. Suspension or Termination

1. Failure to Comply with Terms

In accordance with 24 CFR 85.43, if Subrecipient materially fails to comply with any term of this contract, the City may take one or more of the following actions, as appropriate in the circumstances: (1) temporarily withhold cash payments pending correction of the deficiency by the Subrecipient or other more severe enforcement action by the City; (2) disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance; (3) wholly or partly suspend or terminate the current award for the Subrecipient's program, (4) withhold further awards for the program, or (5) pursue any other legally available remedies.

2. Termination

In accordance with 24 CFR 85.44(a), this contract may be terminated at any time by the City with the consent of Subrecipient, in which case the City and Subrecipient shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

In accordance with 24 CFR 85.44(b), this contract may be terminated by Subrecipient upon written notification to the City, setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, in the case of a partial termination, if the City determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the City may terminate the award in its entirety.

In accordance with 24 CFR 85.43, if Subrecipient materially fails to comply with any term of this contract, this contract may be terminated by the City upon written notification to the Subrecipient, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated.

In the event of termination, whether voluntary or involuntary, all finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials prepared by the Subrecipient under this Agreement shall, at the option of the City, become the property of the City, and the Subrecipient shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents or materials prior to the termination.

H. Reversion of Assets

Upon the expiration of this agreement based on the time limits set forth in section I.D. or termination set forth in section I.E., the Subrecipient shall transfer to the City any CDBG funds on hand at the time of expiration or termination and any accounts receivable attributable to the use of CDBG funds. Any real property under the subrecipient's control that was acquired or improved in whole or in part with CDBG funds (including

CDBG funds provided to the subrecipient in the form of a loan) in excess of \$25,000 must be either:

1. Used to meet one of the national objectives set forth in 24 CFR §570.208 for a term ending five years after expiration of the agreement, or for such longer period of time as determined to be appropriate by the City; or
2. If not used in accordance with paragraph (i) of this section, the Subrecipient shall pay to the City an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to the property. The payment is program income to the recipient. (No payment is required after the period of time specified in paragraph (i) of this section.)

VIII. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

1. Accounting Standards

The Subrecipient agrees to comply with OMB Circular A-110 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

2. Cost Principles

The Subrecipient shall administer its program in conformance with OMB Circular A-122, “Cost Principles for Non-Profit Organizations,” or A-21, “Cost Principles for Educational Institutions,” as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

B. Documentation and Record-Keeping

1. Records to be Maintained

The Subrecipient shall maintain all records required by the Federal regulations specified in 24 CFR Part 570.506, that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

- a. Records providing a full description of each activity undertaken;
- b. Records demonstrating that each activity undertaken meets the CDBG program’s national objective of benefiting low/moderate income persons;
- c. Records required to determine the eligibility of activities;

- d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
- e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
- f. Financial records as required by 24 CFR Part 570.502, and OMB Circular A-110; and
- g. Other records necessary to document compliance with Subpart K of 24 CFR 570.

2. Retention

The Subrecipient shall retain all records pertinent to expenditures incurred under this contract for a period of five (5) years after the termination or expiration of this Agreement. Records for non-expendable property acquired with funds under this contract shall be retained for five (5) years after final disposition of such property. Records for any displaced person must be kept for five (5) years after he/she has received final payment. Notwithstanding the above, if there are litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the five-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the five-year period, whichever occurs later.

3. Client Data

The Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to: client name, address, ethnicity, income and description of service provided. Such information shall also be made available to City monitors or their designees for review upon request within five (5) business days.

4. Disclosure

The Subrecipient understands that client information collected under this contract is private, and the use or disclosure of such information, when not directly connected with the administration of the City's or Subrecipient's responsibilities with respect to services provided under this contract, is prohibited unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian, unless otherwise required by law.

5. Property Records

The Subrecipient shall maintain real property inventory records which clearly identify properties purchased, improved or sold. Properties retained shall continue to meet eligibility criteria and shall conform with the "changes in use" restrictions specified in 24 CFR Parts 570.503(b)(8), as applicable.

6. Close-Outs

The Subrecipient's obligation to the City shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the City), final close-out reports and determining the custodianship of records. ALL REQUESTS FOR FINAL REIMBURSEMENT MUST BE SUBMITTED TO THE CITY WITHIN THREE (3) DAYS AFTER THE LAST DATE OF THE CONTRACT.

7. Audits and Inspections

All Subrecipient records with respect to any matters covered by this Agreement shall be made available to the City, Subrecipient, their designees or the Federal Government, at any time during normal business hours, as often as the City or Subrecipient deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Subrecipient within 30 days after receipt by the Subrecipient. Failure of the Subrecipient to comply with the above audit requirements will constitute a violation of this contract and may result in the withholding of future payments.

In accordance with the Single Audit Act of 1984, the Single Audit Act Amendments of 1996 (Public Law 104-156), and revised OMB Circular A-133, subrecipients receiving in excess of \$300,000 in a fiscal year, or \$500,000 for fiscal years ending after December 31, 2003, are required to have an annual independent audit and a copy of the audit is to be forwarded to Community Development Services upon completion.

C. Reporting and Payment Procedures

1. Program Income

The Subrecipient shall report monthly all program income as defined at 24 CFR 570.500(a) generated by activities carried out with CDBG funds made available under this contract. In the event that any program income is derived from the activities specified in this Agreement, such income shall be transferred to the City's Grant Fund.

2. Payment Procedures

The City will pay to the Subrecipient funds available under this contract, based upon information submitted by the Subrecipient and consistent with any approved budget and City policy concerning payments. Payments will be made for eligible expenses actually incurred and paid by the Subrecipient, and shall not exceed expenditures. Payments will be adjusted by the City in accordance with program income balances available in Subrecipient accounts. In addition, the City reserves the right to apply funds available under this contract for costs incurred by the City on behalf of the Subrecipient.

3. Performance Reports

Subrecipient shall submit a quarterly Performance Report to City in a format prescribed by City that shall include the amount of funds obligated and expended for each eligible activity, and number of beneficiaries served.

Subrecipient shall submit a Performance Report quarterly no later than thirty (30) days after the end of the quarter until all CDBG amounts are reported, expended, and all close-out requirements have been met. The Subrecipient shall submit Progress Reports to the City in a form and containing information as required by the City.

D. Procurement

1. Compliance

Subrecipient shall establish procurement procedures to ensure that materials and services are obtained in a cost-effective manner. When procuring services to be provided under this Agreement Subrecipient shall comply with the non-profit procurement standards of 24 CFR 84.40-48.

Sealed bids are required for purchases of items costing \$25,000 or more. The sealed bid process can be complicated; therefore, the Subrecipient is required to contact the City of Plano Grant Coordinator's office for assistance prior to starting the bid process.

Three (3) written quotes are required for purchases of items costing between \$3,000 and \$25,000. These quotes shall be placed in the Subrecipient's project file. If the Subrecipient is unable to obtain three (3) quotes, a list of the vendors contacted should be placed in the file, noting those vendors who did submit quotes. If there is only one vendor who makes the item to be purchased, this should be noted in the file with an explanation of what was done to determine there was only one vendor available.

For purchases costing less than \$3,000, only one quote is required. A receipt or invoice from the store where the item was bought will suffice. Subrecipient is not precluded from obtaining several quotes to obtain the best price, even for low-cost items.

2. OMB Standards

The Subrecipient shall procure all materials, property, or services in accordance with the requirements of OMB Circular A-110, Procurement Standards, and shall subsequently follow Property Management Standards.

IX. PERSONNEL & PARTICIPANT CONDITIONS

A. Civil Rights

1. Compliance

The Subrecipient agrees to comply with all applicable provisions of Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development

Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, Executive Order 11246 (as amended by Executive Orders 11375 and 12086), and with fair housing and nondiscrimination provisions set forth in 24 CFR 570.601 and 24 CFR 570.602.

2. Nondiscrimination

The Subrecipient will not discriminate against any employee or applicant for employment because of race, color, ancestry, national origin, sex, disability or other handicap, age, marital/familial status, or status with regard to public assistance. The Subrecipient agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.

3. Access to Records

The Subrecipient shall furnish and cause each of its own subrecipients or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts with respect to any matters covered by this agreement by the City, HUD or its agent, or other authorized federal agencies or officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions governing or related to this contract.

4. EEO/AA Statement

The Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.

5. Subcontract Provisions

The Subrecipient will include the provisions of Paragraphs IX.A., Civil Rights, and B. Employment Restrictions, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own subrecipients or subcontractors.

B. Employment Restrictions

1. Prohibited Activity

The Subrecipient is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; sectarian or religious activities; and lobbying political patronage, and nepotism activities.

2. Labor Standards

The Subrecipient agrees to comply with the labor standards as set forth in 24 CFR 570.603.

3. “Section 3” Clause

a. Compliance

Compliance with the provisions of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u)(section 3), the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this contract, shall be a condition of the federal financial assistance provided under this contract and binding upon the City, the Subrecipient and any of the Subrecipient’s subrecipients and subcontractors.

The Subrecipient further agrees to ensure that, to the greatest extent feasible, opportunities for training and employment arising in connection with this project be given to low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

b. Subcontracts

The Subrecipient will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon any finding that the subcontractor is in violation of regulations issued by the grantor agency.

C. Conduct

1. Assignability

The Subrecipient shall not assign or transfer any interest in this contract without the prior written consent of the City thereto; provided, however, that claims for money due or to become due to the Subrecipient from the City under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the City.

2. Subcontracts

a. Approvals

The Subrecipient shall not enter into any subcontracts with any agency or individual in the performance of this contract without the written consent of the City prior to the execution of such agreement. Subrecipient shall also comply with 24 CFR 570.609 with regard to debarment, suspension, or ineligibility status of selected subcontractors.

b. Payment obligations to third parties

The City shall not be obligated or liable under this Agreement to any party other than the Subrecipient for payment of any monies or for provision of any goods or services.

c. Monitoring

The Subrecipient will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct any areas of noncompliance.

d. Content

The Subrecipient shall cause all of the provisions of this contract in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

e. Selection Process

The Subrecipient shall undertake to insure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis. Executed copies of all subcontracts shall be forwarded to the City along with documentation concerning the selection process.

3. Hatch Act

The Subrecipient agrees that neither funds provided, nor personnel employed under this contract, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V United States Code.

4. Affidavit of No Prohibited Interest

Subrecipient acknowledges and represents it is aware of all applicable laws, City Charter, and City Code of Conduct regarding prohibited interests and that the existence of a prohibited interest at any time will render the Contract voidable. Subrecipient has executed the Affidavit of No Prohibited Interest, attached and incorporated herein as **Exhibit C**.

5. Lobbying

The Subrecipient hereby certifies that none of the funds provided under this Agreement shall be used for publicity or propaganda designed to support or defeat legislation before the U.S. Congress, a state Legislature, County Commissioners Court, or City Council.

6. Copyright

If this contract results in any copyrightable material or inventions, the City and/or grantor agency reserves the right to a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for government purposes.

7. Religious Organization

The Subrecipient agrees that funds provided under this contract will not be utilized for

religious activities, to promote religious interests, or for the benefit of a religious organization in accordance with the Federal regulations specified in 24 CFR 570.200(j).

X. ENVIRONMENTAL CONDITIONS

A. Air and Water

The Subrecipient agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:

1. Clean Air Act, 42 U.S.C., 7401, *et seq.*;
2. Federal Water Pollution Control Act, as amended, 33 U.S.C., 1251, *et seq.*, as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder;
3. Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50, as amended.

B. Flood Disaster Protection

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), the Subrecipient shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

C. Lead-Based Paint

The Subrecipient agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR Part 35, Subpart B. Such regulations pertain to all CDBG-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted.

D. Historic Preservation

The Subrecipient agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the

procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this agreement.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.

XI. GENERAL PROVISIONS

A. Article and Section Headings

The Article and Section headings contained herein are for convenience and reference and are not intended to define or limit the scope of any provision of this agreement.

B. Partial Invalidity

If any term, provision, covenant, or condition of this agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

C. Severability

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby, and all other parts of this Agreement shall nevertheless be in full force and effect.

D. Venue

The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this Agreement. The parties agree that this Agreement is performable in Collin County, Texas, and that exclusive venue shall lie in Collin County, Texas.

XII. 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.

XIII. EFFECTIVE DATE

This Agreement shall be effective from and after execution by both parties hereto. **SIGNED** on the date indicated below.

(SUBRECIPIENT)

By _____
Name _____
Title _____

Date: _____

CITY OF PLANO, TEXAS

Christina Day
Community Services Manager

Date: _____

APPROVED AS TO FORM

Diane C. Wetherbee
CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2012, by **(Individual), (Title) of (Name of Recipient Agency), a (Type of Organization, for example, non-profit organization), on behalf of said (Organization).**

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2012, by Christina Day, Community Services 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

2012 BUDGET: (INSERT SUBRECIPIENTS NAME)

Exhibit B

INSURANCE REQUIREMENTS

1. General Provisions

- 1.1. The Agency shall obtain and maintain the minimum insurance coverage set forth in this section. By requiring such minimum insurance, City shall not be deemed or construed to have assessed the risk that may or may not be applicable to the Agency. The Agency shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. The Agency is not relieved of any liability or other obligation assumed or pursuant to the Contract by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. The insurance requirements listed below do not replace any warranty or surety (performance, payment, or maintenance) bonds if required by preceding or subsequent sections of this contract.
- 1.2. Agency shall cause each subcontractor employed by Agency to purchase and maintain insurance of the type specified herein or cover such subcontractors under its insurance coverage.
- 1.3. The Agency agrees that the insurance requirements specified in this section do not reduce the liability Agency has assumed in any indemnification/hold harmless section of this contract.
- 1.4. City reserves the right to approve the security of the insurance coverage provided pursuant to this section by insurers including terms, conditions and the Certificate of Insurance. Failure of the Agency to fully comply with requirements of this section during the term of the contract will be considered a material breach of contract and will be cause for immediate termination of the contract at the option of City.
- 1.5. Insurance coverage required by this section shall:
 - 1.5.1. Be on a primary basis, non-contributory with any other insurance coverage and/or self-insurance carried by City, and
 - 1.5.2. Be with an insurer possessing an A-VII. A. M. Best Rating.

2. Minimum Insurance Coverage & Limits

- 2.1. Commercial General Liability. Agency shall maintain commercial general liability and, if necessary commercial umbrella insurance as specified below.
 - 2.1.1. Commercial general liability insurance shall be written on an ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, product-completed operations, personal and advertising injury and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

2.1.2. Minimum Limits of Insurance

- 2.1.2.1. \$1,000,000 Per Occurrence
- 2.1.2.2. \$1,000,000 Personal/Advertising Injury
- 2.1.2.3. \$2,000,000 General Aggregate
- 2.1.2.4. \$2,000,000 Products/Completed Operations Aggregate

2.2. Commercial Automobile Liability. Contractor shall maintain business automobile liability insurance and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident.

2.2.1. Such automobile liability insurance shall cover liability arising out of any auto (including owned, hired, and non-owned automobiles).

2.2.2. Commercial automobile coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to the provided in ISO form CA 00 01.

2.2.3. Contractor waives all rights against City and its agents, officers, directors and employees for recovery by the commercial automobile liability or commercial umbrella liability insurance obtained by Contractor pursuant to this section or under any applicable automobile physical damage coverage.

3. Evidence of Insurance

3.1. Prior to commencement of work, and thereafter upon renewal or replacement of coverage required by this section, Contractor shall furnish City a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with this section. **Contractor shall furnish copies of all endorsement to insurance policies as required by each section herein to the City.**

3.2. Failure of City to demand such certificate(s) or other evidence of full compliance with these insurance requirements or failure of City to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

3.3. City shall have the right, but not the obligation, of prohibiting Contractor or any subcontractor from entering the project site or commencing any service pursuant to this contract until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the City.

3.4. Failure to maintain required insurance may result in termination of this contract at sole option of the City.

3.5. The Contractor shall furnish a Certificate of Insurance (COI) evidencing insurance coverage required by this section ten (10) business days preceding commencement of contracted service(s). The COI shall:

- 3.5.1. List each insurers' NAIC Number or FEIN,
- 3.5.2. List **2012 Community Development Block Grant, program name, location of service, and services dates of October 1, 2012 through September 30, 2013.**
- 3.5.3. State waiver of subrogation is in favor of City with regard to Workers' Compensation Coverage if required listed as required in Section 2.0, Minimum Coverage & Limits of this document,
- 3.5.4. List the specific number of days cancellation provided pursuant to policy language for notice of cancellation to certificate, and
- 3.5.5. List City of Plano, Office of Risk Management, 7501 A Independence Parkway, Plano, Texas, 75025 in the Certificate Holder Section.

Exhibit C

AFFIDAVIT OF NO PROHIBITED INTEREST

I, the undersigned, declare and affirm that no person or officer of _____ (herein "Subrecipient") is either employed by the City of Plano or is an elected official of the City of Plano and who has a financial interest, direct or indirect, in any contract with the City of Plano or has a financial interest, directly or indirectly, in the sale to the City of Plano of any land, or rights or interest in any land, materials, supplies or service. As per Section 11.02 of the Plano City Charter, interest represented by ownership of stock by a City of Plano employee or official is permitted if the ownership amounts to less than one (1) per cent of the corporation stock.

I further understand and acknowledge that the existence of a prohibited interest at any time during the term of this contract will render the contract voidable.

By: _____
Name of Subrecipient

Signature

Print Name

Title

Date

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2012.

Notary Public, State of _____



**FUNDING AGREEMENT BETWEEN THE CITY OF PLANO
AND
(Insert DEVELOPER)**

**U.S. Department of Housing & Urban Development
Home Investment Partnership Program, CFDA #14-239, M-12-MCF-48-0234**

THIS AGREEMENT entered into this 1st day of October, 2012, between the City of Plano (hereinafter referred to as “City”), a Texas Home-Rule Municipal Corporation, acting by and through the Community Services Division of the Department of Planning, and **(Insert Name of Developer)** (hereinafter, referred to as the “Developer”).

WHEREAS, City has received certain funds from the U.S. Department of Housing and Urban Development (HUD) under Title II of the National Affordable Housing Act of 1990, (P.L. 10 01-625) hereinafter referred to as the “ACT”; and

WHEREAS, the implementing regulations of “the ACT” at Section 24, Part 92, of the Code of Federal Regulations (Final Rule of the Home Investment Partnership Program), and Subsequent Amendments hereinafter referred to as the “HOME Program”, sets forth the requirements for the use of said funds; and

WHEREAS, the City Council of Plano, by resolution, pursuant to the ACT, adopted a Consolidated Plan to carry out housing activities eligible under the HOME Program; and

WHEREAS, the Developer applied for funding from the City of Plano’s HOME Program to provide decent, affordable housing to low-to-moderate income residents of the City of Plano and hereinafter referred to as the “Project”; and

WHEREAS, the City Council of Plano adopted a budget for the HOME Program Year (2012-2013) beginning October 1, 2012 and ending September 30, 2014 and included therein the award of funds to the Developer for funding the “Project”; and

WHEREAS, in consideration of the award of funds by the City Council, the City hereby offers grant assistance to the Developer, (subject to the future availability of federal funds) to implement the approved Developer “Project” application in accordance with “the ACT” and the “HOME Program”; and

NOW THEREFORE, in consideration of the foregoing and the mutual agreements and covenants hereinafter set forth, the parties hereto legally intending to be bound hereby, do agree for themselves and their respective successors and assigns as follows:

I. PURPOSES/CONSIDERATION

The purpose of this Agreement is to provide terms and conditions under which City shall administer and make available the HOME Funds in an amount not to exceed (**Insert Amount**). In consideration of the City providing the above referenced funding, Developer shall pay costs associated with affordable housing and abide by the terms and conditions of this Agreement.

The Agreement shall consist of this written agreement and the following items which are attached hereto and incorporated herein by reference:

- A. Grant Budget (Exhibit “A”);
- B. HUD Income Limits (Exhibit “B”);
- C. Insurance Requirements (Exhibit “C”);
- D. Affirmative Marketing Policies and Procedures (Exhibit “D”);
- E. Affidavit of No Prohibited Interest (Exhibit “E”).

These documents make up the Agreement Documents and what is called for by one shall be as binding as if called for by all. In the event of an inconsistency or conflict in any of the provisions of the Agreement Documents, the inconsistency or conflict shall be resolved by giving precedence first to this written agreement then to the Agreement Documents in the order in which they are listed above. These documents shall be referred to collectively as the “Agreement Documents.”

II. TERMS AND CONDITIONS OF USE OF HOME FUNDS

- A. The Developer agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 92, (the Housing and Urban Development regulations, concerning the HOME Investment Partnerships Program (“HOME”)). The Developer also agrees to comply with all other applicable federal, state and local laws, regulations, and policies governing the funds provided under this contract, including but not limited to the City of Plano’s Subrecipient Compliance Manual. The Developer further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.
- B. The Developer agrees to comply with the requirements of the Consolidated and Further Continuing Appropriation Act of 2012 (P.L. 112-55), including but not limited to the following.
 - 1. Any 2012 HOME grant funds used for activities not completed within four years of the commitment date, (as determined by the latter of the signatures of each party to this written agreement), must be repaid to the HOME Investment Trust Fund. Completion requires: (1) all necessary construction work to have been accepted by the City; and (2) the homebuyer unit is ready for occupancy.
 - 2. The Developer understands that no activity will be eligible for 2012 HOME funding until the City has:
 - a. Underwritten the project,

- b. Assessed the development capacity and fiscal soundness of the developer, and
 - c. Examined neighborhood market conditions to ensure adequate need for that project.
- Any activity undertaken prior to these items being completed and authorization from the City received will be ineligible for use of HOME funding.
3. If any homebuyer unit is not sold to an eligible buyer within six months of completion, funds must be returned. “Sold” is defined as having a legitimate, industry standard sales contract for the unit fully executed by both the buyer and seller.
 4. The Developer has qualified staff with development experience sufficient to meet the requirements of the HOME program.
- C. City is providing the total sum of **(Insert Amount)** which must not be less than fifteen percent (15%) of the City’s HOME allocation **(Insert Amount)** in accordance with requirements of 24 CFR 92.300.

1. All HOME funds may only be expended consistent with the budget approved and detailed in Exhibit A.
2. In consideration of Developer’s full and satisfactory performance of this Agreement, the City shall reimburse the actual allowable costs incurred by Developer in the performance of the Agreement.
3. The sum total of HOME funds above includes **(Insert Amount)** classified for Operating Expenses, which will not exceed five percent (5%) of City HOME allocation **(Insert Amount)**. This allocation is consistent with regulations stating these funds may not exceed \$50,000 or fifty percent (50%) of the Developer total annual operating expenses for the year, whichever is greater.
4. Subsidy limits are set for the HOME Investment. The minimum amount of HOME funds that can be invested is \$1,000 per unit. The maximum amount, based on the 221(d)(3) program limits, for Plano is:

Size:	0 bedrooms	1 bedroom	2 bedrooms	3 bedrooms	4 bedrooms
Limit:	100,742	115,484	140,429	181,668	199,417

5. Developer shall not use these funds to purchase equipment that exceeds \$1,000 in total value.
6. Any request for transfer of funds among the contract budget categories submitted by the Subrecipient will require written approval from the City of Plano before the transfer can be effective. The Subrecipient may make transfer of HOME funds between or among budget categories of Exhibit A attached hereto and incorporated herein by reference without requiring a formal amendment to this contract provided:

- a. The cumulative dollar amount of all transfers among budget categories is equal to or less than ten percent (10%) of the total amount of the budget;
- b. The transfer will not change the scope of the project funded under this contract; and
- c. The Subrecipient submits to City of Plano a written statement specifying the reason for transfer request, the amount of funds to be transferred and identification of effected budget categories.

All other transfers of funds will require a formal amendment.

- D. Developer shall use any and all HOME funds furnished by City under this agreement to provide homeownership housing opportunities for low-to-moderate income persons by **(Insert Description)**, as described in the Scope of Work set forth in Section IV, and for no other purposes.
- E. Developer agrees that these HOME funds will not be used for any expenditure incurred before October 1, 2012.
- F. Developer agrees the expenditure of the HOME funds shall be completed on or before September 30, 2014. Any HOME funds remaining with Developer which are not expended or encumbered on September 30, 2014 will be returned to the City.
- G. If during the term of this Agreement, Developer wishes to utilize HOME funds for purposes other than stated above, such change will be allowed only if the proposed change is not in violation of HOME Regulations. Such change may be allowed only after approval by Developer's Board, as evidenced by the official minutes of the board authorizing the change, and by the City Manager or his designee. No expenditure of HOME Funds in conformance with the proposed change is permitted until written approval is received from the City Manager or his designee.
- H. The Developer shall provide ongoing compliance requirements of HOME-assisted properties for the entire affordability period set forth in Section V.E. For homebuyer units this includes annual monitoring of units for principal residency and **(Insert either recapture or resale)** of funds at time of resale.
- I. Timely completion of the specified work in this agreement is an integral part of performance. Expenditure of HOME funds is subject to Federal deadlines, which could result in the loss of the Federal funds, if not met by acceptance and execution of this agreement, it is agreed by the Developer that the project will be completed as expeditiously as possible and that the Developer will make every effort to ensure that the project will proceed without delay. Failure to meet these deadlines can result in cancellation of this contract and the revocation of HOME funds. Appropriate provisions regarding the importance of timely completion of work will be inserted in all contracts or subcontracts relative to the work tasks required by this agreement.

III. INDEPENDENT CONTRACTOR

It is understood that the City enters into this Agreement with Developer for the purposes enumerated in Section II hereof, and it is understood that Developer is an independent contractor and nothing herein shall be construed to characterize Developer (or any of Developer's employees) as an agent, employee, or representative of the City or as expressing any intention of Developer to enter into a joint venture with City.

IV. SCOPE OF WORK

- A. Developer shall (**Insert detailed program description consistent with 2012 application for funding**).
- B. Developer can provide direct homebuyer subsidies to bring loan amounts down to an affordable level for each client.
- C. Homes shall be rehabilitated in accordance with HOME program regulations and Developer policy.
- D. It is understood that Developer shall provide a specific working budget and realistic timetable for acquisition, rehabilitation, construction, soft costs, development fees and other allowable cost/activities prior to any fund usage. Said budget shall identify all sources and uses of HOME funds, and allocate HOME and non-HOME funds to activities or line items. An activity budget will be submitted prior to fund disbursement for each property acquired, rehabilitated, and sold. Said budget shall include:
 - 1. The line item costs and how each source of funds is to be utilized in the activity. The project will be based on a scope of work consistent with Developer procedures.
 - 2. The permanent source of funding for the repayment of any construction loan.
 - 3. The anticipated sources of temporary or permanent mortgages and any bridge financing that may be necessary.
 - 4. A detailed development schedule delineating the timeline for predevelopment, rehabilitation, sale, and closing of the financing for each housing unit.
 - 5. The total activity budget may be amended or modified by mutual agreement of the Developer and the City.
- E. The Developer shall provide a reconciliation statement prior to closing the sale of each home.
- F. The Scope of Work will be performed in essentially the manner proposed in the Developer application and or Developer's written procedures.

G. The following timetable will be used as a guide for completing the acquisition agreement:

	<u>Purchase Date</u>	<u>Completion date</u>	<u>Sold Date</u>
<i>Property #1</i>	<i>(Insert Date)</i>	<i>(Insert Date)</i>	<i>(Insert Date)</i>
<i>Property #2</i>	<i>(Insert Date)</i>	<i>(Insert Date)</i>	<i>(Insert Date)</i>
<i>Property #3</i>	<i>(Insert Date)</i>	<i>(Insert Date)</i>	<i>(Insert Date)</i>

V. **HOME PROJECT REQUIREMENTS**

A. **DISBURSEMENT OF FUNDS**

1. Grant funds will be disbursed on a reimbursement basis only.
2. Any expense incurred prior to October 1, 2012 (Grant effective date) is not considered to be an eligible expense.
3. No HOME activity costs can be incurred until the City has conducted an environmental review of the proposed activity site as required under 24 CFR Part 58. The environmental review may result in a decision to proceed with, modify or cancel the activity and/or project.
4. The Developer shall provide documentation to the City for each HOME program expenditure request under this agreement. The request should be on a City designated form. Developer shall attach invoices, bills, timesheets, etc. to the form as proof of expenditure. Upon receipt and verification of this documentation and verification that each expense is an eligible HOME expense, the City shall arrange for such funding to be paid to Developer. All such expenditures shall be in conformance to the approved project budget, Exhibit A, and the activity budget. The City reserves the right to withhold payment until adequate documentation has been provided and reviewed. The City also reserves the right to inspect records and activity sites to determine that the reimbursement and compensation requests are reasonable.
5. Developer may submit a final invoice upon completion. Final payment shall be made after City has determined that all services have been rendered, files and documentation delivered, and units have been placed in service in full compliance with HOME regulations, including submission of a completion report, documentation of eligible occupancy (eligible buyer), property standards (final inspection), and long term use restrictions.
6. Developer also agrees that failure to expend HOME funds within a reasonable time frame and in an acceptable manner or to complete the project could result in the repayment of funds in accordance with 24 CFR, Sec 92.503(b).
7. Expenses incurred after the termination date will not be reimbursed under the Agreement and the City shall assume no liability for same. At the time of expiration,

any HOME funds on hand and any accounts receivable attributable to the use of HOME funds shall be returned to the City.

B. ENVIRONMENTAL REVIEW

1. Notwithstanding any provision of this agreement, the parties hereto agree and acknowledge that this agreement does not constitute a commitment of funds or site approval, and that such commitment of funds or approval may occur only upon satisfactory completion of environmental review and receipt by the City of a release of funds from the U.S. Department of Housing and Urban Development under 24 CFR Part 50 and 58.
2. The Developer shall not undertake or commit any funds to physical or choice-limiting actions including property acquisition, demolition, movement, rehabilitation, conversion, repair, or construction prior to the environmental clearance. Any expenditure made prior to the clearance shall not be reimbursed.

C. PROCUREMENT STANDARDS

1. The Developer shall establish procurement procedures that comply at a minimum with the nonprofit procurement standards at 24 CFR 84.40-.48. Developer shall also ensure that minority and women-owned businesses have equal opportunity to bid for materials and services contracts. Purchases of items or services costing \$25,000 or more require sealed bids.
2. For purchase of items costing between \$3,000 and \$25,000, three (3) written quotes for the item are required. These quotes should be placed in the Developer's file. If Developer is unable to obtain three (3) quotes, a list of the vendors contacted should be placed in the file, noting those vendors who did submit quotes. If there is only one vendor who makes the item to be purchased, this should be noted in the file with an explanation of what was done to determine there was only one vendor available.
3. For purchases costing less than \$3,000, only one quote is required. A receipt or invoice from the store where the item was bought will suffice. Developer is not precluded from obtaining several quotes to obtain the best price, even for low-cost items.

D. HOME BUYER ELIGIBILITY

1. Developer must assure that purchasers of HOME assisted housing have a gross annual household income that does not exceed eighty percent (80%) of area median income (AMI), adjusted for household size. Verification of household income must be in accordance with 24 CFR 92.203. Verification documentation must not be more than six (6) months old at closing. These income guidelines may be revised, at which time City will notify Developer of the changes. Upon such notification, all new clients must meet the revised guidelines.

2. Developer shall collect and maintain homebuyer beneficiary information pertaining to household size, income levels, racial characteristics, and the presence of female headed households in order to determine low- and moderate-income benefit in a cumulative and individual manner. Income documentation shall be in a form consistent with HOME requirements as stated in the HUD Technical Guide for Determining Income and Allowances under the HOME Program.
3. Developer will use the 24 CFR Part 5 method of calculating income.
4. AMI charts are provided by HUD annually. Current income eligibility guidelines are shown in **Exhibit B** attached hereto and incorporated herein by reference.
5. Homes purchased by homebuyers must be located within the City limits of the City of Plano.
6. The homebuyer must occupy the home as the principal residence of the recipient of HOME funds throughout the established period of affordability in accordance with 24 CFR 92.254(a)(4).
7. The homebuyer's monthly housing cost should not exceed 35% of their gross monthly income, and the total debt ratio should not exceed 45% of their gross monthly income. These ratios will be based on the income and debt calculations of the first lien holder. The sales price of the home shall be based on market value. The Developer shall refer the homebuyer to the City of Plano's down payment and closing cost assistance program in order to aid in making the home as affordable as possible
8. The homebuyer will have a fee simple title to the property, subject only to mortgages, deeds of trust, deed restrictions, or other debt instruments approved by the City of Plano.

E. AFFORDABILITY PERIOD

1. The HOME program sets affordability periods that relate to the resale of the property. The affordability period is based on the amount of HOME funds provided for the property. If a property is sold at market value, the difference is considered part of the buyer subsidy and included in the affordability period calculation.

2. If the homebuyer sells the property within the affordability period, recapture requirements will be placed on the resale of the property:

<u>HOME Funds Provided</u>	<u>Affordability Period</u>
<\$15,000	5 years
\$15,000-\$40,000	10 years
>\$40,000	15 years

3. The Developer will track the homeowner for the entire affordability period and keep the City informed of residency and property status.

F. RECAPTURE AND REPAYMENT OF HOME FUNDS (OR RESALE STANDARDS MAY SUBSTITUTE HERE)

1. The sale of the property by the homeowner during the affordability period triggers repayment of the direct HOME subsidy that the buyer received when he/she originally purchased the home.
2. The City has chosen the Recapture Option as a mechanism to reclaim all or part of proceeds from the sale of the property.
3. The City will use the “reduction during the affordability period (“forgiveness”) method of calculation and “shared insufficient proceeds” as its method of determining the amount of repayment required.
 - a. Under this method the direct HOME subsidy will be prorated and forgiven on a monthly basis. For example a 5 year affordability period will be forgiven at the rate of 1/60 per month; 10 year affordability at 1/120 per month; and 15 year affordability at 1/180 per month. This amount will be deducted from the full direct subsidy. If the proceeds from the sale of the property are sufficient to repay the City for the portion remaining of the original direct subsidy, the City will be paid and the homeowner will get the difference.
 - b. If the sale proceeds are insufficient to repay the City for the remaining portion of the original direct subsidy, the following calculation will be used:

$$\frac{\text{HOME subsidy}}{(\text{HOME subsidy} + \text{Homeowner investment})} * \text{Net proceeds} = \text{HOME recapture}$$

4. The recapture of funds will be enforced by having the homebuyer sign a note and deed of trust at the time of closing and recording the lien (deed of trust) with the Collin County Clerk’s Office. The City will provide this note and deed of trust as the beneficiary.
5. Funds recaptured because housing no longer meets affordability requirements are subject to the requirements on program income.
6. All HOME funds are subject to repayment in the event the project does not meet all HOME requirements.
7. Developer understands that upon the completion of the project, any HOME funds reserved but not expended under this agreement will revert to the City.

8. The Developer shall lend the HOME funds to the individual buyers in an amount sufficient to make the purchase affordable. Any HOME funds that reduce the price of the property below the fair market value of the property shall be secured by a HOME note and mortgage as required in 24 CFR 92.254(a)(5)(ii) using the note and mortgage prescribed or approved by the City (and consistent with the method of recapture identified in the City's Consolidated Plan).

G. DEVELOPER PROJECT PROCEEDS

1. Project proceeds, as defined herein, shall include any fees payable to Developer which are generated in the provision of housing assistance under this agreement, as well as prior HOME program income and/or proceeds being retained by Developer per 24 CFR 92.300(a).
2. The City of Plano hereby authorizes the Developer to retain all project proceeds in conformance with 24 CFR 92.300(a)(2). Project proceeds are not under the same regulations as program income (recaptured funds).
3. Developer proceeds may only be used for HOME eligible activities and other housing projects that benefit low-income families. Even after this written agreement expires, Developer project proceeds will continue to be used for only HOME eligible activities and other housing projects that benefit low-income families.
4. The City of Plano stipulates that the Developer can use the project proceeds for the following activities per CPD Notice 97-9 (IV)(A):
 - a. HOME eligible activities or
 - b. Other low-income housing activities, which may include operational support of the Developer, assuming the Developer continues to meet its mission of providing affordable housing. This includes operational costs such as rent, salaries, and other affordable housing projects.
5. Developer will report quarterly on the use of project proceeds. The proceeds will be kept in a separate account which can be tracked monthly. The three bank statements for the quarter, invoices and bills must be submitted with the quarterly report.
6. Developer and the City understand that once the Developer proceeds are used, there shall not be any additional HOME requirements to meet. Funds generated from the use of Developer proceeds are not "Developer proceeds".

H. REPORTING REQUIREMENTS

1. Developer shall provide to the City quarterly reports, on forms provided by the City, which will report information for each quarter of the grant year, which will end in December, March, and June, and September. The reports will be due to the City not

later than 30 days from the end of the respective quarter. A final report is required at the end of the grant year.

2. All reports shall state the total number of unduplicated households, including the ethnic origin, number in household, income level, disability status, and whether there is a female head of household. In addition, Developer agrees to provide the City information as required to determine program eligibility, to meet national objectives, and to analyze the financial records pertinent to the project, including the status of net proceeds.
3. If Developer fails to submit said reports, the City will have the option to terminate this Agreement.
4. Developer shall also provide to the City one (1) copy of each audit of Developer's financial records which may be performed between the effective date of this Agreement and the expiration of the Agreement, or until such time as all funds have been expended and the scope of work completed.

VI. THE PROPERTY AND PROPERTY STANDARDS REQUIREMENTS

A. TYPES OF PROPERTIES

Developer must determine that the property is an eligible property. Eligible property types include any property that will serve as the purchaser's principal residence within the city limits of Plano, including:

1. A single family property (one-unit)
2. A two-to-four unit property
3. A condominium unit
4. A cooperative unit
5. A manufactured home

B. VALUE OF PROPERTY

1. Developer must determine the "after completion" maximum value of the property prior to any work being performed by using estimates of value, appraisals, or tax assessments.
2. The after completion value must not exceed ninety-five percent (95%) of the median purchase price.
3. If the property does not require rehabilitation, the sales price must not exceed ninety-five percent (95%) of the median purchase price.

C. PROPERTY STANDARDS

The property must meet local written rehabilitation standards, state and local code requirements, and handicapped accessibility requirements, where applicable.

D. INSURANCE, BONDING REQUIREMENTS, AND INDEMNIFICATION

1. Insurance

- a. Developer agrees to maintain during the term of this Agreement, or any extension thereof, insurance in the type and amounts as shown in **Exhibit C** attached hereto and incorporated herein by reference. Such insurance shall be evidenced by certificates, a copy of which shall be provided to the City within ten (10) days of execution of this Agreement. Insurance provided by Developer is subject to approval by City.
- b. Insurance companies, named insured and policy forms shall be subject to the approval of the City of Plano. Such approval shall not be unreasonably withheld. Insurance policies shall not contain endorsements or policy conditions that reduce coverage provided to the City of Plano. Developer shall be responsible to City of Plano or the insurance companies insuring City for all costs resulting from any financially unsound insurance companies selected by Developer and their inadequate insurance coverage.

2. Bonding

Developer shall observe sound business practices with respect to providing bonding insurance that provides adequate coverage for activities under this Agreement in compliance with 24 CFR 85.36(h).

3. Flood Insurance

- a. Consistent with Flood Disaster Protection Act of 1973 (42 U.S.C. 4001-4128), HOME funds may not be used with respect to the acquisition, new construction, or rehabilitation of a unit located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazard.
 - i. The community in which the area is situated is participating in the National Flood Insurance Program (44 CFR Parts 59-79), or less than a year has passed since FEMA notification regarding such hazards, and
 - ii. Flood Insurance is obtained as a condition of approval of the commitment.
- b. The City shall require and monitor compliance where an area has been identified by FEMA as having special flood hazards. The Developer shall be responsible for assuring that flood insurance under the National Flood Insurance Program is

obtained and maintained. Copies of records pertaining to flood insurance protection shall be provided to the City upon request.

- c. No payments will be made to the Developer until the current insurance certifications have been provided.

4. INDEMNIFICATION

THE DEVELOPER 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 DEVELOPER'S BREACH OF ANY 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 DEVELOPER, 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 CONTRACTOR 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 CONTRACTORS. 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.

DEVELOPER 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 DEVELOPER'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF DEVELOPER'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. DEVELOPER 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 DEVELOPER FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE RIGHT TO

RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND DEVELOPER SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY.

THE INDEMNIFICATION HEREIN SURVIVES THE TERMINATION OF THE CONTRACT AND/OR DISSOLUTION OF THIS AGREEMENT.

E. RECORDS RETENTION

Developer shall maintain accurate accounting records which document and justify all expenditures made pursuant to this Agreement. All income qualification information, all original books of entry and all canceled checks and any other financial records will be retained for no less than five (5) years following the program year in which HOME Funds were last expended under this Agreement. All accounting procedures, records, and reports shall be available for inspection by a duly authorized representative of the City or the U.S. Department of Housing and Urban Development.

F. TERMINATION

1. In accordance with 24 CFR 85.43, suspension or termination may occur if the Developer materially fails to comply with any term of the award, and that the award may be terminated for convenience in accordance with 24 CFR 85.44.
2. If, through any cause, the Developer shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Developer shall violate any of the conditions, agreements or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement by giving written notice to the Developer of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, the Developer shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder to the date of said termination. Notwithstanding the above, the Developer shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Agreement by the Developer and the City may withhold any payments to the Developer for the purpose of setoff until such time as the exact amount of damages due the City from the Developer is determined whether by court of competent jurisdiction or otherwise.

VII. ADMINISTRATION OF THE DEVELOPER/CITY OBLIGATIONS

A. DEVELOPER CERTIFICATION

1. Only non-profit organizations that have been certified by HOME participating jurisdictions as a Community Housing Development Organization can receive funds from the minimum fifteen percent (15%) set aside.
2. Developer must be certified by the participating jurisdiction regarding legal status, organizational structure, and capacity and experience. A HUD checklist will be used to

recertify the Developer.

3. Developer certification must be renewed annually. Developer agrees to provide all necessary documentation to the City for the purpose of recertification.

B. MATCH

1. The HOME Program requires that the funds used by the Developer be matched by the City of Plano. The City depends upon the donations and volunteerism of non-profits for this match of twenty-five percent (25%) of the total Home funds drawn down for project costs. For every dollar of HOME funds drawn down for a project, there is a \$0.25 match obligation. The Developer operating expenses and HOME administrative and planning funds do not require a match.
2. Match is a permanent contribution to affordable housing. Match is not leveraging, but the City's contribution to the HOME program - the local, non-federal contribution to the partnership.
3. The City's match credits are a community's non-federal contributions of cash, assets, services, labor and other resources of value to the HOME Program.
4. The Developer will provide the City documentation of any source of cash, assets, services, labor and other resources of value to the HOME program that is eligible for match. Documentation will include check copies of any cash donation or grant received, deposit slips confirming deposit, and proof of use of funds.

C. RECORD KEEPING AND RETENTION

1. The City must establish and maintain sufficient records to document that program requirements are met. Records must be maintained concerning the following categories: designation as a participating jurisdiction; program records; CHDO records; financial records: program administrative records; and records concerning other federal requirements.
2. The City will retain all records for five (5) years in keeping with Consolidated Plan requirements. Homeownership records will be kept for five years after project completion. Resale/recapture records will be kept for five years after the affordability period ends. Written agreements will be maintained for five years after the agreement ends.
3. The City will provide citizens and other interested parties with reasonable access to records, consistent with state and local laws regarding privacy and confidentiality, including information and records relating to the Consolidated Plan and the use of assistance under the programs covered by the Consolidated Plan.

D. MONITORING

1. The City may perform periodic on-site monitoring of Developer for compliance with the terms and conditions of this agreement and the regulations of 24 CFR 92. If the monitoring reveals deficiencies in the Developer's performance, a written report shall be prepared, identifying the deficiencies and establishing a time frame for correcting the deficiencies.
2. The City reserves the right to audit the records of the Developer any time during the performance of this agreement and for a period of five (5) years after final payment is made under this agreement.
3. Developer will provide reports and access to project files as requested by the City during the project and for five (5) years after completion and closeout of this agreement.
4. If required, the Developer will provide the City with a certified audit of the Developer's records representing the fiscal year during which the project becomes complete whenever the amount of federal funding is at or exceeds \$500,000 pursuant to the requirements of OMB Circular A-133.
5. Access shall be immediately granted to the City, HUD, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers and records of the Developer or its contractors which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

E. DEFAULT

1. If Developer fails in any manner to fully perform and carry out any of the terms, covenants, and conditions of the agreement, and more particularly if the Developer refuses or fails to proceed with the work with such diligence as will insure its completion within the time fixed by the schedule set forth in Section II, Terms and Conditions of Use of Home Funds, Developer shall be in default and notice in writing shall be given to Developer of such default by the City. If Developer fails to cure such default within such time as may be required by such notice, City may at its option terminate and cancel the agreement.
2. In the event of such termination, all HOME Funds awarded to Developer pursuant to this agreement shall be immediately revoked and any approvals related to the project shall immediately be deemed revoked and canceled. In such event, Developer will no longer be entitled to receive any compensation for work undertaken after the date of the termination of this agreement.
3. Such termination shall not affect or terminate any of the rights of City as against the Developer then existing, or which may thereafter accrue because of such default, and

the foregoing provision shall be in addition to all other rights and remedies available to the City under the law and the note and deed of trust (if in effect), including but not limited to compelling Developer to complete the project in accordance with the terms of this Agreement, in a court of proper jurisdiction.

4. The waiver of a breach of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition hereof.

F. NON-ASSIGNMENT

Developer shall not assign any of Developer's obligations or duties under this Agreement without first obtaining written consent from the Community Relations Commission and City Manager.

VIII. UNIFORM ADMINISTRATIVE REQUIREMENTS

To the extent applicable to a nongovernmental recipient of federal funds, the Developer shall comply with OMB Circulars A-87, A-102, A-110, A-122, A-133, as amended, Davis Bacon and Related Acts (40 U.S.C. 276a et seq.), as amended, and as supplemented by Department of Labor regulations (CFR 29 Part 5, as amended), the Copeland Anti-Kickback Act (18 USC 874), as amended, and as supplemented by Department of Labor regulations (CFR 29 Part 3, as amended), the Agreement Work Hours and Safety Standards Act (40 USC 327 et seq.), as amended, and as supplemented by Department of Labor regulations (CFR 29 Part 5, as amended); Executive Order 11246 (Equal Opportunity), as amended, and as supplemented by Department of Labor regulations (CFR 41 chapter 60, as amended); and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq., as amended and Section 104 (d) of the Act), and in accordance with CFR 24 Part 42, as amended.

IX. OTHER FEDERAL REQUIREMENTS

A. EQUAL OPPORTUNITY AND FAIR HOUSING.

In accordance with the Program Guidelines and Section CFR 24 92.350 of the HOME Regulations, no person in the United States shall on the ground of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program activity funded in whole or in part from HOME funds. In addition, funds must be made available in accordance with the following:

1. The requirements of the Fair Housing Act (42 U.S.C. 3601-20) and implementing regulations at 24 CFR Part 100; Executive Order 11063, as amended by Executive Order 12259 (CFR 3, 1958 -1963 Comp., P. 652 and 3 CFR,1980 Comp., P. 307) (Equal Opportunity in Housing) and implementing regulations at 24 CFR Part 107; and of the Civil Rights Act of 1964 (42 U.S. C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR Part 1;

2. The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing Regulations at 24 CFR Part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8;
3. The requirements of Executive Order 11246 (3 CFR 1964-65, Comp., p.339) (Equal Employment Opportunity) and the implementing Regulations issued at 41 CFR chapter 60;
4. The requirements of Section 3 of the Housing and Urban Development Act of 1968 (U.S.C. 1701u) that:
 - a. To the greatest extent feasible, opportunities for training and employment arising in connection with the planning and carrying out of any Project assisted with HOME funds be given to low-income persons residing within the unit of general local government or the metropolitan area (or non-metropolitan City) as determined by HUD, in which the project is located; and
 - b. To the greatest extent feasible, contracts for work to be performed in connection with any such activity be awarded to business concerns, including but not limited to individuals or firms doing business in the field of planning, consulting, design, architecture, building construction, rehabilitation, maintenance, or repair, which are located in or owned in substantial part by persons residing in the same metropolitan area (or non-metropolitan City) as the project.
5. The requirements of Executive Orders 11625 and 12432 (concerning Minority Business Enterprise), and 12138 (concerning Women's Business Enterprise). The Developer must make efforts to encourage the use of minority and women's business enterprises in connection with HOME-funded activities. The Developer will cooperate with the City in its minority outreach program to ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, in the procurement of property and services including, without limitation, real estate firms, construction firms, financial institutions, investment banking firms, underwriters, accountants, and providers of legal services.

B. EQUAL ACCESS

The Developer shall provide the services set forth in Section I without discrimination on the basis of race, color, religion, national origin, sex, sexual orientation, marital status, physical handicap, or age.

C. NON-DISCRIMINATION

The Developer agrees to post notices containing this policy against discrimination in conspicuous places available to applicants for employment and employees. All

solicitations or advertisements for employees, placed by or on the behalf of the Developer, will state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, sexual orientation, national origin, physical handicap, age, height, weight, marital status, veteran status, religion or political belief.

D. AFFIRMATIVE MARKETING

The Developer must adopt affirmative marketing procedures and requirements for HOME-assisted housing containing five (5) or more housing units. Affirmative marketing steps shall consist of actions to provide information and otherwise attract eligible persons from all racial, ethnic, and gender groups in the housing market area to the available housing and shall comply with the requirements and procedures of 24 CFR 92.351. The Developer shall also comply with the “Affirmative Marketing Procedures” adopted by the City that are attached hereto as **Exhibit D** and incorporated herein by reference.

E. ENVIRONMENTAL REVIEW

The Developer will provide information necessary for the DCDLRP to determine the environmental effects of each activity carried out with HOME funds in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) and the related authorities listed in HUD’s implementing regulations at 24 CFR Parts 50 and 58 and shall comply with all requirements and actions for each activity that it carries out with HOME funds, in accordance with the requirements imposed on Developer under 24 CFR Part 58.

F. DISPLACEMENT, RELOCATION, AND ACQUISITION

1. The Developer must ensure that it has taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted with HOME funds.
2. The Developer shall consult the Department of Conservation Division of Land Resource Protection (DCDLRP), prior to proceeding with any project activity with HOME funds that may cause temporary or permanent displacement to assure compliance with appropriate relocation requirements as provided in Section 24 CFR 92.353 of the regulations and in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4201-4655) and 49 CFR Part 24, as amended and the Fair Housing Act (42 U.S.C. 3601-19).
3. If HOME funds are used in an activity, the project is subject to the requirements of the Housing and Community Development Act of 1974. This includes the section 104(d) requirements to provide relocation assistance and replace low/moderate-income housing as described at 24 CFR 570.606(c) (Entitlement Program).
4. The acquisition of real property for a HOME project is subject to the Uniform Act (URA) and the requirements of 49 CFR Part 24, subpart B.

5. The City of Plano will not allow HOME funds to be used on any activity for which a displaced tenant would be eligible to apply for relocation reimbursement.

G. LABOR REQUIREMENTS

1. Section 24 CFR 92.354 of the Regulations requires that any contract for the construction (rehabilitation or new construction) of affordable housing with (twelve) 12 or more units assisted with funds made available under HOME must contain a provision requiring that not less than the wages prevailing in the locality, (as predetermined by the Secretary of Labor pursuant to Davis Bacon and Related Acts (40 U.S.C. 276 a-5)), will be paid to all laborers and mechanics employed in the development of affordable housing involved, and such agreements must also be subject to the overtime provisions, as applicable, to the Work Hours and Safety Standards Act (40 U.S.C. 327-332).
2. The Developer shall comply with regulations issued under these Acts and with other Federal Laws and Regulations pertaining to labor standards and HUD handbook 1344.1 (Federal Labor Standards Compliance in Housing and Community Development Programs), as applicable. The DCDLRP shall require certification as to compliance with the provisions of this section before making any payment under such agreement.

H. LEAD-BASED PAINT

1. In accordance with Section 24 CFR 92.355 of the HOME Regulations as amended, housing assisted with HOME funds constitutes HUD-associated housing for the purpose of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, et seq.) and is, therefore, subject to 24 CFR Part 35. Unless otherwise provided, the Developer shall be responsible for testing and abatement activities.
2. The Developer will assure compliance with Federal Regulations in regard to lead-based paint which require that applicants, owners, and tenants of HUD-associated housing and rehabilitation activities (including structures constructed before 1978) be provided with information on the following: that the property may contain lead-based paint; of the hazards of lead-based paint; of the symptoms and treatment of lead-based paint poisoning; of the precautions to be taken to avoid lead-based paint poisoning (including maintenance and removal techniques for eliminating such hazards); of the advisability and availability of blood lead level screening for children under seven years of age; and that in the event lead-based paint is found in the property, appropriate abatement procedures may be undertaken.

I. DEBARMENT AND SUSPENSION

As required by 2 CFR 2424, federal funds shall not be used directly or indirectly to employ, award contracts to, or otherwise engage the services of, or fund any contractor, subcontractor, developer, business, consultant, or any entity during any period of

debarment, suspension, or placement in ineligibility status.

J. RELIGIOUS ORGANIZATION

The Developer agrees that funds provided under this contract will not be utilized for religious activities, to promote religious interests, or for the benefit of a religious organization in accordance with the federal regulations specified in 24 CFR 570.200(j). If the Developer is a religious or faith-based organization, it is eligible to participate in the HOME program, but HOME program funds may not be used to engage in inherently religious activities such as worship, religious instruction, or proselytization. If Developer conducts such activities, the activities will be offered separately, in time or location, from the assistance funded under this part, and participation must be voluntary for the beneficiaries of the assistance provided.

X. REVERSION OF ASSETS

Upon expiration of the agreement, the Developer will also transfer any remaining unencumbered funds, and any accounts receivable attributable to HOME funds, to the City for deposit to the HOME Investment Trust Fund account. Unexpended funds, recaptured funds and repayments under 24 CFR, 92.252 (a)(4) and 92.254 (a)(5) as well as any interest earned on cash advances from the U.S. Treasury are not program income and shall be promptly remitted to the City for deposit to the HOME Investment Trust Fund Account. Developer is to report any funds so received.

XI. MISCELLANEOUS

A. ENTIRE AGREEMENT/AMENDMENT

This Agreement and its attachments embody the entire agreement between the parties and may only be modified in writing if executed by both parties.

B. DEVELOPER REPRESENTATION

The undersigned represents and warrants that he or she is the duly authorized representative of Developer and that this Agreement has been approved and accepted by the Board of Directors (or equivalent) of the Developer.

C. BINDING ON THE PARTIES

This Agreement shall be binding upon the parties hereto, their heirs, executors, legal representatives, successors, and assigns. Notwithstanding, however, this Agreement shall not be considered fully executed or binding on the City until executed by Developer and the City Manager or his designee, and approved and accepted by the City Council of the City of Plano in open meeting as required by law.

D. NOTICE

All notices or other communication which shall or may be given pursuant to this agreement shall be in writing and shall be delivered by personal service, or by certified or registered mail, return receipt requested, addressed to the other party at the address indicated herein or as the same may be changed from time to time. Notice shall be deemed given on the day on which personally served; or, if by mail, on the fifth day after being posted or the date of actual receipt, whichever is earlier. Notice shall be in writing delivered to the parties as follows:

City

Christina Day
Community Services
City of Plano, Texas
P.O. Box 860358
Plano, TX 75086-0358
972-941-7151

Developer

(Insert Name)
(Insert Title)
(Insert Developer)
(Insert Address)
(Insert City, State, and ZIP Code)
(Insert Phone Number)

E. PARAGRAPH HEADINGS

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

F. WAIVER/BREACH

No waiver or breach of any provision of this Agreement shall constitute a waiver of a subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

G. 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.

H. SEVERABILITY

Should any provisions, paragraphs, sentences, words or phrases contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Texas or other applicable law, such provisions, paragraphs, sentences, words, or phrases shall be deemed modified to the extent necessary in order to confirm with such laws; or, if not modifiable to conform with such laws, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect.

I. VENUE

In the event of breach of this Agreement, this Agreement shall be governed by the laws of the State of Texas and exclusive venue for all causes of action shall be instituted and maintained in Collin County, Texas.

J. AVAILABILITY OF FUNDS

Funding for this agreement is contingent on the availability of HOME Funds and continued authorization for program activities and is subject to amendment or termination due to lack of HOME Funds, or authorization, reduction of HOME Funds, and/or change in regulations.

XII. CONFLICT OF INTEREST

- A.** Developer warrants and covenants that it presently has no interest and shall not acquire any interest, directly or indirectly, which could conflict in any manner or degree with the performance of its services hereunder. Developer further warrants and covenants that in the performance of this agreement, no person having such interest shall be employed.
- B.** HOME conflict of interest provisions, as stated in 24 CFR 92.356, as well as the provisions of 24 CFR 85.36 and 24 CFR 84.42, apply to the award of any contracts under this agreement and the selection of households to occupy HOME-assisted units.
- C.** No employee, agent, consultant, elected official, or appointed official of Developer may obtain a financial interest or unit benefits from a HOME-assisted activity, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. This prohibition includes the following:
 - 1. Any interest in any contract, subcontract or agreement with respect to a HOME-assisted Project or program administered by Developer, or the proceeds hereunder; or
 - 2. Any unit benefits or financial assistance associated with HOME Projects or programs administered by Developer, including occupancy of a rental housing unit in a HOME-assisted rental Project; receipt of HOME tenant-based rental assistance; purchase or occupancy of a homebuyer unit in a HOME-assisted Project; receipt of HOME homebuyer acquisition assistance; or receipt of HOME owner-occupied rehabilitation assistance.
- D.** This prohibition does not apply to an employee or agent of the Developer who occupies a HOME-assisted unit as the on-site manager or maintenance worker.
- E.** Prior to the implementation of the HOME-assisted activity, exceptions to these provisions may be requested in writing to the City. Developer must demonstrate and certify that the policies and procedures adopted for the activity will ensure fair treatment of all parties, and that the covered persons referenced in this policy will have no inside information or undue

influence regarding the award of contracts or benefits of the HOME assistance. City may grant exceptions or forward the request to HUD as permitted by 24 CFR 92.356, 85.36, and 84.42, as they apply.

- F. Developer acknowledges and represents that Developer is aware of the laws related to prohibited interests found in the City Charter and the City Code of Conduct and that the existence of a prohibited interest at any time will render the agreement voidable. At the time of execution of this agreement, a duly authorized representative of the Developer shall execute the Affidavit of No Prohibited Interest attached and incorporated herein by reference as **Exhibit E.**

XIII. 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.

XIV. EFFECTIVE DATE

This agreement shall be effective from and after execution by both parties hereto. **SIGNED** on the date indicated below:

DEVELOPER

(Insert Name)
Executive Director

Date: _____

CITY OF PLANO, TEXAS

Christina Day
Community Services Manager

Date: _____

APPROVED AS TO FORM

Diane C. Wetherbee
City Attorney

ACKNOWLEDGMENTS

STATE OF TEXAS §

§

COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2012, by (Insert Name), (Insert Title) of (Insert Developer), a non-profit corporation, on behalf of said Developer.

Notary Public, State of Texas

STATE OF TEXAS §

§

COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2012, Christina Day, Community Services 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

2012 BUDGET

(Insert Budget Table Consistent with 2012 Application)

EXHIBIT B

2012 HUD INCOME LIMITS

<u>HOUSEHOLD SIZE</u>	<u>MAXIMUM INCOME</u>
1 person	\$39,300
2 person	\$44,900
3 person	\$50,500
4 person	\$56,100
5 person	\$60,600
6 person	\$65,100
7 person	\$69,600
8 person	\$74,100

EXHIBIT C

INSURANCE REQUIREMENTS

1. General Provisions

- 1.1. The Developer shall obtain and maintain the minimum insurance coverage set forth in this section. By requiring such minimum insurance, City shall not be deemed or construed to have assessed the risk that may or may not be applicable to the Developer. The Developer shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. The Developer is not relieved of any liability or other obligation assumed or pursuant to the Contract by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. The insurance requirements listed below do not replace any warranty or surety (performance, payment, or maintenance) bonds if required by preceding or subsequent sections of this contract.
- 1.2. Developer shall cause each subcontractor employed by Developer to purchase and maintain insurance of the type specified herein or cover such subcontractors under its insurance coverage.
- 1.3. The Developer agrees that the insurance requirements specified in this section do not reduce the liability Developer has assumed in any indemnification/hold harmless section of this contract.
- 1.4. City reserves the right to approve the security of the insurance coverage provided pursuant to this section by insurers including terms, conditions and the Certificate of Insurance. Failure of the Developer to fully comply with requirements of this section during the term of the contract will be considered a material breach of contract and will be cause for immediate termination of the contract at the option of City.
- 1.5. Insurance coverage required by this section shall:
 - 1.5.1. Be on a primary basis, non-contributory with any other insurance coverage and/or self-insurance carried by City, and
 - 1.5.2. Be with an insurer possessing an A-VII. A. M. Best Rating.

2. Minimum Insurance Coverage & Limits

- 2.1. Commercial General Liability. Developer shall maintain commercial general liability and, if necessary commercial umbrella insurance as specified below.
 - 2.1.1. Commercial general liability insurance shall be written on an ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, product-completed operations, personal and advertising injury and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

2.1.2. Minimum Limits of Insurance

- 2.1.2.1. \$1,000,000 Per Occurrence
- 2.1.2.2. \$1,000,000 Personal/Advertising Injury
- 2.1.2.3. \$2,000,000 General Aggregate
- 2.1.2.4. \$2,000,000 Products/Completed Operations Aggregate

2.2. Commercial Automobile Liability. Contractor shall maintain business automobile liability insurance and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident.

2.2.1. Such automobile liability insurance shall cover liability arising out of any auto (including owned, hired, and non-owned automobiles).

2.2.2. Commercial automobile coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to the provided in ISO form CA 00 01.

2.2.3. Contractor waives all rights against City and its agents, officers, directors and employees for recovery by the commercial automobile liability or commercial umbrella liability insurance obtained by Contractor pursuant to this section or under any applicable automobile physical damage coverage.

3. Evidence of Insurance

3.1. Prior to commencement of work, and thereafter upon renewal or replacement of coverage required by this section, Contractor shall furnish City a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with this section. **Contractor shall furnish copies of all endorsement to insurance policies as required by each section herein to the City.**

3.2. Failure of City to demand such certificate(s) or other evidence of full compliance with these insurance requirements or failure of City to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

3.3. City shall have the right, but not the obligation, of prohibiting Contractor or any subcontractor from entering the project site or commencing any service pursuant to this contract until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the City.

3.4. Failure to maintain required insurance may result in termination of this contract at sole option of the City.

3.5. The Contractor shall furnish a Certificate of Insurance (COI) evidencing insurance coverage required by this section ten (10) business days preceding commencement of contracted service(s). The COI shall:

3.5.1. List each insurers' NAIC Number or FEIN,

- 3.5.2. List **2012 HOME Grant, (Insert Developer, City, State), and services dates of October 1, 2012 through September 30, 2014.**
- 3.5.3. State waiver of subrogation is in favor of City with regard to Workers' Compensation Coverage if required listed as required in Section 2.0, Minimum Coverage & Limits of this document,
- 3.5.4. List the specific number of days cancellation provided pursuant to policy language for notice of cancellation to certificate, and
- 3.5.5. List City of Plano, Office of Risk Management, 7501 A Independence Parkway, Plano, Texas, 75025 in the Certificate Holder Section.

EXHIBIT D

AFFIRMATIVE MARKETING POLICIES AND PROCEDURES

POLICY

The Developer believes that individuals of similar economic levels in the same housing market areas should have available to them a like range of housing choices regardless of their race, color, religion, sex, age, handicap, familial status, or national origin.

PROCEDURE

The Developer will carry out this policy through affirmative marketing procedures designed specifically for the House on the Corner program as outlined below:

A. Affirmative Marketing

1. The Equal Housing Opportunity logo will be displayed on all materials.
2. The Developer will work closely with diverse community organizations, to ensure that families in need of housing assistance are aware of the opportunities available through this program.

B. Recordkeeping

The Developer will keep records of the following:

1. The racial, ethnic, and gender characteristics of applicants in the ninety (90) days following closing as required by Section 511.71(a)(2).
2. Copies of advertisements materials.

EXHIBIT E

AFFIDAVIT OF NO PROHIBITED INTEREST

I, the undersigned, declare and affirm that no person or officer of (Insert DEVELOPER) (herein "Developer") is either employed by the City of Plano or is an elected official of the City of Plano and who has a financial interest, direct or indirect, in any contract with the City of Plano or has a financial interest, directly or indirectly, in the sale to the City of Plano of any land, or rights or interest in any land, materials, supplies or service. As per Section 11.02 of the Plano City Charter, interest represented by ownership of stock by a City of Plano employee or official is permitted if the ownership amounts to less than one (1) per cent of the corporation stock.

I further understand and acknowledge that the existence of a prohibited interest at any time during the term of this contract will render the contract void.

(Insert Developer)

Developer

By:

Signature

(Insert Name)

Print Name

(Insert Title)

Title

Date

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2012.

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:		September 24, 2012		
Department:		Planning		
Department Head		P. Jarrell		
Agenda Coordinator (include phone #): Doris Carter, x 5350				
CAPTION				
<p>A Resolution of the City of Plano approving the terms and conditions of agreements between the City of Plano, Texas and various heritage preservation organizations which render services that are beneficial to the public and serve a valid public purpose in the total amount of \$735,583; authorizing the City Manager, or his authorized designee, to execute such agreements with these organizations for the provision of support of heritage preservation; and providing an effective date.</p>				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2012-13	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	735,583	735,583
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	-735,583	-735,583
BALANCE	0	0	0	0
FUND(S): CONVENTION & TOURISM FUND				
<p>COMMENTS: Funding for this item is included in the approved 2012-13 Budget. The total amount of \$735,583 is funded from the Hotel/Motel Tax revenue in the Convention & Tourism Fund.</p> <p>STRATEGIC PLAN GOAL: Providing funding for various Heritage Preservation organizations relates to the City's goal of Partnering for Community Benefit.</p>				
SUMMARY OF ITEM				
See Attached Memo				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Memo			Heritage Commission	
Resolution				
Modified Agreement				

MEMORANDUM

Date: September 13, 2012
To: Mr. Bruce D. Glasscock, City Manager
From: Mr. Bhavesh Mittal, Heritage Preservation Officer
Subject: Summary of Heritage Grant Resolution Agenda Item

This resolution establishes funding agreements for the purpose of heritage preservation with various non-profit organizations, as reviewed and approved by the City Council in the 2012-13 adopted budget. This item amounts to \$735,583. The funds will be provided to the following organizations:

Plano Heritage Association (Heritage Farmstead Museum)	\$530,000
The Plano Conservancy for Historic Preservation, Inc.	\$189,500
North Texas Masonic Historical Museum and Library	\$16,083
TOTAL	\$735,583

The funds will be distributed as follows: 50% by October 31, 2012; 25% by February 28, 2013 and 25% by July 1, 2013. There is a sample agreement attached (refer to Exhibit A of proposed resolution).

Only one change was made to the 2012-13 heritage grant funding agreement. An additional provision has been added to Section 2.01.1 and Section 2.02.2 stating "All requests to reallocate funds must be received and approved by September 1, 2013". The proposed change adds further clarification to funding reallocation requests, and establishes a date by which all reallocation requests must be approved. This new provision is consistent with existing contract provisions that relate to approval of funding encumbrances.

cc: Mr. Frank Turner, Deputy City Manager
Ms. Phyllis Jarrell, Planning Director

Attachments: Resolution
Modified Agreement

A Resolution of the City of Plano, Texas, approving the terms and conditions of agreements between the City of Plano, Texas, and various heritage preservation organizations which render services that are beneficial to the public and serve a valid public purpose in the total amount of \$735,583; authorizing the City Manager, or his authorized designee, to execute such agreements with these organizations for the provision of support of heritage preservation; and providing an effective date.

WHEREAS, the City Council has assigned to the Heritage Commission the responsibility of considering funding requests from outside heritage preservation organizations; and

WHEREAS, this Commission entertained funding requests, conducted extensive review, and made recommendations for funding to City Council based on established criteria; and

WHEREAS, the City Council received such recommendations during budget deliberations, conducted a public hearing on the proposed budget, and approved and adopted the 2012-2013 budget; and

WHEREAS, pursuant to Ordinance No. 2012-9-8 the City Council has appropriated funds for such purposes and find that the services provided by these organizations are beneficial to the public and serve a valid public purpose; and

WHEREAS, the City Council desires to enter into agreements with the various heritage preservation organizations, and a sample agreement is attached hereto by reference as Exhibit "A", which establishes the terms and conditions for funding; and

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

Section I. The terms and conditions of the Modified Agreements with the below named organizations in the amounts specified, having been reviewed by the City Council and found to be proper and acceptable and in the best interests of the City of Plano are hereby in all things approved:

Heritage Preservation Grants:

Plano Heritage Association (Heritage Farmstead Museum)	\$530,000
The Plano Conservancy for Historic Preservation, Inc.	\$189,500
North Texas Masonic Historical Museum and Library	\$16,083
TOTAL	\$735,583

Section II. The City Manager or his authorized designee is hereby authorized to execute such Agreements on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreements, and to act in behalf of the City with regard to its terms and conditions.

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

**DULY PASSED AND APPROVED THIS THE 24TH DAY OF SEPTEMBER,
2012.**

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM;

Diane C. Wetherbee, CITY ATTORNEY

**FUNDING AGREEMENT BETWEEN CITY OF PLANO
AND**

The **CITY OF PLANO**, a Texas home rule municipal corporation (hereinafter referred to as “City”), and _____, a Texas non-profit corporation, acting herein through its duly authorized representative (hereinafter referred to as “Contractor”), enter into this funding agreement to set out the terms and conditions governing the grant of City funds to Contractor for the purposes set out herein.

WHEREAS, the City Council finds that the expenditure of public funds to Contractor is in the best interest of the residents and the City of Plano; and

WHEREAS, the City Council finds that expending public funds for the purpose stated above is a valid public purpose; and

WHEREAS, pursuant to Ordinance No. 2012-9-8, the City Council determined that the City should award grant funding in a sum not to exceed \$_____ for the purposes outlined in the attachment entitled “Heritage Preservation Grant Application” (hereinafter referred to as “Application”); and

WHEREAS, Contractor has established itself as having the ability to perform such activities.

NOW, THEREFORE, for and in consideration of the covenants, obligations, and undertakings of each of the respective parties to the Agreement, the parties hereby agree as follows:

**SECTION I
PURPOSES/CONSIDERATION; PRIORITY OF DOCUMENTS**

1.01 Purpose/Consideration.

This Agreement provides the terms and conditions under which City will make available grant funding in a sum not to exceed \$_____, for use to support the activities outlined in attached Exhibit “A,” Contractor’s funding application. The City's source of these funds is derived from the Hotel/Motel Tax revenues and total grant funding awarded to Contractor is

subject to change pursuant to Section 5.07 of the agreement herein. Contractor agrees to accept responsibility for guaranteeing City grant funds are used for the items in Exhibit "A".

In consideration of the City of Plano providing the funding specified for the 2012-13 fiscal year, Contractor shall abide by the terms and conditions of this Agreement.

1.02 Priority of Documents.

This Agreement consists of: Agreement between City of Plano and Contractor; General Conditions; Affidavit of No Prohibited Interest; Insurance, and Employee Dishonesty Bond when required; Application. The documents are complementary, and what is called for by one shall be binding as if called for by all. In the event of inconsistency in any provisions of the documents, the inconsistency shall be resolved by giving precedence to the documents in the order in which they are listed above.

**SECTION II
PERMITTED USES OF FUNDS; CONDITIONS OF USE**

2.01 Contractor shall use any and all funds furnished by City under this Agreement for the purposes outlined in the Application, which is made a part hereof by reference and incorporated as Exhibit "A". In the event that the amount of funds requested and outlined for expenditure in the Application differs from the amount of funds actually awarded by the City, then Contractor shall submit a revised line item budget on a form provided by the City which shall be substituted for the original budget submitted with the Application. The revised line item budget must be submitted within 10 days of the execution of this Agreement and no funds shall be disbursed by the City to Contractor unless and until the revised line item budget is submitted. The revised Line Item Budget of Approved Expenditures shall be signed by two members of Contractor's Executive Board or, in the alternative, one member of Contractor's Executive Board and the Executive Director. The revised line item budget shall be attached hereto and incorporated herein as part of Exhibit "A".

1. Subsequent to the initial contract submittal, should the Contractor wish to utilize funds for a purpose other than those stated in Exhibit "A", the Contractor must submit an additional amended Line Item Budget of Approved Expenditures and request approval from the

Contractor's Board, the Heritage Commission, and City Manager. The Amended Line Item Budget of Approved Expenditures may request reallocation of funds from the "Operations & Maintenance" category to the "Heritage Projects" category but a request for reallocation of funds from the "Heritage Projects" category to the "Operations and Maintenance" category shall be prohibited from consideration. No change may occur unless:

- a. Approved by Contractor's Board, as evidenced by the official minutes of the Board authorizing the change;
- b. Approved by the Heritage Commission, as evidenced by the official minutes of the Commission authorizing the change presented by the Contractor's Board;
- c. Approved by the City Manager, or his designee, after submission of the requested change by the Heritage Commission.

Contractor cannot expend any funds for a purpose not listed in the funding application until receipt of written approval from the City Manager or his designee. All requests to reallocate funds must be received and approved by September 1, 2013.

2.02 All expenditures of City funds must comply with the Agreement and attachments hereto. Agreement compliance is defined as:

1. At least 90% of expenses budgeted in each line item of the Application and funded by City monies must be spent within that line item;
2. All requests to reallocate funds from one line item to another must first be approved by the Contractor's Board, as evidenced by the official minutes of the Board authorizing the change and submitted to the Heritage Preservation Officer. If the Heritage Preservation Officer finds that the request conforms to 2.02.1 above, the amended line item budget shall be approved. If the Heritage Preservation Officer finds that the amendments do not conform to 2.02.1 above, the request must be approved in accordance with the conditions set forth in b and c of section 2.01.1. All requests to reallocate funds must be received and approved by September 1, 2013;

3. Contractor must meet all other conditions of this Agreement.

2.03 Contractor agrees to the general conditions of the grant as set forth in the attachment entitled “General Conditions of Contract” (hereinafter referred to as the “General Conditions”), which is attached hereto and incorporated herein for all purposes as Exhibit “B”.

2.04 Unexpended and unencumbered City funds that remain with the Contractor after September 30, 2013, will revert to the City and Contractor must return said funds to the City on or before October 31, 2013. Encumbered City funds are those funds which the Contractor has received and obligated for payment by written agreement or contract to expend on approved projects listed in Exhibit “A”. Request to encumber city funds for projects, as approved in Exhibit “A”, completed after September 30, 2013, shall be submitted to the City (i.e. Heritage Preservation Officer) for review and approval by September 1, 2013. If approved by the City, the encumbered city funds for specific projects must be completed by December 31, 2013. An additional expense report, in accordance with the reporting requirements set forth in 5.11, describing the expenditure of encumbered funds must be submitted to the City no later than January 31, 2014. City funds may only be encumbered for heritage projects that have commenced prior to September 1, 2013. City funds cannot be expended or encumbered for Contractor's Operations and Maintenance or non-capital expenses.

SECTION III NON-ASSIGNMENT

3.01 Contractor may not assign any interest in this Agreement, whether in whole or part, without prior approval of the City Council, as reflected by a duly authorized resolution.

SECTION IV INDEPENDENT CONTRACTOR

4.01 The City enters into this Agreement with Contractor for the purposes enumerated in Section I. Contractor asserts and agrees that Contractor is an independent contractor and not an officer, agent, servant or employee of the City. Contractor has exclusive control over the details of the activity, and is responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants. The doctrine of respondeat superior

does not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors and consultants. Further, this agreement does not create a partnership or joint enterprise between City and Contractor.

**SECTION V
DISBURSEMENT OF FUNDS**

5.01 The City will disburse funds provided under this Agreement as follows:

1. an amount not to exceed 50% of the funds by October 31, 2012.
2. an amount not to exceed 25% of the funds by February 28, 2013.
3. an amount not to exceed the remaining 25% of the funds by July 1, 2013.

5.02 Expenses incurred after the termination date, with exception of approved encumbered funds as provided for in 2.04, will not be reimbursed under this Agreement and the City shall assume no liability for same.

5.03 Failure to comply with the quarterly reporting requirements as outlined in Section 5.11 of this agreement below, including submittal of an executed certificate of compliance, shall result in funds being withheld from disbursement to the Contractor until a properly prepared report is submitted to the City as required.

5.04 Failure to submit a revised Line Item Budget as required in Section II of this agreement when applicable shall result in funds being withheld from disbursement to the Contractor until it is submitted to the City.

5.05 Failure to submit an Employee Dishonesty Bond as required in Section VII of this agreement when applicable shall result in funds being withheld from disbursement to the Contractor until it is submitted to the City as required.

5.06 Contractor recognizes that this Contract shall commence upon the effective date herein and continue in full force and effect until termination in accordance with its provisions. Contractor and City herein recognize that the continuation of any contract after the close of any given fiscal year of the City of Plano, which fiscal year ends on September 30th of each year, shall be subject to Plano City Council approval. In the event that the Plano City Council does not approve the appropriation of funds for this contract, the Contract shall terminate at the end of

the fiscal year for which funds were appropriated and the parties shall have no further obligations hereunder.

5.07 Contractor recognizes that grant funding is derived from Hotel/Motel tax revenue collected by the City. In the event that the Hotel/Motel Tax revenue generated for fiscal year 2012-13 is lower than initially anticipated, Contractor agrees that the total sum of grant funding awarded by the City to the Contractor may be adjusted accordingly at the City's sole discretion.

5.08 Failure to acquire Certificates of Appropriateness and building permits where required by the City, prior to commencing work on the Contractor's designated heritage resource, shall result in funds being withheld from disbursement to the Contractor until those requirements have been resolved. Contractor is responsible for the expenses to acquire a Certificate of Appropriateness and building permits and may not use City funds unless the activity has been approved on the projects list in Exhibit "A".

5.09 Failure to resolve any outstanding fire, health and safety code requirements found at the Contractor's designated heritage resource site, shall result in funds being withheld from disbursement to the Contractor until those requirements have been resolved. Contractor is responsible for the expenses to resolve the fire, health and safety code requirements and may not use City funds unless the activity has been approved on the projects list in Exhibit "A".

5.10 If the Contractor is found to be in breach of any of the terms or conditions of a prior year's City funding agreement, or has any outstanding items from previous years funding agreement, funds from the current fiscal year shall be withheld from disbursement to the Contractor until those items have been resolved.

5.11 Reporting Requirements.

Within thirty (30) days of the close of each preceding quarter of the contract term, Contractor agrees to provide financial statements to the Contract Administrator sufficiently describing the expenditure of funds provided by the City to be compared against the Line Item Budget of Approved Expenditures attached in Exhibit "A", a list of all bank checks dispatched per quarter relating to the Approved Expenditures attached in Exhibit "A", and a description of program goals achieved and/or progress of same for the preceding quarter. These reports shall contain a Certificate of Compliance with notarized signatures of two members of Contractor's executive board or, in the alternative, one member of Contractor's executive board and the executive director. Reports submitted without required notarized signatures will be rejected and considered incomplete.

At the end of the Contract Term or in the event of earlier termination, Contractor shall provide a final written report of its activities and expenditures to the Contract Administrator.

SECTION VI AFFIDAVIT OF NO PROHIBITED INTEREST

6.01 Contractor acknowledges and represents it is aware of all applicable laws, the City Charter, and the City Code of Conduct regarding prohibited interests, and that the existence of a prohibited interest at any time will render the Contract voidable. At the time of signing this Agreement, a representative of Contractor shall execute the Affidavit of No Prohibited Interest, attached and incorporated herein as Exhibit "C".

**SECTION VII
INSURANCE REQUIREMENTS/INDEMNIFICATION**

7.01 Insurance.

At its own expense, Contractor agrees to maintain during the term of this Agreement, or any extension thereof, insurance in the type and amounts as shown in Exhibit "D". Additionally, this insurance must specifically cover any and all activities occurring on City property, including those activities of Contractor's employees, volunteers, vendors, contractors, or subcontractors. Contractor must provide proof of this insurance to the Contract Administrator within ten (10) days of execution of this Agreement. A properly executed certificate of insurance issued by Contractor's insurance agency is sufficient proof of insurance. Contractor must maintain a current copy of the certificate(s) and provide proof of its current insurance to City throughout the entire term of this Contract.

7.02 Employee Dishonesty Bond Requirement Applicable to Contractors Receiving Funds of \$75,000.00 or greater

At its own expense, a Contractor receiving funds in the amount of \$75,000.00 or more agrees to maintain during the term of this Agreement, or any extension thereof, an Employee Dishonesty Bond (EDB) in an amount equal to the total dollar amount awarded to Contractor by the City as defined in the grant agreement. A copy of proof of EDB shall be attached to the funding agreement as an additional attachment to Exhibit "D". Bonds shall be placed with insurers with an A.M. Best rating of no less than A:VI or a Standard & Poors rating of A or better.

Bonds shall be made payable to the City of Plano and shall be maintained by Contractor throughout the contract period. Contractor must provide proof of this EDB to the Contract Administrator within ten (10) days of execution of this Agreement. A properly executed bond certificate issued by Contractor's insurance agency is sufficient proof of EDB. Contractor must maintain a current copy of the certificate(s) and provide proof of its current EDB to City throughout the entire term of this Contract. Failure to provide proof of the EDB shall result in the City withholding disbursement of funds to the Contractor until proof is provided as required under this Agreement.

7.03 Indemnification.

Contractor shall release, defend, indemnify and hold harmless City and its officers, agents and employees from and against all damages, injuries (including death), claims, property damages (including loss of use), losses, demands, suits, judgments and costs, including attorney's fees and expenses, in any way arising out of, related to, or resulting from the performance of the work or caused by the negligent act or omission of Contractor, its officers, agents, employees, subcontractors, licensees, invitees or any other third parties for whom Contractor is legally responsible (hereinafter "Claims"). Contractor must defend City against all such Claims.

City shall have the right to select or to approve defense counsel retained by Contractor to fulfill its obligation to defend and indemnify the City, unless such right is expressly waived by City in writing. 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 a waiver of Contractor's obligation to defend or indemnify the City pursuant to this Agreement. Contractor shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If Contractor fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Contractor is liable for all costs incurred by City.

SECTION VIII TERM

8.01 The term of this Agreement is October 1, 2012, through September 30, 2013. At the expiration of this Agreement, the Contractor shall have the continuing obligation to complete any unfulfilled terms and conditions of this Agreement, including the submission of a final written report to the City and any other requested written documentation verifying Contractor's compliance with the terms of this Agreement.

**SECTION IX
TERMINATION**

9.01 Each party shall have the right to an early termination of this Agreement by giving the other party written notice thirty (30) days before the desired early termination date. After a notice of early termination, Contractor may use City funds only for costs incurred before the notice of termination date. Contractor, however, must return to the City the unused balance of any funds disbursed to the Contractor pursuant to this Agreement within ten (10) days of either an early termination or at the end of the Agreement term.

9.02 In the event Contractor breaches any of the terms or conditions of this Agreement, whether in whole or part, the City may immediately terminate this Agreement by providing written notice to the Contractor, notwithstanding any other provision. Contractor is solely responsible for funds expended contrary to the terms and conditions of this Agreement, and must return the City funds within ten (10) days of the termination.

**SECTION X
MISCELLANEOUS**

10.01 Entire Agreement.

This Agreement and its attachments constitute the entire agreement between the parties. The parties may only modify, amend, or supplement this Agreement through a written instrument executed by both parties.

10.02 Authority

The undersigned represents and warrants that he or she is the duly authorized representative of the Contractor, and that the Board of Trustees (or equivalent) of the Contractor has approved and accepted this Agreement by Board resolution. Contractor at all times shall maintain a copy of the Board resolution for submission to City upon request.

This Agreement does not become or binding on the City of Plano until both the Contractor and the City Manager or his designee have executed it.

10.03 Successors and Assigns

This Contract is binding upon the parties hereto, their successors, heirs, personal representatives and assigns.

10.04 Notice.

Any Notice, Reports or Documents required to be provided by this Agreement shall be in writing and delivered to the parties as follows:

City – Contract Administrator
Bhavesh Mittal
City of Plano
1520 K Avenue, Suite 250
Plano, TX 75074
972-941-7151

Contractor

10.05 Paragraph Headings.

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

10.06 Interpretation of Contract.

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.

10.07 Venue.

The parties agree that the laws of the State of Texas govern this Agreement, and which is performable in Collin County, Texas. In the event of breach of this Agreement, venue for all causes of action shall exclusively lie in Collin County, Texas.

IN TESTIMONY OF WHICH THE PARTIES HERETO AFFIXED THEIR SIGNATURES ON THIS THE _____ DAY OF _____, 20____.

BY: _____
Name: _____
Title: _____

CITY OF PLANO, TEXAS

BY: _____
Bruce D. Glasscock
CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS)
)
COUNTY OF _____)

This instrument was acknowledged before me on the ___ day of _____,
20____ by _____, _____ of
_____, a non-profit corporation, on behalf of said corporation.

Notary Public in and for the
State of Texas

STATE OF TEXAS)
)
COUNTY OF COLLIN)

This instrument was acknowledged before me on the ____ day of _____, 20____ by **BRUCE D. GLASSCOCK**, City Manager of the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, on behalf of said corporation.

Notary Public in and for the
State of Texas

EXHIBIT "B"
GENERAL CONDITIONS OF AGREEMENT

The Contractor agrees to the following general conditions:

- (1) The Contractor must provide reports of its activities as described in Section V, *Disbursement of Funds*, Paragraph 5.11, *Reporting Requirement*, of the Funding Agreement and as otherwise required by the Special Conditions of the Agreement on a format acceptable to the City. Disbursements may cease if reports are not submitted.
- (2) All of Contractor's procedures, records, and reports of programs and accounts shall be available for inspection by a duly authorized representative of the City. The materials shall be made available during regular business hours and not later than three (3) business days after request to do so. An independent audit of Contractor's financial records, paid for by Contractor, shall be furnished to the City upon request.
- (3) The Contractor agrees to on-site inspection of its facilities and/or programs by the City.
- (4) Improper use of funds provided by City may result in the termination of the Agreement, forfeiture of any outstanding monies to be provided by City, recovery of previous payments, recovery of bond payments, requirement for Contractor to provide an Employee Dishonesty Bond for future participation and/or disqualification of Contractor from future participation in grant programs offered or sponsored by or through City.
- (5) Programs, activities, employment opportunities, and other participatory events funded totally or partially by the City of Plano must be made available to all people regardless of race, color, religion, sex, age, national origin, disability, familial status, or political affiliation.
- (6) The Contractor and any person or organization it contracts with shall comply with all applicable laws, regulations, ordinances, and codes of the United States of America, the State of Texas, and the City of Plano.
- (7) The Contractor shall comply with all Federal, State and Local conflict of interest laws, statutes, and regulations; these laws shall apply to all parties and beneficiaries under this Agreement as well as to all officers, employees, and agents of City.
- (8) None of the funds, materials, property, or services provided directly under this Agreement shall be used for any partisan political activity, to further the election or defeat of any candidate for public office, or for publicity, lobbying and/or propaganda purposes designed to support or defeat legislation pending before the Congress of the United States of America, the Legislature of the State of Texas, the City Council of the City of Plano, or any other political body.
- (9) The City shall have the right to review any and all of Contractor's agreements and contracts prior to execution by the Contractor. City further has the right to require the modification, addition, or deletion of such terms and conditions in Contractor's agreements or contracts as it deems necessary to protect the City's interests.

- (10) For a non-profit corporation in existence for more than one (1) year at the time of the execution of this Agreement, Contractor agrees to provide a sworn statement attesting to the fact that the status of the Contractor is currently valid as a non-profit corporation. All corporations must be in good standing with the Texas Secretary of State.

EXHIBIT "C"

AFFIDAVIT OF NO PROHIBITED INTEREST

I, the undersigned declare that I am authorized to make this statement on behalf of _____ and I have made a reasonable inquiry and, to the best of my knowledge, no person or officer of _____ 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 _____ §

§

COUNTY OF _____ §

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 20_____.

Notary Public, State of _____

EXHIBIT "D"

Contractor shall procure and maintain for the duration of the grant agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the services performed or to be performed hereunder by the Contractor, its agents, representatives, employees, volunteers, officers, directors or sub-contractors.

The Contractor shall maintain insurance with limits not less than \$500,000 per occurrence, \$1,000,000 aggregate and will be as broad as ISO Form Number GL 0002 (Ed 1/72) covering Comprehensive General Liability and ISO Form Number GL 0404 covering Broad Form Comprehensive General Liability, or ISO Commercial General Liability coverage ("occurrence" form CG 0001). Coverage will include: A) Premises - Operations, B) Broad Form Contractual Liability, C) Broad Form Property Damage and D) Personal Injury.

The policy will be endorsed to contain the following provisions: They City, its officials, employees, volunteers, Boards and Commissions are to be added as "Additional Insureds" in respect to liability arising out of any activities performed by or on behalf of the Contractor. The Certificate Holder Information should read as follows:

City of Plano
Attn: Risk Manager
P.O. Box 860358
Plano, TX 75086-0358

CC: Bhavesh Mittal, Heritage Preservation Officer

The policy shall contain no special limitations to the scope of coverage afforded to the City. The Contractor's insurance coverage shall be primary and any insurance or self-insurance shall be in excess of the Contractor's insurance and shall not contribute with it. Certificate must include a waiver of subrogation as regards the workers compensation policy.

Insurance shall be placed with insurers with an A.M. Best rating of no less than A:VI or a Standard & Poors rating of A or better.

The Contractor shall furnish the City with a certificate of insurance which shows the coverage provided. The insurance policy will be endorsed to state that coverage shall not be suspended, voided, canceled, non-renewed, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.



**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:		09/24/12		
Department:		Public Safety Communications		
Department Head		Ron Timmons		
Agenda Coordinator (include phone #): Sharron Mason x7247				
CAPTION				
A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of a technical services contract with Motorola Solutions, Inc.; authorizing its execution by the City Manager or his authorized designee; 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: 2012-13	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	333,547	333,547
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	-308,972	-308,972
BALANCE	0	0	24,575	24,575
FUND(S): GENERAL AND INTERLOCAL RADIO				
<p>COMMENTS: Funds are included in the FY 2012-13 Public Safety Communications (\$233,547) and Interlocal Radio (\$100,000) Adopted Budget to provide a Motorola Radio Service Agreement for the maintenance, support or other services for the City of Plano Radio System. Remaining balance will be used for other Public Safety Communications and Interlocal Radio purchases.</p> <p>STRATEGIC PLAN GOAL: Providing a Motorola Service Agreement for the City's Radio System relates to the City's Goal of a Financially Strong City with Service Excellence.</p>				
SUMMARY OF ITEM				
<p>Staff requests Council approval for the purchase of a Motorola Radio Service Agreement from Motorola Solutions, Inc. for the City of Plano New Digital Radio System. Motorola Solutions, Inc., will provide Network Monitoring Service, Technical Support Service, Customer Technician Dispatch Service, Security Update Service and Software Maintenance Agreement Support in the amount of \$308,972 for provision of services to the City's ASTRO25® Voice and Data Communications System from October 1, 2012 to September 30, 2013. Contract No. 2012-303-X</p>				
List of Supporting Documents: Recommendation Memo, Sole Source Letter, Resolution and Agreement			Other Departments, Boards, Commissions or Agencies	



Date: 8/21/12

To: Sharron Mason, Purchasing

From: Ron Goldsmith, PSC

Ref: Sole Source Purchase Recommendation Memo

Public Safety Communications recommends the purchase from Motorola Solutions, Inc. of a (12) month service agreement.

This agreement allows Motorola Solutions, Inc. to monitor the new digital radio system for faults and notify the on-call radio technician for repairs. This service automatically notifies the appropriate personnel and tracks their response times and successful completion. Additionally, the agreement provides 24 hour technical support to the radio technicians. Finally, this agreement provides software patches as needed for the radio infrastructure to protect against viruses and other network vulnerabilities.

Failure to approve this contract will result in the loss of online technical support, call out case management, technician dispatching and tracking as well as software security updates. These services are essential to maintaining the new digital radio system.

Motorola Solutions, Inc. is the sole source provider of this service.

The cost of these services is \$308,972 and funded from 237 (\$100,000) and the remainder from 534 (\$208,972).



1507 LBJ Freeway
Farmers Branch, TX 75234
972-277-4608

August 8, 2012

Jim Raney
Radio Systems Coordinator
Plano, TX

This letter is to advise that Motorola Solutions Inc. is the sole source provider for depot repairs, monitoring services and technical support for the City of Plano's Radio Communications system. Motorola's depot is the centralized repair facility that provides expert infrastructure maintenance and repair for customers throughout North America. Our experienced, highly trained and certified repair technicians perform quality repairs with a guarantee that your repairs will be done correctly.

Motorola's technical support technicians are the only technicians trained to service the complex radio system and Motorola does not certify any other service providers to perform this service. State-of-the-art diagnostics equipment, repair tools, and an extensive inventory of replacement parts help us quickly analyze, isolate and provide expert repair on your Motorola equipment. With over 35 years of experience in depot repairs, the Motorola Depots are ISO 9001 and TL9000 certified. Only Motorola can assure that your equipment is repaired and reprogrammed to the correct operating parameters. All repairs are returned to original factory specifications by using parts specifically designed for your radios. Using Motorola OnLine (MOL), you can easily and quickly submit repair requests and check repair status.

Contracting directly with Motorola will assure Plano that its communications equipment will continue to operate properly today and in the future.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Martin', written over a large, stylized 'J'.

John Martin
Customer Service Manager
Motorola Solutions, Inc.
214-681-6515

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of a technical services contract with Motorola Solutions, Inc.; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

WHEREAS, the Public Safety Communications Department of the City of Plano utilizes an ASTRO25 voice and data communications system designed and manufactured by Motorola Solutions, Inc. and utilized by Public Safety and other City departments; and

WHEREAS, Motorola Solutions, Inc. is the sole source provider for network monitoring and technical support services for the ASTRO25 voice and data communications system; and

WHEREAS, the City Council has been presented a proposed network monitoring, technical support and customer technician dispatch service agreement between the City of Plano and Motorola Solutions, Inc., 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 Agreement should be approved, and that the City Manager or his 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 City Council hereby finds and determines that Motorola Solutions, Inc. is the sole source provider for network monitoring and technical support for the City of Plano's ASTRO25 voice and data communications system, and, thus, the purchase of such services is exempt from competitive bid as provided for in TEXAS LOCAL GOVERNMENT CODE, Section 252.022(a)(7).

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

DULY PASSED AND APPROVED this 24th day of September, 2012.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

**NETWORK MONITORING, TECHNICAL SUPPORT AND CUSTOMER TECHNICIAN
DISPATCH SERVICE AGREEMENT
BETWEEN
THE CITY OF PLANO, TEXAS, AND
MOTOROLA SOLUTIONS, INC.**

MOTOROLA SOLUTIONS, INC. ("Contractor") and the **CITY OF PLANO, TEXAS** ("City") enter into this Network Monitoring, Technical Support, and Customer Technician Dispatch Service Agreement for provision of services to the City's ASTRO25® Voice and Data Communications System from October 1, 2012 to September 30, 2013.

**I.
EXHIBITS**

The exhibits listed below are incorporated into and made a part of this Agreement. In the event of an inconsistency or conflict between the provisions of this Agreement and the Exhibits, the provisions in this Agreement shall take precedence over the Exhibits, and any inconsistency or conflicts between the Exhibits shall be read and resolved in their listed order.

- (a) Contractor's Services Agreement (**Exhibit "A"**);
- (b) Statement of Work – Astro 25 Software Maintenance Agreement (**Exhibit "A-1"**)
- (c) Statement of Work – Network Monitoring and Customer Technician Dispatch (**Exhibit "A-2"**);
- (d) Statement of Work – Technical Support Service (**Exhibit "A-3"**);
- (e) Statement of Work – Pre-Tested Software Subscription (PTSS) (**Exhibit "A-4"**);
- (f) Insurance Requirements (**Exhibit "B"**); and
- (g) Affidavit of No Prohibited Interest (**Exhibit "C"**).

**II.
SCOPE OF SERVICES**

The parties agree that Contractor shall perform such services as are further described in the Statements of Work attached hereto and incorporated herein as **Exhibits "A-1", "A-2", "A-3" and "A-4"**. The parties understand and agree that deviations or modifications in the Statement of Work may be authorized from time to time by the City, but said authorization must be made in writing and signed by all parties.

**III.
WARRANTY**

Contractor warrants and covenants to City that all goods and services provided by Contractor, Contractor's subcontractors, and agents under the Agreement shall be free of defects and produced and performed in a skillful and workmanlike manner and shall comply with the specifications for said goods and services as set forth in this Agreement and **Exhibits "A-1", "A-2", "A-3" and "A-4"**, as applicable. Contractor warrants that the goods and services

provided to City under this Agreement shall be free from defects in material and workmanship, for a period of ninety (90) days from the date that the goods or services are provided.

IV. PAYMENT

Total compensation for Contractor's services shall be in an amount not to exceed the sum of **THREE HUNDRED EIGHT THOUSAND NINE HUNDRED SEVENTY TWO AND NO/100 DOLLARS (\$308,972.00)** as set out in **Exhibit "A"**.

Contractor recognizes that this Contract shall commence upon the effective date herein and continue in full force and effect until termination in accordance with its provisions. Contractor and City herein recognize that the continuation of any contract after the close of any given fiscal year of the City of Plano, which fiscal year ends on September 30th of each year, shall be subject to Plano City Council approval. In the event that the Plano City Council does not approve the appropriation of funds for this contract, the Contract shall terminate at the end of the fiscal year for which funds were appropriated and the parties shall have no further obligations hereunder.

V. PROTECTION OF EMPLOYEES AND THE PUBLIC

Contractor shall at all times exercise reasonable precautions for the safety of employees and others on or near the work and shall comply with all applicable provisions of Federal, State, and Municipal safety laws. The safety precautions actually taken and the adequacy thereof shall be the sole responsibility of Contractor. Contractor shall indemnify City for any and all losses arising out of or related to a breach of this duty by Contractor pursuant to sections VII and VIII (Indemnification and Compliance with Applicable Law, respectively).

VI. LOSSES FROM NATURAL CAUSES

Unless otherwise specified, all loss or damage to Contractor arising out of the nature of the work to be done, or from the action of the elements, or from any unforeseen circumstances in the prosecution of the same, or from unusual obstructions or difficulties which may be encountered in the prosecution of the work, shall be sustained and borne by the Contractor at its own cost and expense.

VII. INDEMNIFICATION AND HOLD HARMLESS

THE CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH) AND PROPERTY DAMAGE THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONTRACTOR'S NEGLIGENT ACT, GROSSLY NEGLIGENT ACT OR WILLFUL MISCONDUCT OF THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES OR SUBCONTRACTORS WHILE PERFORMING DUTIES UNDER THIS

AGREEMENT. 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 CONTRACTORS. 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.

CONTRACTOR AT ITS OWN EXPENSE IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS, PROVIDED THAT THE CITY GIVES CONTRACTOR PROMPT WRITTEN NOTICE OF ANY SUCH CLAIM OR SUIT. CITY SHALL COOPERATE WITH CONTRACTOR IN ITS DEFENSE OR SETTLEMENT OF SUCH CLAIM OR SUIT. THIS SECTION SETS FORTH THE FULL EXTENT OF CITY'S GENERAL INDEMNIFICATION OF CONTRACTOR FROM LIABILITIES THAT ARE IN ANYWAY RELATED TO CITY'S PERFORMANCE UNDER THIS AGREEMENT. CONTRACTOR 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 CONTRACTOR FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND CONTRACTOR SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY.

VIII. INDEMNITY FOR INTELLECTUAL PROPERTY INFRINGEMENT

Contractor will defend at its expense any suit brought against City to the extent it is based on a third-party claim alleging that equipment manufactured by Contractor or Contractor's software ("Product") directly infringes a United States patent or copyright ("Infringement Claim"). Contractor's duties to defend and indemnify are conditioned upon: City promptly notifying Contractor in writing of the Infringement Claim; Contractor having sole control over the defense of the suit and all negotiations for its settlement or compromise; and City providing to Contractor cooperation and if, requested by Contractor, reasonable assistance in the defense of the Infringement Claim. In addition to Contractor's obligation to defend, and subject to the same conditions, Contractor will pay all damages finally awarded against City by a court of competent jurisdiction for an Infringement Claim or agreed to, in writing, by Contractor in settlement of an Infringement Claim. If an Infringement Claim occurs, or in Contractor's opinion is likely to occur, Contractor may at its option and expense; (a) procure for City the right to continue using the Product; (b) replace or modify the Product so that it becomes non-infringing while providing functionally equivalent performance; or (c) accept the return of the Product and grant City a credit for the Product, less a reasonable charge for depreciation. The depreciation amount will be calculated based upon generally accepted accounting standards. Motorola will have no duty to defend or indemnify for any Infringement Claim that is based upon: (a) the combination of the Product with any software, apparatus, or device not furnished by Motorola; (b) the use of ancillary equipment or software not furnished by Motorola and that is attached to or used in connection with the Product; (c) Product designed or manufactured in accordance with Customer's designs, specifications, guidelines or instructions, if the alleged infringement would not have occurred without such designs, specifications, guidelines or instructions; (d) a

modification of the Product by a party other than Contractor; (e) use of the Product in a manner for which the Product was not designed or that is inconsistent with the terms of this Agreement; or (f) the failure by City to install an enhancement release to the Contractor software that is intended to correct the claimed infringement. In no event will Contractor's liability resulting from its indemnity obligation to City extend in any way to royalties payable on a per use basis or the City's revenues, or any royalty basis other than a reasonable royalty based upon revenue derived by Contractor from sales or license of the infringing Product. This section provides City's sole and exclusive remedies and Contractor's entire liability in the event of an Infringement claim.

**IX.
COMPLIANCE WITH APPLICABLE LAWS**

Contractor shall at all times observe and comply with all federal, state and local laws, ordinances and regulations including all amendments and revisions thereto, which in any manner affect Contractor or the work. If Contractor observes that the work is at variance therewith, Contractor shall promptly notify City in writing.

**X.
VENUE**

The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this Contract. The parties agree that this Contract is performable in Collin County, Texas, and that exclusive venue shall lie in Collin County, Texas.

**XI.
ASSIGNMENT AND SUBLETTING**

Contractor agrees to retain control and to give full attention to the fulfillment of this Contract, that this Contract shall not be assigned or sublet without the prior written consent of City, with the exception of wholly-owned subsidiaries of Contractor, and that no part or feature of the work will be sublet to anyone objectionable to City. Contractor further agrees that the subletting of any portion or feature of the work, or materials required in the performance of this Contract, shall not relieve Contractor from its full obligations to City as provided by this Contract.

**XII.
INDEPENDENT CONTRACTOR**

Contractor covenants and agrees that Contractor is an independent contractor and not an officer, agent, servant or employee of City; that Contractor 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 Contractor, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Contractor.

XIII.

INSURANCE AND CERTIFICATES OF INSURANCE

Contractor shall procure and maintain for the duration of the contract insurance coverage as set forth in the Insurance Requirements marked **Exhibit "B"** attached hereto and incorporated herein by reference. Contractor shall provide a signed insurance certificate verifying that they have obtained the required insurance coverage prior to the effective date of this Contract.

XIV. FORCE MAJEURE

Neither party is liable for delays or lack of performance resulting from any causes beyond the reasonable control of a party including acts of God or the public enemy, war, riot, civil unrest, 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 impact the Contractor's operations in the City.

XV. AFFIDAVIT OF NO PROHIBITED INTEREST

Contractor acknowledges and represents it is aware of all applicable laws, City Charter, and City Code of Conduct regarding prohibited interests and that the existence of a prohibited interest at any time will render the Contract voidable. Contractor has executed the Affidavit of No Prohibited Interest, attached and incorporated herein as **Exhibit "C"**.

XVI. SEVERABILITY

The provisions of this Contract are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Contract is for any reason held to be contrary to the law or contrary to any rule or regulation having the force and effect of the law, such decisions shall not affect the remaining portions of the Contract. However, upon the occurrence of such event, either party may terminate this Contract by giving the other party thirty (30) days written notice.

XVII. ENTIRE AGREEMENT

This Contract and the Exhibits embody the entire agreement between the parties and may only be modified in writing if executed by both parties.

XVIII. CONTRACT INTERPRETATION

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

**XIX.
SUCCESSORS AND ASSIGNS**

This Contract shall be binding upon the parties hereto, their successors, heirs, personal representatives and assigns.

**XX.
HEADINGS**

The headings of this Contract are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

**XXI.
EFFECTIVE DATE**

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

IN WITNESS WHEREOF, the parties have executed this Contract by signing below.

MOTOROLA SOLUTIONS, INC.

DATE: _____

By: _____
Name: _____
Title: _____

CITY OF PLANO, TEXAS

DATE: _____

By: _____
Bruce D. Glasscock
CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, City Attorney



SERVICES AGREEMENT

Attn: National Service Support/4th fl
 1301 East Algonquin Road
 (800) 247-2346

Contract Number: S00001018445
 Contract Modifier: RN05-APR-12 18:16:51

Date: 07/31/2012

Company Name:	Plano, City Of
Attn:	
Billing Address:	P O Box 860358
City, State, Zip:	Plano, TX, 75086
Customer Contact:	
Phone:	

Required P.O.: No
 Customer #: 1011267912
 Bill to Tag #: 0028
 Contract Start Date: 10/01/2012
 Contract End Date: 09/30/2013
 Anniversary Day: Sep 30th
 Payment Cycle: ANNUAL
 PO #:

QTY	MODEL/OPTION	SERVICES DESCRIPTION	MONTHLY EXT	EXTENDED AMT
		***** Recurring Services *****		
1	SVC01SVC0032C SVC150AD	NETWORK MONITORING SERVICE - CTD ASTRO25 MASTER SITE	\$4,052.50	\$48,630.00
1	SVC152AD	ASTRO25 PRIME SITE		
24	SVC153AD	ASTRO25 REMOTE SITE		
1	SVC158AD	ASTRO25 DISPATCH SITE		
	SVC01SVC1104C	TECHNICAL SUPPORT SERVICE	\$5,862.25	\$70,347.00
1	SVC032AD	ASTRO25 MASTER SITE		
1	SVC034AD	ASTRO25 PRIME SITE		
23	SVC035AD	ASTRO25 REMOTE SITE		
1	SVC040AD	ASTRO25 DISPATCH SITE		
	SVC01SVC1105C	CUSTOMER TECHNICIAN DISPATCH SERVIC	\$1,354.00	\$16,248.00
1	SVC129AD	ASTRO25 MASTER SITE		
24	SVC132AD	ASTRO25 REMOTE SITE		
1	SVC137AD	ASTRO25 DISPATCH SITE		
1	SVC486AE	ASTRO25 PRIME SITE		
	SVC04SVC0016C	SECURITY UPDATE SERVICE	\$3,112.25	\$37,347.00
1	SVC973AE	SUS MASTER SITE STANDARD		
	SVC04SVC0163A	SOFTWARE MAINTENANCE AGREEMENT	\$11,366.66	\$136,399.92
1	SVC029AG	ASTRO 25 MASTER SITE OR ZONE		
1	SVC030AG	ADD'L MASTER SITES OR ZONES		
11	SVC031AG	RF/SIMULCAST SITES		
3	SVC032AG	SMA DISPATCH SITES		
23	SVC033AG	SMA CONSOLE OPS		
1	SVC034AG	SMA NICE LOGGERS		
2	SVC047AG	ZONE FEATURE - IVD	EXHIBIT	A
108	SVC053AG	RF STATIONS	PAGE 1	OF 5
1	SVC064AG	ZONE FEATURE - CSMS		
2	SVC065AG	ZONE FEATURE - CNI OR CEN		
SPECIAL INSTRUCTIONS - ATTACH			Subtotal - Recurring Services	\$25,747.66
				\$308,971.92

STATEMENT OF WORK FOR PERFORMANCE DESCRIPTIONS	Subtotal - One-Time Event Services	\$.00	\$.00
	Total	\$25,747.66	\$308,971.92
	Taxes	-	-
	Grand Total	\$25,747.66	\$308,971.92
	THIS SERVICE AMOUNT IS SUBJECT TO STATE AND LOCAL TAXING JURISDICTIONS WHERE APPLICABLE, TO BE VERIFIED BY MOTOROLA.		
	Subcontractor(s)	City	State
	MOTOROLA NIO SSA TEAM	SCHAUMBURG	IL
	MOTOROLA SSC NETWORK SECURITY DO298	SCHAUMBURG	IL
	MOTOROLA SYSTEM SUPPORT CENTER-NETWORK MGMT DO067	SCHAUMBURG	IL
	MOTOROLA SYSTEM SUPPORT CTR-CALL CENTER DO066	SCHAUMBURG	IL
	MOTOROLA SYSTEM SUPPORT-TECHNICAL SUPPORT DO068	SCHAUMBURG	IL

I received Statements of Work that describe the services provided on this Agreement. Motorola's Service Terms and Conditions, a copy of which is attached to this Service Agreement, is incorporated herein by this reference.

AUTHORIZED CUSTOMER SIGNATURE	TITLE	DATE
-------------------------------	-------	------

CUSTOMER (PRINT NAME)

MOTOROLA REPRESENTATIVE(SIGNATURE)	TITLE	DATE
------------------------------------	-------	------

John Martin 214-681-6515

MOTOROLA REPRESENTATIVE(PRINT NAME)	PHONE
-------------------------------------	-------

Company Name: Plano, City Of
 Contract Number: S00001018445
 Contract Modifier: RN05-APR-12 18:16:51
 Contract Start Date: 10/01/2012
 Contract End Date: 09/30/2013

Service Terms and Conditions

Motorola Solutions Inc. ("Motorola") and the customer named in this Agreement ("Customer") hereby agree as follows:

Section 1. APPLICABILITY

These Service Terms and Conditions apply to service contracts whereby Motorola will provide to Customer either (1) maintenance, support, or other services under a Motorola Service Agreement, or (2) installation services under a Motorola Installation Agreement.

Section 2. DEFINITIONS AND INTERPRETATION

2.1. "Agreement" means these Service Terms and Conditions; the cover page for the Service Agreement or the Installation Agreement, as applicable; and any other attachments, all of which are incorporated herein by this reference. In interpreting this Agreement and resolving any ambiguities, these Service Terms and Conditions take precedence over any cover page, and the cover page takes precedence over any attachments, unless the cover page or attachment states otherwise.

2.2. "Equipment" means the equipment that is specified in the attachments or is subsequently added to this Agreement.

2.3. "Services" means those installation, maintenance, support, training, and other services described in this Agreement.

Section 3. ACCEPTANCE

Customer accepts these Service Terms and Conditions and agrees to pay the prices set forth in the Agreement. This Agreement becomes binding only when accepted in writing by Motorola. The term of this Agreement begins on the "Start Date" indicated in this Agreement.

Section 4. SCOPE OF SERVICES

4.1. Motorola will provide the Services described in this Agreement and the Statement of Work documents attached as Exhibits to this Agreement. At Customer's request, Motorola may also provide additional services at Motorola's then-applicable rates for the services.

4.2. If Motorola is providing Services for Equipment, Motorola parts or parts of equal quality will be used; the Equipment will be serviced at levels set forth in the manufacturer's product manuals; and routine service procedures that are prescribed by Motorola will be followed.

4.3. If Customer purchases from Motorola additional equipment that becomes part of the same system as the initial Equipment, the additional equipment may be added to this Agreement and will be billed at the applicable rates after the warranty for that additional equipment expires.

4.4. All Equipment must be in good working order on the Start Date or when additional equipment is added to the Agreement. Upon reasonable request by Motorola, Customer will provide a complete serial and model number list of the Equipment. Customer must promptly notify Motorola in writing when any Equipment is lost, damaged, stolen or taken out of service. Customer's obligation to pay Service fees for this Equipment will terminate at the end of the month in which Motorola receives the written notice.

4.5. Customer must specifically identify any Equipment that is labeled intrinsically safe for use in hazardous environments.

4.6. Customer must promptly notify Motorola of any Equipment failure. Motorola will respond to Customer's notification in a manner consistent with the level of Service purchased as indicated in this Agreement.

Section 5. EXCLUDED SERVICES

5.1. Service excludes the repair or replacement of Equipment that has become defective or damaged from use in other than the normal, customary, intended, and authorized manner; use not in compliance with applicable industry standards; excessive wear and tear; or accident, liquids, power surges, neglect, acts of God or other force majeure events.

5.2. Unless specifically included in this Agreement, Service excludes items that are consumed in the normal operation of the Equipment, such as batteries or magnetic tapes; upgrading or reprogramming Equipment; accessories, belt clips, battery chargers, custom or special products, modified units, or software; and repair or maintenance of any transmission line, antenna, microwave equipment, tower or tower lighting, duplexer, combiner, or multicoupler. Motorola has no

obligations for any transmission medium, such as telephone lines, computer networks, the internet or the worldwide web, or for Equipment malfunction caused by the transmission medium.

Section 6. TIME AND PLACE OF SERVICE

Service will be provided at the location specified in this Agreement. When Motorola performs service at Customer's location, Customer will provide Motorola, at no charge, a non-hazardous work environment with adequate shelter, heat, light, and power and with full and free access to the Equipment. Waivers of liability from Motorola or its subcontractors will not be imposed as a site access requirement. Customer will provide all information pertaining to the hardware and software elements of any system with which the Equipment is interfacing so that Motorola may perform its Services. Unless otherwise stated in this Agreement, the hours of Service will be 8:30 a.m. to 4:30 p.m., local time, excluding weekends and holidays. Unless otherwise stated in this Agreement, the price for the Services exclude any charges or expenses associated with helicopter or other unusual access requirements. Should helicopter use or other unusual service expenses be deemed necessary by Motorola, written approval for the additional charges will be obtained from Customer prior to commencement of the work.

Section 7. CUSTOMER CONTACT

Customer will provide Motorola with designated points of contact (list of names and phone numbers) that will be available twenty-four (24) hours per day, seven (7) days per week, and an escalation procedure to enable Customer's personnel to maintain contact, as needed, with Motorola.

Section 8. PAYMENT

Unless alternative payment terms are stated in this Agreement, Motorola will invoice Customer in advance for each payment period. All other charges will be billed monthly, and Customer must pay each invoice in U.S. dollars within thirty (30) days of the invoice in accordance with the terms of the Texas Prompt Payment Act, (Texas Government Code § 2251).

Section 9. WARRANTY

Motorola warrants that its Services under this Agreement will be free of defects in materials and workmanship for a period of ninety (90) days from the date the performance of the Services are completed. In the event of a breach of this warranty, Customer's sole remedy is to require Motorola to re-perform the non-conforming Service or to refund, on a pro-rata basis, the fees paid for the non-conforming Service. MOTOROLA DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Section 10. DEFAULT/TERMINATION

10.1. If either party defaults in the performance of this Agreement, the other party will give to the non-performing party a written and detailed notice of the default. The non-performing party will have thirty (30) days thereafter to provide a written plan to cure the default that is acceptable to the other party and begin implementing the cure plan immediately after plan approval. If the non-performing party fails to provide or implement the cure plan, then the injured party, in addition to any other rights available to it under law, may immediately terminate this Agreement effective upon giving a written notice of termination to the defaulting party.

10.2. Any termination of this Agreement will not relieve either party of obligations previously incurred pursuant to this Agreement, including payments which may be due and owing at the time of termination. All sums owed by Customer to Motorola will become due and payable under the terms of the Texas Prompt Payment Act upon termination of this Agreement. Upon the effective date of termination, Motorola will have no further obligation to provide Services.

Section 11. LIMITATION OF LIABILITY

Except for personal injury or death, Motorola's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the price of twelve (12) months of Service provided under this Agreement. ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT MOTOROLA WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT OR THE PERFORMANCE OF SERVICES BY MOTOROLA PURSUANT TO THIS AGREEMENT. This limitation of liability will survive the expiration or termination of this Agreement and applies notwithstanding any contrary provision.

Section 12. EXCLUSIVE TERMS AND CONDITIONS

Customer agrees to reference this Agreement on any purchase order issued in furtherance of this Agreement, however, an omission of the reference to this Agreement will not affect its applicability. In no event will either party be bound by any terms contained in a Customer purchase order, acknowledgement, or other writings unless: the purchase order, acknowledgement, or other writing specifically refers to this Agreement or another contractual document made part of the Network Monitoring, Technical Support, or Customer Technician Dispatch Service Agreement between the parties; clearly indicate the intention of both parties to override and modify this Agreement or another contractual document between the parties; and the purchase order, acknowledgement, or other writing is signed by authorized representatives of both parties.

Section 13. PROPRIETARY INFORMATION; CONFIDENTIALITY; INTELLECTUAL PROPERTY RIGHTS

13.1. Any information or data in the form of specifications, drawings, reprints, technical information or otherwise furnished to Customer under this Agreement will remain Motorola's property, will be deemed proprietary, will be kept confidential, and will be promptly returned at Motorola's request, except as required by law. Customer may not disclose, without Motorola's written permission or except as required by law, any confidential information or data to any person, or use confidential information or data for any purpose other than performing its obligations under this Agreement. The obligations set forth in this Section survive the expiration or termination of this Agreement.

13.2. Unless otherwise agreed in writing, no commercial or technical information disclosed in any manner or at any time by Customer to Motorola will be deemed secret or confidential. Motorola will have no obligation to provide Customer with access to its confidential and proprietary information, including cost and pricing data.

13.3. This Agreement does not grant directly or by implication, estoppel, or otherwise, any ownership right or license under any Motorola patent, copyright, trade secret, or other intellectual property including any intellectual property created as a result of or related to the Equipment sold or Services performed under this Agreement.

Section 14. FCC LICENSES AND OTHER AUTHORIZATIONS

Customer is solely responsible for obtaining licenses or other authorizations required by the Federal Communications Commission or any other federal, state, or local government agency and for complying with all rules and regulations required by governmental agencies. Neither Motorola nor any of its employees is an agent or representative of Customer in any governmental matters.

Section 15. MATERIALS, TOOLS AND EQUIPMENT

All tools, equipment, dies, gauges, models, drawings or other materials paid for or furnished by Motorola for the purpose of this Agreement will be and remain the sole property of Motorola. Customer will safeguard all such property while it is in Customer's custody or control, and return it to Motorola upon request. This property will be held by Customer for Motorola's use without charge and may be removed from Customer's premises by Motorola at any time without restriction. Notwithstanding the others terms of this section, Motorola will agree to remove any such property within sixty (60) days of a written request from Customer to Motorola, and Customer will have no further duty to retain or safeguard the equipment should Motorola fail to remove the property at the expiration of the sixty-day period.

Section 16. GENERAL TERMS

16.1. If any court renders any portion of this Agreement unenforceable, the remaining terms will continue in full force and effect.

16.2. This Agreement and the rights and duties of the parties will be interpreted in accordance with the laws of the State in which the Services are performed

16.3. Failure to exercise any right will not operate as a waiver of that right, power, or privilege.

16.4. Motorola may subcontract any of the work, but subcontracting will not relieve Motorola of its duties under this Agreement.

16.5. Except as provided herein, neither Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, which consent will not be unreasonably withheld. Any attempted assignment, delegation, or transfer without the necessary consent will be void. Notwithstanding the foregoing, Motorola may assign this Agreement to any of its affiliates or its right to receive payment without the prior consent of Customer. In addition, in the event Motorola separates one or more of its businesses (each a "Separated Business"), whether by way of a sale, establishment of a joint venture, spin-off or otherwise (each a "Separation Event"), Motorola may, without the prior written consent of the other Party and at no additional cost to Motorola, assign this Agreement such that it will continue to benefit the Separated Business and its affiliates (and Motorola and its affiliates, to the extent applicable) following the Separation Event

STATEMENT OF WORK

ASTRO 25 SOFTWARE MAINTENANCE AGREEMENT (SMA)

1.0 Description of Service and Obligations

- 1.1 As major system releases become available, Motorola agrees to provide the system owner with the software required to execute up to one system infrastructure upgrade in a 12 month period for their ASTRO 25 system.
- 1.2 Motorola agrees to provide minor software upgrades, known as “patch releases”, which may include commercial Operating Software (“OS”) and application software patches and service pack updates when and if available. Currently, the parties acknowledge that Motorola’s service includes Microsoft Windows and Server OS, Red Hat Linux, Sun Solaris and any Motorola software service packs that may be available. Motorola agrees to provide only patch releases that have been analyzed, pre-tested, and certified in a dedicated ASTRO 25 test lab to ensure that they are compatible and do not interfere with the ASTRO 25 network functionality. Corresponding 3rd Party software and operating system patches will be released quarterly upon successful completion of the regular test cycle or at Motorola’s discretion. Once a patch release has been validated as safe for deployment on the radio network, Motorola agrees to post it on a Motorola secure extranet site for the Customer to download and deploy.
 - 1.2.1 The parties agree that minor software upgrades, and patch release coverage, which include commercial Operating Software (“OS”) and application software patches and service pack updates, will terminate should the customers system release version become more than 5 system release versions from the current shipping release version.
- 1.3 The parties agree that ASTRO 25 system release upgrades are considered “major” upgrades if they include commercial OS and application software updates as well as Motorola system release software. System releases shall be pre-tested and certified in Motorola’s Systems Integration Test lab. ASTRO 25 system releases shall improve the system functionality and operation from previous releases and may include some minor feature enhancements. At Motorola’s option, system releases may also include significant new feature enhancements that Motorola may offer for purchase.
- 1.4 The parties agree that the ASTRO 25 system release upgrades include limited security updates issued by Microsoft, Solaris and Red Hat certified with each individual system release.
- 1.5 Motorola agrees that this Agreement entitle a Customer to past software versions for the purpose of downgrading product software to a compatible release version.
- 1.6 The parties agree that the ASTRO 25 SMA pricing is based on the system configuration outlined in Appendix A. The parties further agree that this configuration is to be reviewed annually on the contract renewal date. Any change in system configuration may require an ASTRO 25 Software Maintenance Agreement price adjustment.
- 1.7 The parties agree and acknowledge that the ASTRO 25 SMA applies only to system release upgrades within the ASTRO 25 7.x platform.

- 1.8 Motorola agrees that the following ASTRO 25 system release software for the following products are covered under this Agreement: base stations, site controllers, comparators, routers, LAN switches, servers, dispatch consoles, network management terminals, Network Fault Management (NFM) products, network security devices such as firewalls and intrusion detection sensors, and associated peripheral infrastructure software.
- 1.9 Product programming software such as Radio Service Software (“RSS”), Configuration Service Software (“CSS”), and Customer Programming Software (“CPS”) are also covered under this Agreement.
- 1.10 The parties agree that the SMA makes available the subscriber radio software releases that are shipping from the factory during the SMA coverage period. The parties further agree that new subscriber radio options and features not previously purchased are excluded from SMA coverage. Additionally, subscriber software installation and reprogramming are excluded from the ASTRO 25 SMA coverage.
- 1.11 Motorola agrees to issue the SMA bulletin on an annual basis and post it in soft copy on a designated extranet site for Customer access. Standard and optional features for a given ASTRO 25 system release are listed in the SMA bulletin.
- 1.12 Coverage Continuity.
 - 1.12.1 The parties acknowledge and agree that the ASTRO 25 SMA requires continuous coverage beginning within (90) days after the expiration of system warranty. Should the Customer delay purchase of an ASTRO 25 SMA beyond (90) days from system warranty expiration or elect to discontinue the ASTRO 25 SMA and later decide to reinstate coverage, additional payment(s) will be necessary to cover the period for which coverage was discontinued or delayed. The total of payments for lapses in coverage will not exceed 3 years in equivalent ASTRO 25 SMA coverage.
- 1.13 The Customer agrees that they shall:
 - 1.13.1 Contact Motorola upon receiving a bulletin to engage the appropriate Motorola resources for a system release upgrade.
 - 1.13.2 Purchase any hardware and labor needed to implement system release upgrades.
 - 1.13.3 Purchase optional system release features or system expansions.
 - 1.13.4 Purchase any additional hardware and software needed to implement any optional system release features or system expansions.
 - 1.13.5 Provide or purchase labor to implement optional system release features or system expansions.
 - 1.13.6 Cooperate with Motorola and perform all acts that are reasonable or necessary to enable Motorola to provide software upgrade services.

2.0 Exclusions and Limitations

- 2.1 The parties agree that Systems that have non-standard configurations that have not been certified by Motorola Systems Integration Testing are specifically excluded from the ASTRO 25 SMA unless otherwise agreed in writing by Motorola and included in this SOW.
- 2.2 The parties acknowledge and agree that the ASTRO 25 SMA does not cover the following products:
- MCC5500 Dispatch Consoles
 - MIP5000 Dispatch Consoles
 - Plant/E911 Systems
 - MOTOBRIDGE Solutions
 - ARC 4000 Systems
 - Motorola Public Sector Applications Software (PSA)
 - Custom SW, CAD, Records Management Software
 - Data Radio Devices
 - Mobile computing devices such as Laptops
 - Non-Motorola two-way radio subscriber products
 - Genesis Products
 - Point-to-point products such as Microwave terminals and association multiplex equipment
- 2.3 The parties agree that hardware upgrades and/or replacements, as well as pre-planning, design and implementation services required to deploy an ASTRO 25 system release upgrade are not included within the coverage of the ASTRO 25 Software Maintenance Agreement. The parties further agree that implementation services and any hardware upgrades and/or replacements required to support the system release upgrade will be quoted separately for the specific system release upgrade requested by the customer.
- 2.4 The parties agree that the ASTRO 25 system releases include limited security updates issued by Microsoft, Solaris and Red Hat certified with each individual system release.
- 2.5 The parties agree that the ASTRO 25 SMA does not cover software support for virus attacks or other applications that are not part of the ASTRO 25 system, or unauthorized modifications or other misuse of the covered software. Motorola is not responsible for management of anti-virus or other security applications (such as Norton). Anti-virus and/or security application support may be covered under a separate agreement.
- 2.6 The parties agree that upgrades for equipment add ons or expansions during the term of the contract are not included in the coverage of this SOW unless otherwise agreed to by Motorola.

3.0 Special provisions

- 3.1 Customer acknowledges that if its System has a Special Product Feature, additional engineering may be required to prevent an installed system release from overwriting the Special Product Feature. Upon request, Motorola will determine whether a Special Product Feature can be incorporated into a system release and whether additional engineering effort is required. If additional engineering is required Motorola will issue a change order for the change in scope and associated increase in the price for the ASTRO 25 Software Maintenance Agreement.

- 3.2 Customer may use the software (including any System Releases) only in accordance with the applicable Software License Agreement. The SMA Statement of Work is not intended to modify or terminate an existing Software License Agreement. The SMA or services rendered by Motorola does not alter Motorola's software intellectual property rights.
- 3.3 Customer acknowledges that Software Maintenance Agreement services do not include repair or replacement of hardware or software necessary due to defects that are not corrected by the system release, nor does it include repair or replacement of defects resulting from any nonstandard or improper use or conditions or from unauthorized installation of software.
- 3.4 The parties agree that ASTRO 25 SMA coverage and the parties' responsibilities described in this Statement of Work will automatically terminate if Motorola no longer supports the ASTRO 25 7.x software version in the Customer's system or discontinues the SMA program; in either case, Motorola will refund to Customer any prepaid fees for Software Maintenance services applicable to the terminated period.
- 3.5 Motorola may suspend or terminate the ASTRO 25 Software Maintenance Agreement if the following conditions apply:
- Customer fails to pay Motorola any fees for the ASTRO 25 SMA when due
 - Customer breaches the Software License Agreement or other applicable agreement
 - Customer's rights to use the software under the Software License Agreement expire or are terminated
 - Customer replaces its Motorola System with a system from another manufacturer

4.0 WARRANTIES AND DISCLAIMER:

Motorola warrants that its services will be free of defects in materials and workmanship for a period of ninety (90) days following completion of the service (“Warranty Period”). Your sole remedies are to require Motorola to re-perform the affected service or at Motorola's option to refund, on a pro-rata basis, the service fees paid for the affected service. Product and software documentation that specifies technical and performance features and capabilities, and the user, operation and training manuals for the Software (including all physical or electronic media upon which this information is provided) are collectively referred to as “Documentation.” During the applicable Warranty Period, Motorola warrants that the tested anti-virus definitions, intrusion detection sensor signatures, and operating system security updates/patches do not degrade or compromise System functionality, and that after incorporation of the recommended remediation action the System Software, when used properly and in accordance with the Documentation, will be free from a reproducible defect that eliminates the functionality or successful operation of a feature critical to the primary functionality or successful operation of the software. Whether a defect occurs will be determined solely with reference to the Documentation. Motorola does not warrant that Customer’s use of the software or products will be uninterrupted or error-free or that the software or the products will meet Customer’s particular requirements.

MOTOROLA DISCLAIMS ALL OTHER WARRANTIES WITH RESPECT TO PRETESTED ANTI-VIRUS DEFINITIONS, DATABASE SECURITY UPDATES, OPERATING SYSTEM SOFTWARE PATCHES, AND INTRUSION DETECTION SENSOR SIGNATURE FILES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. FURTHER, MOTOROLA DISCLAIMS ANY WARRANTY CONCERNING THE NON-MOTOROLA SOFTWARE AND DOES NOT GUARANTEE THAT CUSTOMER’S SYSTEM WILL BE ERROR-FREE OR IMMUNE TO VIRUSES OR WORMS AS A RESULT OF THESE SERVICES.

Appendix A - System Pricing Configuration

This configuration is to be reviewed annually on the contract renewal date. Any change in system configuration may require an ASTRO 25 SMA price adjustment.

Core	
Master Site Configuration	0
Zones in Operation (Including DSR and Dark Master Sites)	0
Zone Features: IV&D, OTAR, TDMA, Telephone Interconnect, CNI, HPD, ISSI CSMS, IA, POP25, Text Messaging, Outdoor Location, ...	0
RF System	
Voice RF Sites & RF Simulcast Sites	0
Repeaters/Stations (FDMA)	0
Repeaters/Stations (TDMA)	0
HPD RF Sites	0
HPD Stations	0
Dispatch Console System	
Dispatch Sites	0
Gold Elite Operator Positions	0
MCC 7500 Operator Positions (GPIOM)	0
MCC 7500 Operator Positions (VPM)	0
Conventional Channel Gateways (CCGW)	0
Conventional Site Controllers (GCP 8000 Controller)	0
Logging System	
Number of AIS Servers	0
Number of Voice Logging Recorder	0
Number of Logging Replay Clients	0
Network Management and MOSCAD NFM	
Network Management Clients	0
MOSCAD NFM Systems	0
MOSCAD NFM RTUs	0
MOSCAD NFM Clients	0
Fire Station Alerting (FSA)	
FSA Systems	0
FSA RTUs	0
FSA Clients	0
Fire Station Alerting (FSA)	
Voice Subscribers non-APX	0
Voice Subscribers APX	0
HPD Subscribers	0



not be responsible for any damages of any kind arising out of or relating to the inability of Motorola to reach the Customer Contact or others on the Customer escalation table.

- 2.9. Escalate the Case per the escalation contact table provided by Customer pursuant to 3.5.2 if Customer's technician does not report site arrival, Response or Restoration within Customer requested Response times as set forth the Customer Support Plan.
- 2.10. Verify with Customer that Restoration is complete or System is functional, if required by Customer's repair Verification preference in the Customer Support Plan. If Verification by Customer cannot be completed within 20 minutes of Restoration, the Case will be closed and the Customer technician will be released.
- 2.11. Close the Case upon receiving notification from Customer indicating the Case is resolved.
- 2.12. Notify Customer of Case Status, as described in the Customer Support Plan at the following Case levels:
 - 2.12.1. Open and closed; or
 - 2.12.2. Open, assigned to Customer technician, arrival of Customer technician on site, deferred or delayed, closed.
- 2.13. Provide, when requested by Customer, the following reports, as applicable:
 - 2.13.1. Case activity reports to Customer.
 - 2.13.2. Network Monitoring Service reports for Customer System(s)
 - 2.13.3. Network Activity/Availability Reports for ASTRO 25, SmartZone/ OmniLink, and Private Data Systems only.
- 2.14. Respond in accordance to pre-defined Response times upon receipt from Customer of Customer managed passwords required for proper access to the Customer's System.

3.0 Customer Responsibilities:

- 3.1. Allow Motorola Continuous remote access to obtain System availability and performance data.
- 3.2. Allow Motorola to access System if firewall has been installed; provide permanent/dedicated access for SNMP traps (outbound) and ZDS polling (inbound). Also provide continuous utility service to any Motorola equipment installed or utilized at Customer's premises to support delivery of the Service.
- 3.3. Order and maintain dedicated dial-up phone lines for telephone service for SMARTNET System types. The Connectivity Matrix set forth in Appendix 1 further describes the Connectivity options.
- 3.4. Unless otherwise specified, Motorola recommends a private network connection for all other Systems. The Connectivity Matrix set forth in Appendix 1 further describes the Connectivity options.
- 3.5. Provide Motorola with pre-defined Customer information and preferences prior to Start Date necessary to complete Customer Support Plan, including, but not limited to:
 - 3.5.1. Case notification preferences and procedure
 - 3.5.2. Escalation contact table
 - 3.5.3. Severity Level definitions
 - 3.5.4. Site arrival preference and procedure
 - 3.5.5. Repair Verification preference and procedure
 - 3.5.6. Response and Restoration time commitments
 - 3.5.7. Submit changes in any information supplied in the Customer Support Plan to the Customer Support Manager.
- 3.6. Provide the following information when initiating a service request:
 - 3.6.1. Assigned System ID number
 - 3.6.2. Problem description and site location
 - 3.6.3. Other pertinent information requested by Motorola to open a Case.
- 3.7. Notify the SSC when Customer performs any activity that impacts the System. (Activity that impacts the System may include, but is not limited to, installing software or hardware upgrades, performing upgrades to the network, or taking down part of the system to perform maintenance.)
- 3.8. Respond to Motorola within 10 minutes of receipt of page or telephone call to accept assignment of Case. If Customer fails to contact Motorola within 10 minutes, Motorola will follow the escalation process described in section 2.8.1 above.
- 3.9. Report Restoration to Motorola upon resolution of Case within Restoration times set forth in the Customer Support Plan.
- 3.10. Report site arrival to Motorola within the Response and Restoration time commitments for all accepted cases if required in the Customer Support Plan.
- 3.11. Allow Motorola access to remove Motorola owned monitoring equipment upon cancellation of service.
- 3.12. Provide all Customer managed passwords required to access the Customer's System to Motorola upon request or when opening a Case to request service support or enable Response to a technical issue.



- 3.13. Pay additional support charges above and beyond the contracted service agreements that may apply if it is determined that System faults were caused by the Customer making changes to critical System parameters.
- 3.14. Cooperate with Motorola and perform all acts that are reasonable or necessary to enable Motorola to provide the services described in this SOW.

Appendix 1

Connectivity Matrix

System Type	Connectivity	Responsibility
Astro 25	T1	Motorola
SmartZone/OmniLink v3.5 and below	256K	Motorola
SmartZone/OmniLink v4 and above	512K	Motorola
Private Data	256K	Motorola
ARC 4000	T1 or VPN	Motorola
MESH	T1 or VPN	Motorola
Harmony	T1	Motorola
MotoBridge	T1 or VPN	Motorola
SmartNet	Dial-up	Customer

Private Network Connection IP VPN (All Customers)	Public Internet Connection IP VPN (Option Available only to Customers outside of the US)
Standard solution for real time Connectivity	Non Standard solution for Connectivity
Dedicated bandwidth configuration provided to monitor Customers	No dedicated bandwidth provided to monitor Customers
Protected from unauthorized intrusion	Low risk of unauthorized intrusion
Encryption available	Encryption is required
Connectivity available through Motorola	Customer provides Connectivity to the internet via an internet service provider selected by Customer.

Motorola Owned & Supplied Equipment Table

Equipment Type	Location Installed
	Master Site
Firewall/Router	Master Site for each Zone
System Support Server	

ASTRO 25 6.0 - 6.2	<p>Nortel; Packet Routing Network; Zone Controllers; Database Server; FullVision Server; Zone Statistical Server; Air Traffic Router; System Statistics Server; User Configuration Server; Packet Data Gateway Server; PBX; Interconnect Server; Motorola Gold Elite Gateway (MGEG); AEB; CEB; ARCADACS Cross Connect Switch; Simulcast RF Site (Site Controllers, Comparators, Stations); Intelli Repeater RF Site (Stations); Intelli Site Repeater RF Site (Site Controllers, Stations);</p> <p>MOSCAD Overlay (TenSr, Station, Channel Banks, TRAK GPS, Environmental Alarms, Microwave)</p>
SmartZone 4.1	<p>Zone Controllers; Database Server; Digital Interface Unit (DIU); Central Electronic Bank (CEB) Interface; AEB; FullVision Server; Air Traffic Router; System Statistics Server (Multi-Zone); Zone Statistical Server; User Configuration Server; NOVA 2000 (Interconnect); Remote RF Sites (Site Controllers Including Simulcast, Stations);</p> <p>MOSCAD Overlay (Stations-Non Trunked, Comparater, TenSr Channel Banks, Environmental Alarms, Microwave)</p>
ARC 4000	<p>Zone Controller, Network Manager Servers, User Configuration Server, Zone Database Server, FullVision Server, Air Traffic Router Server, Packet Data Router & Radio Network Gateway (IV&D), Data Collection Device, Master Site Router (Core, Gateway), Master Site Switches, Individual Site Routers, Individual Site Switches</p>
Astro LE	<p>Site Controllers; Environmental Alarms; Channel Banks</p>
SMARTNET Monitored by MOSCAD SiteSentry	<p>Site Controllers; Stations; Environmental Alarms; Channel Banks. Site Sentry is a canceled product. No new customers.</p>
Private Data	<p>Wireless Network Gateway (WNG); Radio Network Controller (RNC); Base Station</p>
Harmony (HWCS)	<p>MSO, EBTS</p>
MOTObridge	<p>SIP, OMC, Gateway Units</p>



Statement of Work

Technical Support Service

1.0 Description of Services

The Technical Support service provides centralized remote telephone support for technical issues that require a high level of communications systems expertise or troubleshooting on Equipment. The Motorola System Support Center's (SSC) Technical Support Operation is staffed with technologists who specialize in the diagnosis and resolution of system performance issues. Technical Support Service: (i) does not include software upgrades that may be required for issue resolution; (ii) does not include Customer training; (iii) is only available for those system types supported and approved by Technical Support Operations and (iv) limited to Infrastructure currently supported by Motorola,

Technical Support is applicable to the following system types: ASTRO®, ASTRO® 25, ARC 4000, SmartZone® v2.0.3 and higher, SmartZone®/OmniLink®, E911, Private Data v2.0.3 and higher, SmartNet®, Conventional Two-Way, Wireless Broadband and Digital In-Car Video.

The terms and conditions of this Statement of Work (SOW) are an integral part of Motorola's Service Terms and Conditions or other applicable Agreement to which it is attached and made a part thereof by this reference.

2.0 Motorola has the following responsibilities:

- 2.1. Respond to requests for Technical Support for the Restoration of failed Systems and diagnosis of operation problems in accordance with the response times set forth in the Remote Technical Support Response Times Table and the Severity Level defined in the Severity Definitions Table.
 - 2.1.1. If Infrastructure is no longer supported by Motorola, Technical Support will diagnosis the System but may not be able to resolve the issue without the Customer replacing the Infrastructure.
- 2.2. Advise caller of procedure for determining any additional requirements for issue characterization, and Restoration which includes providing a known fix for issue resolution when available.
- 2.3. Attempt remote access to System for remote diagnostics, when possible.
- 2.4. Maintain communication with the Servicer or Customer in the field until close of the Case, as needed.
- 2.5. Coordinate technical resolutions with agreed upon third party Vendor(s), as needed.
- 2.6. Escalate and manage support issues, including Systemic issues, to Motorola engineering and product groups, as applicable.
- 2.7. Escalate the Case to the appropriate party upon expiration of a Response time.
- 2.8. Provide Configuration Change Support and Work Flow changes to Systems that have dial in or remote access capability.
- 2.9. Determine, in its sole discretion, when a Case requires more than the Technical Support services described in this SOW and notify Customer of an alternative course of action.

3.0 Customer has the following responsibilities:

- 3.1. Provide Motorola with pre-defined information prior to Start Date necessary to complete Customer Support Plan.
 - 3.1.1. Submit changes in any information supplied in the Customer Support Plan to the Customer Support Manager.
- 3.2. Contact the SSC in order to access the Technical Support Operation, provide name of caller, name of Customer, System ID number, Service Agreement number, site(s) in questions, and brief description of the problem.
- 3.3. Supply on-site presence when requested by System Support Center.
- 3.4. Validate issue resolution prior to close of the Case.



- 3.5. Allow Motorola remote access to the System by equipping the System with the necessary Connectivity.
- 3.6. Remove video from Digital In-Car Video equipment prior to contacting Motorola. If Technical Support assists the Customer in removing video, the Customer acknowledges, understands and agrees that Motorola does not guarantee or warrant that it will be able to extract any captured video or that any captured video will not be damaged, lost or corrupted.
- 3.7. Acknowledge that Cases will be handled in accordance with the times and priorities as defined in Remote Technical Support Response Times Table and the Severity Level defined in the Severity Definitions Table.
- 3.8. Cooperate with Motorola and perform all acts that are reasonable or necessary to enable Motorola to provide the Technical Support service to Customer.

Severity Definitions Table

Severity Level	Problem Types
Severity 1 ③	Response is provided Continuously ③ Major System failure ③ 33% of System down ③ 33% of Site channels down ③ Site Environment alarms (smoke, access, temp, AC power). ③ This level is meant to represent a major issue that results in an unusable system, sub-system, Product, or critical features from the Customer's perspective. No Work-around or immediate solution is available.
Severity 2 ③	Response during Standard Business Day ③ Significant System Impairment not to exceed 33% of system down ③ System problems presently being monitored ③ This level is meant to represent a moderate issue that limits a Customer's normal use of the system, sub-system, product, or major non-critical features from a Customer's perspective
Severity 3 ③	Response during Standard Business Day ③ Intermittent system issues ③ Information questions ③ Upgrades/preventative maintenance ③ This level is meant to represent a minor issue that does not preclude use of the system, sub-system, product, or critical features from a Customer's perspective. It may also represent a cosmetic issue, including documentation errors, general usage questions, recommendations for product enhancements or modifications, and scheduled events such as preventative maintenance or product/system upgrades.

Remote Technical Support Response Times Table

SEVERITY	RESPONSE
Severity 1	Within 1 Hour from receipt of Notification, Continuously
Severity 2	Within 4 Hours from receipt of Notification, Standard Business Day
Severity 3	Within next Business Day, Standard Business Day



STATEMENT OF WORK

Pre-Tested Software Subscription (PTSS)

1.0 Definitions

Terms that are capitalized but not defined in this Statement of Work shall have the definition given to such terms in the Service Terms and Conditions, the Communications System Agreement or other applicable agreement. The following terms have the following meanings:

1.1 Non-Motorola Software: Software whose copyright is owned by a party other than Motorola or its affiliated company, including but not limited to the anti-virus definitions, operating system software patches and signature files that will be pre-tested pursuant to this Statement of Work.

1.2 System: The currently shipping Motorola ASTRO§ 25 System Release and up to 5 releases prior, with the last eligible release starting at 7.4.

1.3 Supported Release: Pre-Tested Software Subscription Platinum is available on the currently shipping Motorola ASTRO§ 25 System Release and up to 5 releases prior, with the last eligible release being 7.4. If a customer is on a System Release older than 7.4 (eg, 7.3, 7.2, 6.9, etc), or is outside of the 5 release schedule, then they cannot purchase this service.

2.0 Description of Services

With Pre-Tested Software Subscription (Service), Motorola pretests the updated commercial anti virus definitions for the Microsoft Windows based boxes on a System. This Service includes Motorola obtaining Microsoft Security Updates for Windows operating system, Solaris recommended patch bundles, Red Hat Linux security patches, anti-virus definitions* and intrusion detection sensor updates for Motorola supplied equipment from applicable original equipment manufacturer (OEM). Motorola will evaluate and pre-test each update on Motorola's ASTRO 25 test System components for operational impact. Motorola's verification and evaluation process for anti-virus definitions will consist of applying each update to an appropriate ASTRO 25 system release that corresponds and is consistent with supported** & fielded systems. Each assessment will consist of no less than 36 hours of examination time to evaluate the impact each anti-virus update has to the system. Upon satisfactory completion of the assessment pertaining to anti-virus signatures, these updates will be provided on a weekly basis either automatically or through connecting to Motorola's secured extranet



connection. When anti-virus definitions classified as Category 4 (Severe, difficult to contain) and Category 5 (Very Severe, very difficult to contain) by the commercial supplier are released, Motorola will determine if a high-priority release is necessary. Operating system updates/patches will be made available to our customers electronically upon successful testing in our lab environments on a monthly basis for Microsoft patches and on a quarterly basis for all others.

NOTICE: Automatic anti-virus and IDS updates are only available through our network security monitoring offering. Motorola will perform testing only on standard configurations certified by Motorola System Integration Testing (SIT) and Motorola supplied equipment/software prior to making an update available to Customers.

* - Not all systems are provided antivirus for Microsoft and UNIX platforms. To receive full antivirus support under this service offering, the customer must have a standard ASTRO 25 system that is supported and also has implemented antivirus for UNIX.

** - Supported is defined as the current system release and the last three prior. Support beyond this model requires approval from the Customer Service Manager and the Security Services Product Manager. For extended coverage, please communicate a formal request to your account manager.

The customer will be responsible for deploying Microsoft, Oracle, Sun Microsystems, UNIX, and Linux security updates from a Motorola provided secured extranet Web site. Antivirus and IDS updates will be capable of pushed automatically to the customer ASTRO25 network only if network security monitoring is acquired by the customer. If there is a recommended configuration change that is successfully tested on the ASTRO 25 test System, Motorola will provide detailed instructions for performing the configuration change. Pre-Tested Software Subscription - Platinum does not include software for system upgrades or implementation of any recommended remediation.

INCLUSIONS: Pre-Tested Software Subscription - Platinum is available on the currently shipping Motorola ASTRO 25 System Release and up to 5 releases prior, with the last eligible release being 7.4. If a customer is on a System Release older than 7.4 (eg, 7.3, 7.2, 6.9, etc), then they cannot purchase this service.

EXCLUSIONS: Systems that have non-standard configurations that have not been certified by Motorola SIT are specifically excluded from this Service unless otherwise agreed in writing by Motorola. Service does not include pre-tested intrusion detection system (IDS) updates for IDS solutions not purchased through Motorola. NICE Recorder, certain consoles, MARVILS, Symbol Equipment, AirDefense Equipment, AVL, and Radio Site Security products are also excluded. The scope of service coverage is defined by Motorola Services and is subject to change based on OEM support lifecycles. The terms and conditions of this Statement of Work are an integral part of Motorola's Service Terms and Conditions or other applicable Agreement to which it is attached and made a part thereof by this reference.

3.0 Motorola has the following responsibilities:

3.1 Obtain anti-virus definitions for the Microsoft Windows platform, intrusion detection sensor signatures for Motorola supplied IDS, Microsoft Security Updates for Windows Operating system, Solaris operating system recommended patch bundles, and Red Hat Linux security patches from Motorola selected commercial suppliers.

3.2 Evaluate anti-virus definitions classified as Category 4 and 5 by Motorola selected commercial supplier to determine if a high-priority release is required. Motorola in its discretion will determine the urgency of the update based on the impact to the System.

3.3 Identify and document latest System vulnerabilities and compliance issues discovered during quarterly vulnerability scan performed in Section 3.4.

3.6 Investigate new vulnerabilities and compliance issues that are identified in Sections 3.3 and 3.5 to determine a recommended response. Recommended response may include, but is not limited to, not applicable to ASTRO 25 System, deploy security software updates; deploy operating system security updates or patches; implement configuration changes; upgrade to current ASTRO 25 System Release (actual upgrade expense not included in this service offering); or recommending a compensating control.

3.7 Pre-test recommended remediation when applicable and make documentation and/or software updates available to Customer electronically.

3.8 Provide documented response with recommended remediation when applicable for all new vulnerabilities quarterly or at Motorola's discretion to Customer electronically.

3.9 Test anti-virus definitions, intrusion detection sensor signatures, and operating system security updates/patches by deploying them on a dedicated ASTRO 25 test System with the standard supported configurations, which include Motorola's then current approved cohabitated applications.

3.10 Confirm that tested anti-virus definitions, intrusion detection sensor signatures, and operating system security updates/patches do not degrade or compromise System functionality on dedicated test System within the standard supported configurations.

3.11 Address issues identified during testing to support functionality under the procedures specified in 3.10 above by working with Motorola selected commercial supplier or Motorola product development engineering team.



3.12 Release pre-tested anti-virus definitions and intrusion detection sensor signatures for Motorola supplied IDS electronically on a weekly basis upon successful completion of the weekly test cycle to be completed one week after release by commercial supplier unless an issue is detected or within 36 hours from Motorola selected commercial supplier's Category 4 & 5 certified virus definitions being available or at Motorola's discretion if determined by Motorola to be a high-priority release. Release may include the anti-virus definition file, intrusion detection sensor signatures, updated configuration files, instructions and other information deemed pertinent by Motorola.

3.13 Release Microsoft, Solaris and Red Hat Linux operating system security patches/updates when they are certified and available with instructions for obtaining patch/update for Customer deployment on the Customer system. Microsoft operating system security updates will be released monthly as available from Motorola selected commercial supplier upon successful completion of monthly test cycle. Solaris and Red Hat Linux operating system security patches will be released quarterly upon successful completion of quarterly test cycle or at Motorola's discretion.

3.14 Notify Customer when the latest release is available with instructions on where to obtain latest release.

3.15 Provide technical assistance if there is an issue with the installation of an update.

3.16 Maintain annual Customer subscriptions for anti-virus definitions and intrusion detection sensor signatures, with Motorola selected commercial supplier.

4.0 Customer has the following responsibilities:

4.1 Provide means for accessing pre-tested files electronically.

4.2 Deploy pre-tested files on Customer System as instructed in the DRead Me text provided.

4.3 Implement recommended remediation(s) on Customer System as determined necessary by Customer.

4.4 Upgrade System to a Supported System Release as necessary to continue Service.

4.5 Identify one point of contact for issues specific to Pre-Tested Software Subscription.

4.6 Cooperate with Motorola and perform all acts that are reasonable and/or necessary to enable Motorola to electronically provide Pre-Tested Software Subscription Platinum to Customer.



4.7 Comply with the terms of the applicable license agreement between Customer and the Non-Motorola Software copyright owner.

4.8 Adhere closely to the System Support Center (SSC) troubleshooting guidelines provided upon system acquisition. A failure to follow SSC guidelines may cause Customer and Motorola unnecessary or overly burdensome remediation efforts that may result in a service fee to Customer.

5.0 WARRANTIES AND DISCLAIMER:

Motorola warrants that its services will be free of defects in materials and workmanship for a period of ninety (90) days following completion of the service. Your sole remedies are to require Motorola to re-perform the affected service or at Motorola's option to refund, on a pro-rata basis, the service fees paid for the affected service.

During the applicable Warranty Period, Motorola warrants that the tested anti-virus definitions, intrusion detection sensor signatures, and operating system security updates/patches do not degrade or compromise System functionality, and that after incorporation of the recommended remediation action the System Software, when used properly and in accordance with the Documentation, will be free from a reproducible defect that eliminates the functionality or successful operation of a feature critical to the primary functionality or successful operation of the Software. Product and Software documentation that specifies technical and performance features and capabilities, and the user, operation and training manuals for the Software (including all physical or electronic media upon which this information is provided) are collectively referred to as Documentation. Whether a defect occurs will be determined solely with reference to the Documentation. Motorola does not warrant that Customer's use of the Software or Products will be uninterrupted or error-free or that the Software or the Products will meet Customer's particular requirements.

MOTOROLA DISCLAIMS ALL OTHER WARRANTIES WITH RESPECT TO PRE-TESTED ANTI-VIRUS DEFINITIONS, DATABASE SECURITY UPDATES, OPERATING SYSTEM SOFTWARE PATCHES, AND INTRUSION DETECTION SENSOR SIGNATURE FILES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. FURTHER, MOTOROLA DISCLAIMS ANY WARRANTY CONCERNING THE NON-MOTOROLA SOFTWARE AND DOES NOT GUARANTEE THAT CUSTOMER'S SYSTEM WILL BE ERROR-FREE OR IMMUNE TO VIRUSES OR WORMS AS A RESULT OF THESE SERVICES.

INSURANCE REQUIREMENTS

1.0 General Provisions

- 1.1 The Contractor shall obtain and maintain the minimum insurance coverage set forth in this section. By requiring such minimum insurance, City shall not be deemed or construed to have assessed the risk that may or may not be applicable to the Contractor. The Contractor shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. The Contractor is not relieved of any liability or other obligation assumed or pursuant to the Contract by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. The insurance requirements listed below do not replace any warranty or surety (performance, payment, or maintenance) bonds if required by preceding or subsequent sections of this contract.
- 1.2 Contractor shall cause each subcontractor employed by Contractor to purchase and maintain insurance of the type specified herein or cover such subcontractors under its insurance coverage.
- 1.3 The Contractor agrees that the insurance requirements specified in this section do not reduce the liability Contractor has assumed in any indemnification/hold harmless section of this contract.
- 1.4 City reserves the right to approve the security of the insurance coverage provided pursuant to this section by insurers including terms, conditions and the Certificate of Insurance. Failure of the Contractor to fully comply with requirements of this section during the term of the contract will be considered a material breach of contract and will be cause for immediate termination of the contract at the option of City.
- 1.5 Insurance coverage required by this section shall:
- 1.5.1 Be on a primary basis, non-contributory with any other insurance coverage and/or self-insurance carried by City
 - 1.5.2 Be with an insurer possessing an A-VII. A. M. Best Rating
- 1.6 **Subcontractor Insurance.** If the contractor utilizes the services of another company or subcontractor, affiliate or non-affiliate, in order to fulfill the requirements covered under this Agreement, then those other companies or subcontractors must comply with the insurance provisions within this Agreement.

2.0 Minimum Insurance Coverage & Limits

2.1 Commercial General Liability. Contractor shall maintain commercial general liability and, if necessary commercial umbrella insurance as specified below.

2.1.1 Commercial general liability insurance shall be written on an ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, product-complete operations, personal and advertising injury and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

2.1.2 City, the City Council and its members, the City's agents, officers, directors and employees shall be included as an additional insured under the commercial general liability using **ISO additional insured endorsement CG 20 10 and CG 20 37** or their equivalent, including coverage for City with respect to liability arising out of the completed operations of Contractor.

2.1.3 Limits of Insurance

- 2.1.3.1 \$1,000,000 Per Occurrence
- 2.1.3.2 \$1,000,000 Personal/Advertising Injury
- 2.1.3.3 \$2,000,000 General Aggregate
- 2.1.3.4 \$2,000,000 Products/Completed Operations Aggregate

3.0 Evidence of Insurance

3.1 Prior to commencement of work, and thereafter upon renewal or replacement of coverage required by this section, Contractor shall furnish City a certificate(s) of insurance, including for subcontractors cited in Section 1.6, executed by a duly authorized representative of each insurer, showing compliance with this section. **Contractor shall furnish copies of all endorsement to insurance policies as required by each section herein to the City.**

3.2 Failure of City to demand such certificate(s) or other evidence of full compliance with these insurance requirements or failure of City to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

3.3 City shall have the right, but not the obligation, of prohibiting Contractor or any subcontractor from entering the project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the City.

- 3.4 Failure to maintain required insurance may result in termination of this contract at sole option of the City.
- 3.5 The Contractor shall furnish a Certificate of Insurance (COI) evidencing insurance coverage required by this section ten (10) business days preceding commencement of contracted service(s). The COI shall:
 - 3.5.1 List each insurers' NAIC Number or FEIN
 - 3.5.2 List **contract number, project name/number**, name of event, location (building name, building address, etc.), date(s) of event or service being performed
 - 3.5.3 State insurance is on a primary basis and non-contributory with any insurance/or self-insurance carried by City
 - 3.5.4 Specifically list reference to all endorsements required herein
 - 3.5.5 List the specific number of days cancellation provided pursuant to policy language for notice of cancellation on certificate
 - 3.5.6 List City of Plano, Risk Management Division, 7501 A Independence Parkway, Plano, Texas, 75025 in the Certificate Holder Section



CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)
08/21/2012

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Aon Risk Services Central, Inc. Chicago IL Office 200 East Randolph Chicago IL 60601 USA	CONTACT NAME: PHONE (A/C. No. Ext): (866) 283-7122 FAX (A/C. No.): (847) 953-5390		
	E-MAIL ADDRESS:		
INSURED Motorola Solutions, Inc. Attn Karen Napier 1303 East Algonquin Road Schaumburg IL 60196 USA	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: Liberty Insurance Corporation		42404
	INSURER B: Liberty Mutual Fire Ins Co		23035
	INSURER C:		
	INSURER D:		
	INSURER E:		

Holder Identifier :

COVERAGES **CERTIFICATE NUMBER: 570047299005** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS. **Limits shown are as requested**

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	Y		TB2641005169072	07/01/2012	07/01/2013	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$250,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG Included
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS			AS2-641-005169-012	07/01/2012	07/01/2013	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION						EACH OCCURRENCE AGGREGATE
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N		WA764D005169082 All Other States WC7641005169092 OR, WI	07/01/2012	07/01/2013	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE-EA EMPLOYEE \$1,000,000 E.L. DISEASE-POLICY LIMIT \$1,000,000

Certificate No : 570047299005

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

RE: 2012-249-X Motorola Radio Service Agreement, Contract No. S00001018445. The City of Plano, TX, The City Council and its members, the City's agents, officers, directors and employees are included as Additional Insured with respect to the General Liability policy using ISO Blanket Additional Insured Endorsement CG 2010 Attached. The General Liability and Automobile Liability policies are Primary Insurance with any Insurance/Self-Insurance carried by the City. Waiver of Subrogation is provided under the Workers' Compensation policy using Blanket Endorsement WC 00 03 13 Attached. Notice of 30 day Cancellation Endorsements are provided under the General Liability, Automobile Liability and workers' Compensation policies, per attached.

CERTIFICATE HOLDER**CANCELLATION**

City of Plano Risk Management Division 7501 A Independence Parkway Plano TX 75025 USA	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE <i>Aon Risk Services Central, Inc.</i>

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WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

This Endorsement is not applicable in KY, NJ and NH.

The waiver does not apply to any right to recover payments which the Minnesota Workers Compensation Reinsurance Association may have or pursue under M.S. 79.36.

Schedule

Where required by contract or written contract prior to loss:

This endorsement is executed by the Liberty Insurance Corporation 21814

Premium \$

Effective Date

Expiration Date

For attachment to Policy No. WA7-64D-005169-082

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location(s) Of Covered Operations
All Entities as required in writing prior to the date of loss	
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

- 2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

This endorsement is executed by the LIBERTY MUTUAL FIRE INSURANCE COMPANY

Premium \$
 Effective Date Expiration Date
 For attachment to Policy No. TB2-641-005169-072
 Audit Basis
 Issued To

Countersigned by

Authorized Representative

Issued

Sales Office and No.

End. Serial No.

Policy Number **TB2-641-005169-072**

Issued by **LIBERTY MUTUAL FIRE INSURANCE COMPANY**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NOTICE OF CANCELLATION TO THIRD PARTIES

This endorsement modifies insurance provided under the following:

- BUSINESS AUTO COVERAGE PART
- MOTOR CARRIER COVERAGE PART
- GARAGE COVERAGE PART
- TRUCKERS COVERAGE PART
- EXCESS AUTOMOBILE LIABILITY INDEMNITY COVERAGE PART
- SELF-INSURED TRUCKER EXCESS LIABILITY COVERAGE PART
- COMMERCIAL GENERAL LIABILITY COVERAGE PART
- EXCESS COMMERCIAL GENERAL LIABILITY COVERAGE PART
- PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
- LIQUOR LIABILITY COVERAGE PART
- COMMERCIAL LIABILITY – UMBRELLA COVERAGE FORM

Schedule		
Name of Other Person(s) / Organization(s):	Email Address or mailing address:	Number Days Notice:
City of Plano	Risk Management Division 7501 A Independence Parkway Plano, TX 75025	30

- A. If we cancel this policy for any reason other than nonpayment of premium, we will notify the persons or organizations shown in the Schedule above. We will send notice to the email or mailing address listed above at least 10 days, or the number of days listed above, if any, before the cancellation becomes effective. In no event does the notice to the third party exceed the notice to the first named insured.
- B. This advance notification of a pending cancellation of coverage is intended as a courtesy only. Our failure to provide such advance notification will not extend the policy cancellation date nor negate cancellation of the policy.
All other terms and conditions of this policy remain unchanged.

Policy Number: AS2-641-005169-012
 Issued By: Liberty Mutual Fire Insurance Co.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NOTICE OF CANCELLATION TO THIRD PARTIES

This endorsement modifies insurance provided under the following:

- BUSINESS AUTO COVERAGE PART
- MOTOR CARRIER COVERAGE PART
- GARAGE COVERAGE PART
- TRUCKERS COVERAGE PART
- EXCESS AUTOMOBILE LIABILITY INDEMNITY COVERAGE PART
- SELF-INSURED TRUCKER EXCESS LIABILITY COVERAGE PART
- COMMERCIAL GENERAL LIABILITY COVERAGE PART
- EXCESS COMMERCIAL GENERAL LIABILITY COVERAGE PART
- PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
- LIQUOR LIABILITY COVERAGE PART

Schedule		
Name of Other Person(s)/ Organization(s):	Email Address or mailing address:	Number Days Notice:
City of Plano	Attn: Risk Management Division 7501 A Independence Parkway	30
	Plano, TX 75025	

- A. If we cancel this policy for any reason other than nonpayment of premium, we will notify the persons or organizations shown in the Schedule above. We will send notice to the email or mailing address listed above at least 10 days, or the number of days listed above, if any, before the cancellation becomes effective. In no event does the notice to the third party exceed the notice to the first named insured.
- B. This advance notification of a pending cancellation of coverage is intended as a courtesy only. Our failure to provide such advance notification will not extend the policy cancellation date nor negate cancellation of the policy.

All other terms and conditions of this policy remain unchanged.

NOTICE OF CANCELLATION TO THIRD PARTIES

- A. If we cancel this policy for any reason other than nonpayment of premium, we will notify the persons or organizations shown in the Schedule below. We will send notice to the email or mailing address listed below at least 10 days, or the number of days listed below, if any, before cancellation becomes effective. In no event does the notice to the third party exceed the notice to the first named insured.
- B. This advance notification of a pending cancellation of coverage is intended as a courtesy only. Our failure to provide such advance notification will not extend the policy cancellation date nor negate cancellation of the policy.

Schedule

Name of Other Person(s) / Organization(s):	Email Address or mailing address:	Number Days Notice:
City of Plano	Risk Management Division 7501 A Independence Parkway. Plano, TX 75025	30

All other terms and conditions of this policy remain unchanged.

Issued by Liberty Insurance Corporation 21814

For attachment to Policy No. WA7-64D-005169-082 Effective Date Premium \$

Issued to



**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:	9/24/2012
Department:	Public Safety Communications
Department Head	Ron Timmons
Agenda Coordinator (include phone #): Sharron Mason - Ext. 7247	

CAPTION

A Resolution of the City Council of the City of Plano, Texas, rescinding prior Resolution No. 2012-5-11(R) which approved the Agreement with TT Holdings I, Inc., d/b/a TriTech Software Systems for the purchase of Stratus ft6300 fault tolerant server and one year maintenance on May 29, 2012; approving a new Agreement for the purchase of Stratus ft6300 fault tolerant server and one year maintenance from TriTech Software Systems for a total of Ninety One Thousand Two Hundred and No/100 Dollars (\$91,200.00), and maintenance service for five (5) additional years in an amount not to exceed Sixty Six Thousand Seven Hundred Twenty Four and No/100 Dollars (\$66,724.00); authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR: 2011-12	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	91,200	0	91,200
Encumbered/Expended Amount	0	0	0	0
This Item	0	-91,200	0	-91,200
BALANCE	0	0	0	0

FUND(S): **TECHNOLOGY FUND; GENERAL FUND**

COMMENTS: Funds are included in the FY 2011-12 Technology Fund and Public Safety Communications budgets for a server upgrade and annual maintenance of the Trittech CAD system in Public Safety Communications. The balance of funds will be used for other items related to the project.

STRATEGIC PLAN GOAL: Server replacement and upgrades for the Public Safety Communications CAD system relates to the City's Goals of Safe, Large City and Financially Strong City with Service Excellence.

SUMMARY OF ITEM

Public Safety Communications recommends the approval of a new contract for the purchase of Stratus ft6300 fault tolerant server and one year maintenance from TriTech Software Systems for a total of \$91,200.00, and maintenance service for five (5) additional years in an amount not to exceed \$66,724.00.

This purchase allows staff to bring Public Safety Computer Aided Dispatch (CAD) system up to current release versions of 911 and dispatch software. Contract No. 2012-182-X

List of Supporting Documents:

Other Departments, Boards, Commissions or Agencies



**CITY OF PLANO
COUNCIL AGENDA ITEM**

Recommendation Memo, Sole Source Letter, Resolution and Contract	



Date: June 21, 2012

To: Diane Palmer-Boeck, Chief Purchasing Officer

From: Susan Carr, PSC Manager

Subject: Repealing Contract No. 2012-182-X awarded 05/29/12; Awarding Contract No. 2012-182-X with Tri-Tech Software for Sole Source Purchase of a Stratus ftServer

Public Safety Communications, at the request of Legal, is requesting that contract 2012-182-X, TRITECH SOFTWARE SYSTEM SOLE SOURCE PURCHASE, be repealed. The contract went before City Council on May 29, 2012.

After approval by City Council, and upon execution of the contract, the vendor requested modifications to the contract. Those modifications would require the City to re-negotiate the terms and resubmit through the Council agenda process for approval of the new contract.



April 10, 2012

City of Plano

Re: TriTech Software and Software Support Sole Source

Dear Amy,

TriTech Software systems is the developer and exclusive provider of our VisiNet suite of software applications (computer aided dispatch, mobile data, Law records management, interfaces, and related modules and documentation), and the exclusive provider of support for the TriTech applications. TriTech's applications are proprietary to TriTech, and no other service providers / vendors are currently authorized by TriTech to provide support services.

Should you have any further questions, please do not hesitate to contact me directly at 858.799.7372, or via e-mail at roxanne.lerner@tritech.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Roxanne Lerner".

Roxanne Lerner
Contracts and Proposals Manager

cc: Accounting

A Resolution of the City Council of the City of Plano, Texas, rescinding prior Resolution No. 2012-5-11(R) which approved the Agreement with TT Holdings I, Inc., d/b/a TriTech Software Systems for the purchase of Stratus ft6300 fault tolerant server and one year maintenance on May 29, 2012; approving a new Agreement for the purchase of Stratus ft6300 fault tolerant server and one year maintenance from TriTech Software Systems for a total of Ninety One Thousand Two Hundred and No/100 Dollars (\$91,200.00), and maintenance service for five (5) additional years in an amount not to exceed Sixty Six Thousand Seven Hundred Twenty Four and No/100 Dollars (\$66,724.00); authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

WHEREAS, on May 29, 2012, the City Council approved the Agreement with TT Holdings I, Inc., d/b/a TriTech Software Systems;

WHEREAS, the department requests that the Council rescind Resolution No. 2012-5-11(R) approving the Agreement on May 29, 2012, as substantial changes were made to the terms and conditions of the Agreement after it was approved;

WHEREAS, the City Council has been presented a new Agreement between the City of Plano and TriTech Software Systems for the purchase and installation of the Stratus ft6300 fault tolerant server and maintenance of the Stratus ft6300 server, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement");

WHEREAS, TriTech Software Systems is the sole source provider of Stratus ft6300 fault tolerant server and maintenance for the VisiCad computer aided dispatch system utilized by the Public Safety Communications Department; and

WHEREAS, upon full review and consideration of the new Agreement, and all matters attendant and related thereto, the City Council is of the opinion that its prior action approving the Agreement on May 29, 2012, should be repealed, and the terms and conditions in the new Agreement should be approved, and that the City Manager or his authorized designee shall be authorized to execute 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. City Council prior Resolution No. 2012-5-11(R) approving the Agreement with TT Holdings I, Inc., d/b/a TriTech Software Systems on May 29, 2012, is hereby repealed.

Section II. The City Council hereby finds and determines that TriTech Software Systems is the sole source provider for the purchase of the Stratus ft6300 fault tolerant server and maintenance of the fault tolerant server and thus, the purchase and maintenance of such Stratus ft6300 fault tolerant server is exempt from competitive bid as provided for in *V.T.C.A., Local Government Code, Section 252.022(a)(7)*.

Section III. The terms and conditions of the new agreement for the Stratus ft6300 fault tolerant server with one year maintenance in the amount of Ninety One Thousand Two Hundred and No/100 Dollars (\$91,200.00), and maintenance service for five (5) additional years in an amount not to exceed Sixty Six Thousand Seven Hundred Twenty Four and No/100 Dollars (\$66,724.00), having been reviewed by the City Council of the City of Plano and found to be acceptable and are hereby approved.

Section IV. 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 new Agreement.

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

DULY PASSED AND APPROVED this 24th day of September, 2012.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

**CONTRACT BY AND BETWEEN
CITY OF PLANO, TEXAS AND
TRITECH SOFTWARE SYSTEMS
2012-182-X**

THIS CONTRACT is made and entered into by and between **TRITECH SOFTWARE SYSTEMS**, a California corporation, whose address is 9477 Waples St., Suite 100, San Diego, California 92121, hereinafter referred to as "Contractor" or "Vendor," and the **CITY OF PLANO, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon approval of the Plano City Council and subsequent execution of this Contract by the Plano City Manager or his duly authorized designee.

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

**I.
SCOPE OF SERVICES**

Contractor shall provide all labor, supervision, materials, and equipment necessary for the purchase and installation of a replacement Stratus ft6300 fault tolerant server. Contractor's services under this Agreement include making a copy of the system database residing on the City's current Computer Aided Dispatch ("CAD") system ("CAD") production Stratus ftServer and restoring the data on the new Stratus ft6300 server being purchased under this Agreement. Once the system database has been restored on the new Stratus ft6300 server, the server will be placed into production. In the event of an error caused by Contractor's installation services, Contractor shall reinstall the copied CAD system database on the new Stratus ft6300 server. These products and service, including maintenance, shall be provided in accordance with the Vendor's Proposal/Sales Quotation, a copy of which is attached hereto and incorporated herein as **Exhibit "A" and "B"**. Vendor represents that it is an authorized reseller and licensor of the Stratus ft 6300 fault tolerant server, manufactured by Stratus Technologies. Vendor further represents that as an authorized reseller and licensor it has the authority to extend to the City, as part of its contract with City, Stratus' End-User License Agreement attached as Exhibit "F". The Contract consists of this written agreement and the following items which are attached hereto and incorporated herein by reference:

- (a) Vendor's Proposal/Sales Quotation (**Exhibit "A"**);
- (b) Vendor's Maintenance Quote and scope of service (**Exhibit "B"**);
- (c) Limited Return To Factory Hardware Warranty (**Exhibit "C"**);
- (d) Insurance Requirements (**Exhibit "D"**);
- (e) Affidavit of No Prohibited Interest (**Exhibit "E"**); and
- (f) End-User License Agreement (**Exhibit "F"**).

These documents make up the Contract documents and what is called for by one shall be as binding as if called for by all. In the event of an inconsistency or conflict in any of the provisions of the Contract documents, the inconsistency or conflict shall be resolved by giving precedence first to this written agreement then to the contract documents in the order in which

they are listed above. These documents shall be referred to collectively as "Contract Documents."

**II.
TERM OF CONTRACT**

On the effective date listed below, the Contractor hereby agrees to install the Stratus ft6300 fault tolerant server and provide maintenance for the server for one (1) year. After the expiration of the first (1st) year, Contractor shall provide maintenance for the server for five (5) additional years.

**III.
WARRANTY**

Contractor warrants that it shall provide its services in accordance with commercially acceptable standards for such service. The Hardware to be provided as set forth in Contractor's Proposal/Sales Quotation and Maintenance Quote and Scope of Service attached hereto and incorporated herein as **Exhibit "A" and "B"** shall be warranted to City as provided in the Warranty set forth in **Exhibit "C"**, commencing on the date of installation.

**IV.
PAYMENT**

Payments hereunder shall be made to Contractor following City's acceptance of the work and within thirty (30) days of receiving Contractor's invoice for the products and services delivered. Total compensation under this contract for the first year shall not exceed the sum of **NINETY ONE THOUSAND TWO HUNDRED AND NO/100 DOLLARS (\$91,200.00)**. Cost of the equipment, configuration, shipping and implementation of the server in the amount of **SEVENTY NINE THOUSAND SEVEN HUNDRED AND NO/100 DOLLARS (\$79,700.00)** will be paid out of the Technology Services fund. Public Safety Communications will pay for the maintenance in the amount of **ELEVEN THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$11,500.00)**. Maintenance costs for the remaining five (5) years will not exceed the total amount of **SIXTY SIX THOUSAND SEVEN HUNDRED TWENTY FOUR AND NO/100 DOLLARS (\$66,724.00)** as set forth in **Exhibit "B"** and will be paid by Technology Services.

Contractor recognizes that this Contract shall commence upon the effective date herein and continue in full force and effect until termination in accordance with its provisions. Contractor and City herein recognize that the continuation of any contract after the close of any given fiscal year of the City of Plano, which fiscal year ends on September 30th of each year, shall be subject to Plano City Council approval. In the event that the Plano City Council does not approve the appropriation of funds for this contract, the Contract shall terminate at the end of the fiscal year for which funds were appropriated and the parties shall have no further obligations hereunder.

V.
PROTECTION AGAINST ACCIDENT TO EMPLOYEES AND THE PUBLIC

Contractor shall at all times exercise reasonable precautions for the safety of employees and others on or near the work and shall comply with all applicable provisions of Federal, State, and Municipal safety laws. The safety precautions actually taken and the adequacy thereof shall be the sole responsibility of the Contractor. Contractor shall indemnify City for any and all losses arising out of or related to a breach of this duty by Contractor pursuant to paragraph **VII. INDEMNIFICATION** and paragraph **VIII. COMPLIANCE WITH APPLICABLE LAWS** set forth herein.

VI.
LOSSES FROM NATURAL CAUSES

Unless otherwise specified, all loss or damage to Contractor arising out of the nature of the work to be done, or from the action of the elements, or from any unforeseen circumstances in the prosecution of the same, or from unusual obstructions or difficulties which may be encountered in the prosecution of the work, shall be sustained and borne by the Contractor at its own cost and expense.

VII.
INDEMNIFICATION

CONTRACTOR 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 CONTRACTOR'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 CONTRACTOR, 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 CONTRACTOR 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 CONTRACTORS. 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.

CONTRACTOR 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 CONTRACTOR'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF CONTRACTOR'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. CONTRACTOR 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 CONTRACTOR FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND CONTRACTOR SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY.

INTELLECTUAL PROPERTY INFRINGEMENT INDEMNIFICATION SHALL BE PROVIDED IN ACCORDANCE WITH EXHIBIT "F".

CONTRACTOR REPRESENTS THAT, TO THE BEST OF ITS KNOWLEDGE, THE CITY'S USE OF PRODUCTS THAT ARE PROVIDED SUPPLIED, OR SOLD BY CONTRACTOR TO CITY AS PART OF THIS AGREEMENT DOES NOT CONSTITUTE AN INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS AND THE CITY HAS THE LEGAL RIGHT TO USE SAID PRODUCTS. THE CITY ENTERS INTO THIS AGREEMENT RELYING ON THIS REPRESENTATION.

THE TOTAL LIABILITY OF CONTRACTOR FOR ANY CLAIM OR DAMAGE ARISING UNDER THIS AGREEMENT, WHETHER IN CONTRACT, TORT, BY WAY OF INDEMNIFICATION OR UNDER STATUTE SHALL BE LIMITED TO DIRECT DAMAGES WHICH SHALL NOT EXCEED THE TOTAL PRICE OF THE PRODUCTS AND SERVICES STATED IN EXHIBIT A.

EXCEPT AS PROVIDED IN SECTION I SCOPE OF SERVICES, CONTRACTOR OR IT SUBCONTRACTORS OR VENDORS SHALL NOT BE LIABLE FOR LOSS OF USE, DATA, SOFTWARE, PROFIT OR BUSINESS, OR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, WHETHER ARISING FROM AN ACTION IN CONTRACT, TORT OR OTHER LEGAL THEORY REGARDLESS OF WHETHER TRITECH HAD KNOWLEDGE OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE.

THE INDEMNIFICATION HEREIN SURVIVES THE TERMINATION OF THE CONTRACT AND/OR DISSOLUTION OF THIS AGREEMENT INCLUDING ANY INFRINGEMENT CURE PROVIDED BY THE CONTRACTOR PURSUANT TO PARAGRAPH 3 IN THE HEREIN INDEMNIFICATION SECTION.

VIII. COMPLIANCE WITH APPLICABLE LAWS

Contractor shall at all times observe and comply with all Federal, State and local laws, ordinances and regulations including all amendments and revisions thereto, which in any

manner affect Contractor or the work, and **SHALL INDEMNIFY AND SAVE HARMLESS CITY AGAINST ANY CLAIM RELATED TO OR ARISING FROM THE VIOLATION OF ANY SUCH LAWS, ORDINANCES AND REGULATIONS WHETHER BY CONTRACTOR, ITS EMPLOYEES, OFFICERS, AGENTS, SUBCONTRACTORS, OR REPRESENTATIVES.** If Contractor observes that the work is at variance therewith, Contractor shall promptly notify City in writing.

IX. VENUE

The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this Contract. The parties agree that this Contract is performable in Collin County, Texas, and that exclusive venue shall lie in Collin County, Texas, with the exception of warranty issues covered by **Exhibit "C"**.

X. ASSIGNMENT AND SUBLETTING

Contractor agrees to retain control and to give full attention to the fulfillment of this Contract, that this Contract shall not be assigned or sublet without the prior written consent of City, and that no part or feature of the work will be sublet to anyone objectionable to City. Contractor further agrees that the subletting of any portion or feature of the work, or materials required in the performance of this Contract, shall not relieve Contractor from its full obligations to City as provided by this Contract.

XI. INDEPENDENT CONTRACTOR

Contractor covenants and agrees that Contractor is an independent contractor and not an officer, agent, servant or employee of City; that Contractor 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 Contractor, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Contractor.

XII. INSURANCE AND CERTIFICATES OF INSURANCE

Contractor shall procure and maintain for the duration of the contract insurance coverage as set forth in the Insurance Requirements marked **Exhibit "D"** attached hereto and incorporated herein by reference. Contractor shall provide a signed insurance certificate verifying that they have obtained the required insurance coverage prior to the effective date of this Contract.

**XIII.
HINDRANCES AND DELAYS**

No claims shall be made by Contractor for damages resulting from hindrances or delays from any cause during the progress of any portion of the work embraced in this Contract.

**XIV.
AFFIDAVIT OF NO PROHIBITED INTEREST**

Contractor acknowledges and represents it is aware of all applicable laws, City Charter, and City Code of Conduct regarding prohibited interests and that the existence of a prohibited interest at any time will render the Contract voidable. Contractor has executed the Affidavit of No Prohibited Interest, attached and incorporated herein as **Exhibit "E"**.

**XV.
SEVERABILITY**

The provisions of this Contract are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Contract is for any reason held to be contrary to the law or contrary to any rule or regulation having the force and effect of the law, such decisions shall not affect the remaining portions of the Contract. However, upon the occurrence of such event, either party may terminate this Contract by giving the other party thirty (30) days written notice.

**XVI.
TERMINATION**

City may, at its option, with or without cause, and without penalty or prejudice to any other remedy it may be entitled to at law, or in equity or otherwise under this Contract, terminate further work under this contract, in whole or in part by giving at least thirty (30) days prior written notice thereof to Contractor with the understanding that all services being terminated shall cease upon the date such notice is received.

**XVII.
ENTIRE AGREEMENT**

This Contract and its attachments embody the entire agreement between the parties and may only be modified in writing if executed by both parties.

**XVIII.
CONTRACT INTERPRETATION**

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

**XIX.
SUCCESSORS AND ASSIGNS**

This Contract shall be binding upon the parties hereto, their successors, heirs, personal representatives and assigns.

**XX.
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.

**XXI.
HEADINGS**

The headings of this Contract are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

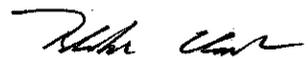
**XXII.
EFFECTIVE DATE**

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

IN WITNESS WHEREOF, the parties have executed this Contract by signing below.

TRITECH SOFTWARE SYSTEMS

Date: 7/26/12

By: 
Name: Blake E. Clark
Title: Chief Financial Officer

CITY OF PLANO, TEXAS

Date: _____

By: _____
Bruce D. Glasscock
CITY MANAGER


APPROVED AS TO FORM
Fol
Diane C. Wetherbee, CITY ATTORNEY

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of San Diego

On July 26, 2012 before me, Shawna M. Jones, Notary Public
(Here insert name and title of the officer)

personally appeared Blake Clark

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is are subscribed to the within instrument and acknowledged to me that he she they executed the same in his her their authorized capacity(ies), and that by his her their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Shawna M Jones
Signature of Notary Public

(Notary Seal)



ADDITIONAL OPTIONAL INFORMATION

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he~~/~~she~~/~~they~~, -is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

DESCRIPTION OF THE ATTACHED DOCUMENT

Contract by and between city of Plano, TX and
(Title or description of attached document)

TriTech Software Systems
(Title or description of attached document continued)

Number of Pages 7 Document Date 7/26/12

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

- Individual (s)
- Corporate Officer
CFO
(Title)
- Partner(s)
- Attorney-in-Fact
- Trustee(s)
- Other _____



Proposal/Sales Quotation

Quotation # **2585KS-02** Quotation Date: **03.07.12**

General & Client Information

Client Name:	City of Plano	Bill to:	City of Plano
System Description:	Stratus ft6300 w/ Services		1117 E 15th St
Sales Order #:	TBD		Plano, TX 75074
Client Purchase Order #:			
Client Purchase Order Date:			
Client Contact:	Earl Atencio	Ship to:	Same
Contact Phone:	972.941.7341		
Contact Email Address:	earla@plano.gov		
Credit Terms:	Net 30 days from date of invoice		
Client Account Manager:	Ken Schulte		
Project Manager:	TBD		

Project Products & Services

Qty	Sales Category	Item Description	Unit Price	Qty*Unit \$	Extended Price
		Stratus ft6300 w/ Services & Support			
1	HW/3rd Pty SW	1-ftServer 6300 Rack mountable, 2-way, DMR, 2.93 GHz quad-core processor & Windows Server 2008 R2 Multilingual Enterprise Edition R2, 25 CAL. Automated Update Layer for Windows-based Class A ftServer Systems, Release 6.1 1-Rapid Disk Resync 1-Active Upgrade for Windows Server 2008 4-4GB DDR3-1333 Dual-rank DIMM 8-Disk Drive Blank for ftServer 6300 2-73GB 2.5-inch 15K SAS disk drive 6-146GB 2.5-inch 15K SAS disk drive 1-ASN Modem for ftServer 2-IEC-C19 to IEC-309 16/20A 15' 1-2.0 meter jumper cord pair 1-Pair of ftServer universal rack 1U Power Distribution Unit (200 240 VAC) (RoHS compliant) 1-Stratus Technologies ftServer Hardware Warranty Agreement 1-Stratus ftServer 6300 Systems: Installation Guide 1-Read Me First: Unpacking ftServer 6300 Systems	60,650.00	\$60,650.00	\$60,650.00
1	HW/3rd Pty SW	ftServer 6300 Standard System Installation (M-F, local business hours, within Stratus service radius.) & install customer copy of Windows OS.	5,500.00	\$5,500.00	\$5,500.00
1	Support HW/3rd Pty	ftServer 6300 24x7 Total Assurance Support	11,500.00	\$11,500.00	\$11,500.00
1	Services	Database Server Rehost Configuration & Testing (includes installing SQL on the server)	2,800.00	\$2,800.00	\$2,800.00
1	Services	Hot Standby Server Rehost Configuration & Testing (includes installing SQL on the Hot Standby server)	2,800.00	\$2,800.00	\$2,800.00
2	Services	DBA Services for Replication Re-Install & Configuration (see notes)	750.00	\$1,500.00	\$1,500.00
1	Services	Re-Install of Replicator Software & Configuration	2,500.00	\$2,500.00	\$2,500.00
1	Services	Project Management	3,000.00	\$3,000.00	\$3,000.00
1	Other	Shipping	\$950.00	\$950.00	\$950.00
		Total:			\$ 91,200.00

Project Summary & Totals

TriTech CAD Software					
TriTech Interface Software					
TriTech Mobile Software					
TriTech RMS Software					
TriTech Custom SW					66,150.00
Hardware & 3rd Party Software					11,500.00
Support Hardware & 3rd Party Software					
Subcontract					12,600.00
TriTech Services					
TriTech Annual Support & Maintenance					950.00
Other					
				Subtotal:	\$ 91,200.00
Estimated Sales Tax (State: _____ at _____ %)	Taxable sales:	0.00	Sales tax rate:	5.00%	\$ -
Estimated Shipping					\$ -
				Total:	\$ 91,200.00

Project Payment Terms: Net 30 days from date of invoice

Due on Order					\$ 77,650.00
Due on Delivery of ftserver					\$ 950.00
Due on Installation of ftserver					\$ 12,600.00
					\$ -
				Total Payments:	\$ 91,200.00

EXHIBIT A
PAGE 1 OF 2



Proposal/Sales Quotation

Quotation # **2585KS-02** Quotation Date: **03.07.12**

Summary Information & Project Notes

All TriTech services noted in this proposal will occur during normal business hours. If "after-hours" services are required additional costs will apply. Client is responsible for providing Hot Standby server hardware including OS & SQL. Plano will be responsible for installing OS on Hot Standby server. TriTech will re-install and configure two legs of Replication to accommodate the primary Data Warehouse and the client's second Data Warehouse server. Due to budget reasons the rehost of two Data Warehouse servers will be processed on a separate sales order from this project.

Send Purchase Orders to:
 TriTech Software Systems
 Attn: K.Beckwith FAX: 858-799-7015
 salesadmin@tritech.com

Remit Payments to:
 TriTech Software Systems
 PO Box # 671392
 Dallas, TX 75267-1392

Quotation issued by: **Ken Schulte**
 Contact info: **720 379 3900**

Terms and Conditions

This Quotation is valid for 60 (sixty) days and is subject to the terms of your TriTech System Purchase Agreement. The software licensing provisions of the System Purchase Agreement between TriTech and Client shall govern the additional TriTech software licenses purchased hereunder. Support will be provided in accordance with the Software Support Agreement between TriTech and the Client. The quotation information is proprietary and may not be copied or released other than for the express purpose of selection and purchase/license. Any estimated sales and/or use tax has been calculated as of the date of quotation and is provided as a convenience for budgetary purposes. TriTech reserves the right to adjust and collect sales and/or use tax at the actual date of invoicing. If your organization is tax exempt or pays state taxes directly, then prior to invoicing, your organization must provide TriTech with a copy of a current tax exemption certificate issued by your state's taxing authority for the given jurisdiction.

Additional TriTech software licenses purchased under this Sales Order for Client's existing configuration will be deemed Accepted upon delivery. TriTech software licenses purchased for new TriTech Software modules; or Subsystems (e.g., addition of VisiNet Mobile, or VisiNet Law RMS) will be deemed Accepted upon Go Live.

Acceptance criteria for the TriTech software components will be the following unless otherwise noted in a mutually authorized agreement or Statement of Work:

- The software will operate in conformity with the TriTech issued software documentation:
- (i) For VisiNet Command, VisiNet Law RMS, VisiNet Mobile, and VisiNet Browser, documentation will include the User Guide, Admin Guide and applicable release notes;
 - (ii) For Standard Interfaces, documentation will be the standard Interface Requirements Document (IRD);
 - (iii) For custom applications and modules, the documentation will be the Operational Scenario Document (OSD) unless the requirements are defined in this Sales Order and no OSD will be developed.
- There is no Acceptance criteria for services.

Travel and out-of-pocket expenses will be invoiced as incurred, at actual cost, unless specifically itemized in the quotation.

By signing below, you are indicating that you are authorized to obligate funds for your organization. To activate your order, check the appropriate box below and, either, (i) attach a copy of this quotation to your purchase order when it is remitted to TriTech, or, (ii) if no additional authorizing paperwork is required for your organization to accept and pay an invoice, sign below and fax this quotation to 858-799-7015 or email to salesadmin@tritech.com to indicate your acceptance.

<input type="checkbox"/>	Purchase Order required and attached, reference PO#	on invoice			
<input type="checkbox"/>	No Purchase Order required to invoice				
Please check one of the following:					
<input type="checkbox"/>	I agree to pay any applicable sales tax.				
<input type="checkbox"/>	I am tax exempt. Please contact me if TriTech does not have my current exempt information on file.				

Accepted for Client

	City of Plano				
	Client Agency/Entity Name				
	Print Name			Title	
	Client Authorized Representative				
	Signature			Date	
	Client Authorized Representative				

EXHIBIT A
 PAGE 2 OF 2



TriTech Software Systems
9477 Waples Street, Ste. 100
San Diego, CA 92121
Phone: 858.799.7000
Fax: 858.799.7011
www.tritech.com

May 10th, 2012

Sent via email

City of Plano, TX
P.O. Box 860358
Plano, TX 75086-0358

Attention: Mrs. Susan K. Johnson

Re: Stratus ftServer & annual Support/Maintenance Scope

Dear Mrs. Johnson:

The City has expressed a desire to purchase a Stratus ftServer as an upgrade to the City's TriTech VisiCAD computer aided dispatch system. As you are aware, TriTech is an authorized reseller of Stratus ftServer hardware and Stratus ftServer annual support and maintenance services. TriTech has been providing Stratus' fault tolerant server solutions for our clients' mission critical systems for several years and is certified by Stratus for server configuration and installation.

Based upon the specific configuration used for the VisiCAD Command dispatching system, TriTech and Stratus have developed a unique implementation and maintenance program that is only available for Stratus ftServers and support sole sourced through TriTech. This program commences with the specification of the hardware, continues through the coordination of installation services from the two organizations and culminates with the coordinated support services provided by our respective 24x7 call centers.

As a part of this project Plano will receive Stratus's total assurance services for comprehensive support and maintenance on the Stratus ft6310 server. This support plan features uptime guarantee, vendor collaboration, full operating system support, 24/7 engineer response to a critical call with minutes, around the clock root-cause problem determination and uptime assurance software subscription. If a critical availability problem arises, management escalation brings it to the attention of Stratus executives ensuring that the right resources are at work on the most rapid resolution possible.

Should you have any further questions, please do not hesitate to contact me directly at ken.schulte@tritech.com, or 720.379.3900.

Sincerely,

Ken Schulte
Client Account Manager

EXHIBIT B
PAGE 1 OF 2

Plano Stratus Support

Product Name	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
Annual Stratus Support (will not exceed)	11,500.00	12,075.00	12,679.00	13,313.00	13,979.00	14,678.00

EXHIBIT 8
 PAGE 2 OF 2

Stratus Technologies
 ftServer® Products
LIMITED RETURN-TO-FACTORY HARDWARE WARRANTY

This Limited Hardware Warranty ("Warranty") applies to the Stratus ftServer Products sold with this Warranty Statement only if you are the original purchaser of the Products and purchased them from Stratus or an authorized Stratus distributor or reseller. Stratus warrants that the Hardware Products will be free from defects in material and workmanship and conform to its specifications during the applicable Warranty Period described below.

Hardware Product	Warranty Period (From date of Stratus Shipment)
*ftServer Systems (Hardware Only)	1 Year
Add-on Hardware Components	90 Days
**Pass Through Hardware Products	"AS IS" from Stratus; direct Manufacturer's warranty if transferable
*processing model and associated components ordered contemporaneously with and factory installed on the processing model	
**third party hardware is provided as a convenience to Customers.	

You must notify Stratus of any claimed defect within the applicable Warranty Period.

You must remove and install parts designated as "Customer Replaceable Units" or "CRUs" under the remote direction of Stratus or its Authorized Service Representative. For a list of CRUs, please refer to the Stratus Website at <http://www.stratus.com/go/support/ftserver/warrantyinfo>.

Removal and installation of parts designated as Field Replaceable Units or "FRUs" by anyone other than Stratus, its authorized service representative, or by you if you have received FRU removal certification from Stratus, will void this Warranty. For a listing of FRUs, please refer to the Stratus Web Site at <http://www.stratus.com/go/services/ipb>. FRU removal and installation services are available from Stratus at its then current rates. FRU removal and installation certification training is available from Stratus in accordance with its then current rates and policies. Stratus will replace defective FRUs on-site, on a schedule basis, during local business hours.

Unless otherwise stated, and to the extent permitted by local law, new Hardware Products may be manufactured using new materials or new and used materials equivalent to new in performance and reliability. Hardware Products may be repaired or replaced (a) with new or previously used products or parts equivalent to new in performance and reliability, or (b) with equivalent products to an original product that has been discontinued.

Stratus reserves the right, at its option, to fulfill the Warranty obligations hereunder either directly or through its designee. All parts that are replaced under this Warranty become the property of Stratus, and any replacement part returned to you takes on the Warranty status of the replaced part.

Returned parts and Products may be inspected and tested and, if it is determined that the returned part or Product is not defective, you may be charged a restocking fee and billed for any freight charges.

This Warranty does not apply to any part the serial number of which has been altered or removed or any part that has been damaged or rendered defective as a result of: (1) its use with equipment or software not furnished by Stratus, or (2) the use of parts not manufactured or sold by Stratus or its authorized representatives, or (3) modification or alteration without Stratus' prior written approval, or (4) accident, neglect, misuse, abuse or other external cause, or (5) exposure to conditions outside the range of environmental, power and operating specifications stated in the user documentation that shipped with the Product.

Warranty Support

You must first contact Stratus, or the party from which you purchased your Stratus Product if other than Stratus, for return instructions prior to returning any defective part. You may also obtain return instructions or other Warranty information by contacting your local Stratus sales office, the Stratus Web site at <http://www.stratus.com/go/support/ftserver/warrantyreplace> or your local authorized Stratus service representative. Returned parts may be refused if you do not first obtain return instructions or if you fail to follow the return instructions provided to you. You are responsible for all shipping charges for returned parts. Stratus' sole obligation and your exclusive remedy under this Warranty will be, at Stratus' option, to repair or replace any parts

that are defective and returned by you within the applicable Warranty Period to the location designated by Stratus or the authorized Stratus distributor or reseller from which you purchased the Product. Stratus will use commercially reasonable efforts to ship a repaired or replacement part to you as soon as practicable. These are your exclusive remedies for defective Products.

STRATUS IS NOT RESPONSIBLE FOR DAMAGE TO OR LOSS OF ANY PROGRAMS, DATA, OR REMOVABLE STORAGE MEDIA. STRATUS IS NOT RESPONSIBLE FOR THE RESTORATION OR REINSTALLATION OF ANY PROGRAMS OR DATA OTHER THAN SOFTWARE INSTALLED BY STRATUS WHEN THE PRODUCT IS MANUFACTURED.

Before returning any unit for service, be sure to back up data and remove any confidential, proprietary, or personal information.

Warranty Disclaimer And Limitation of Liability:

Except as expressly set forth in this Warranty, neither Stratus, its affiliates, subsidiaries nor its or their suppliers make any other warranties, express or implied, including any implied warranties of merchantability and fitness for a particular purpose. Stratus, its affiliates, subsidiaries and its and their suppliers expressly disclaim all warranties not stated in this Warranty Statement. Any implied warranties that may be imposed by law are limited to the terms of this Warranty Statement.

Except for damages or losses related to death or bodily injury, in no event will Stratus, its affiliates, subsidiaries or its or their suppliers, be liable for any special, indirect, punitive, incidental or consequential damages or losses (including without limitation loss of use, data, profit, savings or business), whatever the basis of the claim or action (such as breach of warranty, condition, contract, infringement and tort, including strict liability and negligence, or other legal theory) even if advised of the possibility of such damages or if such possibility was reasonably foreseeable. To the maximum extent permitted by law, the liability of Stratus, its affiliates, subsidiaries and its and their suppliers for damages or losses for any cause whatsoever, and regardless of the basis of the claim or action will be limited to the amount you actually paid for the specific Product that caused the damages or losses.

IMPORTANT NOTICE: Some states/jurisdictions do not allow the exclusion or limitation of implied warranties or the exclusion or limitation of special, indirect, punitive, incidental or consequential damages. Consequently, such exclusions or limitations may not apply to you. This warranty gives you specific legal rights, and you may also have other rights that vary from state/jurisdiction to state/jurisdiction.

Pass-through Hardware Products:

Pass-through Hardware Products are provided "AS IS" but may be subject to warranties provided directly to you by their respective non-Stratus manufacturers or suppliers. For more information, contact your local Stratus sales office, the Stratus Web site at <http://www.stratus.com/go/support/fiserver/warrantyinfo> or your local authorized Stratus service representative.

Import and Export:

You acknowledge that the Products contain components, software and of technology that are of U.S. origin and are subject to U.S. Export Administration, international and national import and export control laws and regulations, including end-user, end-use and destination restrictions issued by the U.S. and other governments ("Import and Export Controls"). You agree that you shall not export, import, directly or indirectly, re-export, divert, or transfer the Product or any materials, items or technology relating to Stratus' or its licensors' business or related technical data or any direct product thereof to any destination, company or person or for any end use that is restricted or prohibited by the Import and Export Controls.

Governing Law:

This Warranty is governed by and shall be construed in accordance with the laws of the Commonwealth of Massachusetts and the United States of America, excluding the conflicts of law principles thereof. The United Nations Convention on the International Sale of Goods shall not apply to this Warranty or the Products.

INSURANCE REQUIREMENTS

1.0 General Provisions

- 1.1 The Contractor shall obtain and maintain the minimum insurance coverage set forth in this section. By requiring such minimum insurance, City shall not be deemed or construed to have assessed the risk that may or may not be applicable to the Contractor. The Contractor shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. The Contractor is not relieved of any liability or other obligation assumed or pursuant to the Contract by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. The insurance requirements listed below do not replace any warranty or surety (performance, payment, or maintenance) bonds if required by preceding or subsequent sections of this contract.
- 1.2 Contractor shall cause each subcontractor employed by Contractor to purchase and maintain insurance of the type specified herein or cover such subcontractors under its insurance coverage.
- 1.3 The Contractor agrees that the insurance requirements specified in this section do not reduce the liability Contractor has assumed in any indemnification/hold harmless section of this contract.
- 1.4 City reserves the right to approve the security of the insurance coverage provided pursuant to this section by insurers including terms, conditions and the Certificate of Insurance. Failure of the Contractor to fully comply with requirements of this section during the term of the contract will be considered a material breach of contract and will be cause for immediate termination of the contract at the option of City.
- 1.5 Insurance coverage required by this section shall:
 - 1.5.1 Be on a primary basis, non-contributory with any other insurance coverage and/or self-insurance carried by City
 - 1.5.2 Be with an insurer possessing an A-VII. A. M. Best Rating
- 1.6 **Subcontractor Insurance.** If the contractor utilizes the services of another company or subcontractor, affiliate or non-affiliate, in order to fulfill the requirements covered under this Agreement, then those other companies or subcontractors must comply with the insurance provisions within this Agreement.

2.0 Minimum Insurance Coverage & Limits

2.1 Commercial General Liability. Contractor shall maintain commercial general liability and, if necessary commercial umbrella insurance as specified below.

2.1.1 Commercial general liability insurance shall be written on an ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, product-completed operations, personal and advertising injury and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

2.1.2 City, the City Council and its members, the City's agents, officers, directors and employees shall be included as an additional insured under the commercial general liability using **ISO additional insured endorsement CG 20 10 and CG 20 37** or their equivalent, including coverage for City with respect to liability arising out of the completed operations of Contractor.

2.1.3 Limits of Insurance

2.1.3.1	\$1,000,000 Per Occurrence
2.1.3.2	\$1,000,000 Personal/Advertising Injury
2.1.3.3	\$2,000,000 General Aggregate
2.1.3.4	\$2,000,000 Products/Completed Operations Aggregate

2.2 Commercial Automobile Liability. Contractor shall maintain business automobile liability insurance and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident.

2.2.1 Such automobile liability insurance shall cover liability arising out of any auto (including owned, hired, and non-owned automobiles).

2.2.2 Commercial automobile coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to the provided in ISO form CA 00 01.

2.2.3 Contractor waives all rights against City and its agents, officers, directors and employees for recovery by the commercial automobile liability or commercial umbrella liability insurance obtained by Contractor pursuant to this section or under any applicable automobile physical damage coverage.

2.3 **Workers' Compensation & Employer Liability.** Contractor shall maintain workers' compensation insurance in amounts required by appropriate state statute. The employers liability limit and, if necessary, commercial umbrella coverage shall not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

2.3.1 Contractor waives all rights against City, the City Council and its members, the City's agents, officers, directors and employees for recovery of damages under contractor's workers' compensation and employers liability or commercial umbrella liability insurance. Contractor must cause a **waiver of subrogation** to be effected under its workers' compensation coverage using endorsement WC 00 03 13.

3.0 Evidence of Insurance

3.1 Prior to commencement of work, and thereafter upon renewal or replacement of coverage required by this section, Contractor shall furnish City a certificate(s) of insurance, including for subcontractors cited in Section 1.6, executed by a duly authorized representative of each insurer, showing compliance with this section. **Contractor shall furnish copies of all endorsement to insurance policies as required by each section herein to the City.**

3.2 Failure of City to demand such certificate(s) or other evidence of full compliance with these insurance requirements or failure of City to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

3.3 City shall have the right, but not the obligation, of prohibiting Contractor or any subcontractor from entering the project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the City.

3.4 Failure to maintain required insurance may result in termination of this contract at sole option of the City.

3.5 The Contractor shall furnish a Certificate of Insurance (COI) evidencing insurance coverage required by this section ten (10) business days preceding commencement of contracted service(s). The COI shall:

3.5.1 List each insurers' NAIC Number or FEIN

3.5.2 List **contract number, project name/number**, name of event, location (building name, building address, etc.), date(s) of event or service being performed

3.5.3 State insurance is on a primary basis and non-contributory with any insurance/or self-insurance carried by City

3.5.4 Specifically list reference to all endorsements required herein

- 3.5.5 List the specific number of days cancellation provided pursuant to policy language for notice of cancellation on certificate
- 3.5.7 List City of Plano, Risk Management Division, 7501 A Independence Parkway, Plano, Texas, 75025 in the Certificate Holder Section



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
04/16/2012 14:16

PRODUCER Barney & Barney LLC CA Insurance Lic: 0C03950 9171 Towne Centre Drive, Suite 500 San Diego, CA 92122 858-457-3414	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
	INSURERS AFFORDING COVERAGE	NAIC #
INSURED TT Holdings I, Inc. Et Al (See Attached) 9860 Mesa Rim Road San Diego, CA 92121	INSURER A: OneBeacon America Insurance Company	20621
	INSURER B: United National Insurance Company	13064
	INSURER C:	
	INSURER D:	
	INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR	ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
B		X	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> \$5,000 Deductible GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	CBL0751953	5/1/2011	5/1/2012	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrences) \$ 100,000 MED EXP (Any one person) \$ EXCLUDED PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPROP AGG \$ 2,000,000
A			AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	711012532	5/1/2011	5/1/2012	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
			GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
			EXCESS / UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
A			WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N <input type="checkbox"/> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory In NH) If yes, describe under SPECIAL PROVISIONS below	406037181	5/1/2011	5/1/2012	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
			OTHER				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

*10 DAYS NOTICE OF CANCELLATION FOR NON-PAYMENT OF PREMIUM.
 Bid No. 2012-182-B

General Liability coverage is primary and non-contributory.

CERTIFICATE HOLDER

City of Plano - Purchasing Division

 Attn: Sharron Mason -- Sr. Buyer
 P.O. Box 860358
 Plano, TX 75086-0358
CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30* DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Jennifer Myers

ACORD 25 (2009/01) Client # 45335

Mst # 18375

Cert # 439783

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Subject:

The ACORD name and logo are registered marks of ACORD

EXHIBIT DPAGE 5 OF 9

Attachment Page

Named Insured Schedule

TriTech Holdings, Inc., A Delaware Corporation

TriTech Software Systems, a California Corporation

Information Management Corporation

Ortivus, Inc.

TriTech Emergency Medical Systems Canada ULC

TriTech Emergency Medical Systems, Inc.

TriTech Delaware, LLC

Vision Enterprises, Inc.

VisionAIR, Inc.

Vision Acquisition, Inc.

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

This Certificate of Insurance does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

EXHIBIT D
PAGE 7 OF 9

INSURED: TT Holdings I, Inc.

POLICY #: CBL0751953

COMPANY: United National Insurance Company

POLICY PERIOD: 5/1/2011

TO 5/1/2012

EFFECTIVE DATE: 05/01/2011

COMMERCIAL GENERAL LIABILITY
CG 20 33 07 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR
CONTRACTORS – AUTOMATIC STATUS WHEN
REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Section II – Who Is An Insured is amended to include as an additional insured any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for that additional insured are completed.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
 - a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - b. Supervisory, inspection, architectural or engineering activities.
2. "Bodily injury" or "property damage" occurring after:
 - a. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
 - b. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

INSURED: TT Holdings I, Inc.

COMPANY: OneBeacon America Insurance Company

POLICY PERIOD: 5/1/2011

TO 5/1/2012

POLICY #: 406037181

EFFECTIVE DATE: 05/01/2011

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

TEXAS WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

This endorsement applies only to the insurance provided by the policy because Texas is shown in Item 3.A. of the Information Page.

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule, but this waiver applies only with respect to bodily injury arising out of the operations described in the Schedule where you are required by a written contract to obtain this waiver from us.

This endorsement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

The premium for this endorsement is shown in the Schedule.

Schedule

1. () Specific Waiver
Name of person or organization

(X) Blanket Waiver
Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver. **BLANKET**

2. Operations:

3. Premium
The premium charge for this endorsement shall be 0.0 percent of the premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described.

4. Advance Premium

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.
(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Countersigned By _____

Jurat

State of California

County of San Diego

Subscribed and sworn to (or affirmed) before me on this 26th day of July,

20 12 by Blake Clark,

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Shawna M Jones
Signature

(Notary seal)



OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

Affidavit of No Prohibited Interest

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages 12 Document Date 7/27/12

Re: Contract b/t Plano, TX and TriTech

(Additional information)

INSTRUCTIONS FOR COMPLETING THIS FORM

The wording of all Jurats completed in California after January 1, 2008 must be in the form as set forth within this Jurat. There are no exceptions. If a Jurat to be completed does not follow this form, the notary must correct the verbiage by using a jurat stamp containing the correct wording or attaching a separate jurat form such as this one which does contain proper wording. In addition, the notary must require an oath or affirmation from the document signer regarding the truthfulness of the contents of the document. The document must be signed AFTER the oath or affirmation. If the document was previously signed, it must be re-signed in front of the notary public during the jurat process.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the jurat process is completed.
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Signature of the notary public must match the signature on file with the office of the county clerk.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different jurat form.
 - ❖ Additional information is not required but could help to ensure this jurat is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
- Securely attach this document to the signed document

STRATUS TECHNOLOGIES ftServer[®] SOFTWARE END-USER LICENSE AGREEMENT

THIS END-USER LICENSE AGREEMENT ("EULA") CONSTITUTES THE LEGAL AGREEMENT BETWEEN THE LICENSEE ("YOU") AND STRATUS TECHNOLOGIES IRELAND LIMITED ("STRATUS") FOR THE STRATUS[®] ftServer[®] SOFTWARE PRODUCTS, CERTAIN THIRD PARTY SOFTWARE PRODUCTS* AND RELATED MEDIA, MATERIALS AND DOCUMENTATION ("PRODUCTS"). BY INSTALLING THE PRODUCT OR RETAINING IT FOR MORE THAN TEN (10) DAYS, YOU AGREE TO BE BOUND BY THIS EULA. IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT USE THE PRODUCTS AND YOU MUST RETURN THE UNUSED PRODUCTS WITHIN TEN (10) CALENDAR DAYS OF RECEIPT FOR A FULL REFUND OF ANY PAID PRODUCT USE FEES. CONTACT YOUR PRODUCTS SUPPLIER OR VENDOR FOR RETURN INSTRUCTIONS. IF YOU RECEIVED THE PRODUCTS DIRECTLY FROM STRATUS, REFER TO THE STRATUS WEB SITE AT "www.stratus.com" OR CONTACT YOUR LOCAL STRATUS SALES OFFICE FOR RETURN INSTRUCTIONS. IF STRATUS PROVIDES YOU WITH AN UPDATE TO ANY PRODUCT FURNISHED UNDER THIS EULA, YOU AGREE TO DESTROY THE PREVIOUS VERSION PRODUCT WITHIN A REASONABLE TIME AND USE ONLY THE PRODUCT'S UPDATED VERSION.

THE PERSON ENTERING INTO THIS EULA REPRESENTS AND WARRANTS THAT HE IS AUTHORIZED TO ENTER INTO A BINDING AGREEMENT ON BEHALF OF HIS EMPLOYER AS THE LICENSEE.

*This EULA applies to the Stratus Software Products and any third party software programs (such as EMC software products) that are supplied by Stratus or its resellers but that are not packaged with a separate end-user license agreement (the Stratus Software Products and such third party software programs collectively hereinafter referred to as the "Products").

- 1 Software License. Except for the limited use right set forth in this Section 1, Stratus and its licensors ("Licensors") shall own all right, title and interest in and to the Products and any copies of the Products. The Products are licensed, not sold. Any updates, supplements, corrections or bug fixes for the Products will be governed by the terms of this EULA.
 - 1.1 You acknowledge that you have only a non-exclusive and limited right to use the object code version of the Products on a single ftServer system and the applicable peripheral devices (including without limitation storage equipment) sold to you by Stratus or its authorized distributor or reseller (collectively, the "System") in accordance with this EULA. You may make a single copy of the Products in object code form for archival or backup purposes. You may not remove or obscure any proprietary rights notice, Restricted Rights legend (as defined in section 1.4 below) or other notice (collectively, "Notices") included with the Products. You must include all Notices on all copies of the Products. You may not reverse engineer, decompile or disassemble the Products or attempt to gain access to the source code for the Products, except and only to the extent that it is expressly permitted by applicable law, and, to the extent applicable law permits contractual waiver of such right, you hereby waive your rights to do so.
 - 1.2 Provided you have not breached any of your duties or obligations under this EULA, you may permanently transfer the Products and all rights under this EULA only as part of a one-time sale or transfer of the System on which the Products are installed and only to a transferee who agrees to be bound by all of the terms and conditions set forth in this EULA. Upon such transfer, you agree that you will (1) transfer all of the Products with the System, (2) retain no copies of the Products, and (3) assign all rights and delegate all obligations under this EULA to your transferee. You will not otherwise transfer or assign the Products or this EULA and/or any rights or obligations hereunder without the prior written consent of Stratus.
 - 1.3 Without prejudice to any other rights, Stratus has the right to terminate this EULA and refuse to ship any Products if you fail to pay any relevant license fees or other charges. Your rights under this EULA will automatically terminate if you breach any of your material obligations under this EULA. Upon any termination of this EULA, you will return to Stratus or its designee, or if instructed by Stratus to do so, destroy all copies of the Products promptly after such termination.
 - 1.4 The Products include commercial computer software that has been developed entirely at private expense and is regularly used for non-governmental purposes and licensed to the public. All software provided to the U.S. Government is provided with "Restricted Rights" as provided in FAR, 48 CFR 52.227-14 (JUNE 1987) or DFAR 48 CFR 252.227-7013 (OCT 1988), as applicable. All rights not expressly granted are reserved.
- 2 Confidentiality. You acknowledge that the Products embody trade secrets and proprietary information and materials of Stratus and its Licensors ("Confidential Information"). You agree not to disclose such Confidential Information to any third party. Without limiting the foregoing, you agree to treat the Confidential Information with at least the same degree of care with which you treat your own confidential information of like importance, but in no event will you

treat such Confidential Information with less than reasonable care. Notwithstanding the above, you will have no liability with regard to any Confidential Information that (1) was in the public domain at the time it was disclosed or has entered the public domain through no fault of you, (2) was known to you, without restriction, at the time of disclosure, (3) was independently developed by you without any use of or reference to the Confidential Information, or (4) is disclosed pursuant to a valid order or requirement of a court, administrative agency, or other governmental body, provided that you promptly furnish to Stratus notice of such requirement or order enabling Stratus and its Licensors to seek a protective order or otherwise prevent or restrict such disclosure.

3 **Infringement Indemnity.**

3.1 Stratus will defend any claim brought against you alleging that the Products infringe a patent or copyright in your jurisdiction, and will indemnify you against all damages and costs finally awarded against you provided that Stratus is notified promptly in writing of the claim and given full authority, information and assistance for the defense and/or settlement of such claim, which defense and/or settlement will be under the sole control of Stratus. If a claim has occurred, or in Stratus' opinion is likely to occur, you agree to permit Stratus, at its sole option and expense, to (1) procure for you the right to continue using the Products, or (2) to replace or modify the Products so that they are non-infringing. If in Stratus' sole judgment neither of the foregoing alternatives is commercially practicable, Stratus may terminate this license, remove the Products and refund to you the product use fees as depreciated or amortized by an equal annual amount over the lifetime of the Products taking into account generally accepted accounting practices.

3.2 Neither Stratus, nor its affiliates, subsidiaries nor the Licensors will have any liability for any claim based upon or arising out of (1) the combination, operation or use of the Products with (a) any Microsoft or other third party software programs, (b) any equipment, devices or software not supplied by Stratus, or (2) the alteration or modification of any Products. **To the full extent permitted by law, this section states the entire liability of Stratus, its affiliates, subsidiaries and the Licensors and your sole remedy with respect to any claim of infringement.**

4 **Limited Warranty.**

4.1 Stratus warrants that the media containing each Product will be free from defects in material and workmanship for thirty (30) days from the date of receipt. Stratus' sole liability and your exclusive remedy for such defective Product media will be to replace the defective media free of charge. You may obtain information for reporting warranty defects from your Products supplier or vendor or from the Stratus web site at "www.stratus.com".

4.2 Stratus does not represent or warrant that the Products will operate without interruption or will be error free. This warranty does not apply to defects attributable to (1) modification or alteration of the Products made without the prior written approval of Stratus, (2) accident, neglect, misuse or abuse, or (3) exposure to conditions outside the range of the environmental, power and operating specifications provided by Stratus.

5 **Disclaimer And Limitation of Liability:**

5.1 Except as expressly set forth in this EULA, neither Stratus, its affiliates, subsidiaries nor the Licensors make any other warranties, express or implied, including any implied warranties of merchantability and fitness for a particular purpose. Stratus, its affiliates, subsidiaries and the Licensors expressly disclaim all warranties not stated in this EULA. Any implied warranties that may be imposed by law are limited to the terms contained in this EULA to the maximum extent permitted by law.

5.2 Except for damages or losses related to death or bodily injury, in no event will Stratus, its affiliates, subsidiaries or the Licensors, be liable for any special, indirect, punitive, incidental or consequential damages or losses (including without limitation loss of use, data, profit, savings or business), whatever the basis of the claim or action (such as breach of warranty, condition, contract, infringement and tort, including strict liability and negligence, or other legal theory) even if advised of the possibility of such damages or if such possibility was reasonably foreseeable. To the maximum extent permitted by law, the liability of Stratus, its affiliates, subsidiaries and the Licensors for damages or losses for any cause whatsoever, and regardless of the basis of the claim or action will be limited to the amount you actually paid for the specific Product that caused the damages or losses. Because some states or countries do not allow a limitation on the duration of an implied warranty or the exclusion of incidental or consequential damages, the above limitations and/or exclusions may not apply to you.

6 **Import / Export.** You acknowledge that the Products are of U.S. origin and are subject to U.S. Export Administration, international and national import and export control laws and regulations, including end-user, end-use and destination restrictions issued by the U.S. and other governments ("Import and Export Controls"). You agree that you will not export, import, directly or indirectly, re-export, divert, or transfer the Product or, any materials, items or

technology relating to Stratus' or the Licensors' business or related technical data or any direct product thereof to any destination, company or person restricted or prohibited by the Import and Export Controls.

7 General Terms and Conditions.

7.1 This EULA constitutes the entire agreement between you and Stratus with respect to the subject matter hereof and supersedes all previous and contemporaneous written and oral representations, proposals, negotiations and communications, including, without limitation, the terms and conditions of any purchase order. You acknowledge that the terms and conditions of this EULA are intended to inure to the benefit of Stratus' affiliates, subsidiaries and the Licensors as third party beneficiaries of the EULA, any and all of which will be entitled to invoke such terms and conditions on their behalf and enforce such terms and conditions against you. You further acknowledge that Stratus' affiliates, subsidiaries and the Licensors accept their third party beneficiary rights and that such rights will be deemed irrevocable.

7.2 Stratus may assign this EULA or any of the rights or obligations hereunder, and any causes of action arising hereunder, to any third party without necessity or obligation of notice to you. The waiver or failure of either party to exercise in any respect any right provided for herein will not be deemed a waiver of any further right hereunder. The invalidity or unenforceability of any provision of this EULA will not affect the validity or enforceability of any other provision, the remaining provisions being deemed to continue in full force and effect.

7.3 Stratus will not be responsible for any failure to perform its obligations under this EULA due to circumstances beyond its reasonable control, including without limitation acts of God, war, riot, terrorism, embargoes, acts of civil or military authorities, fire, flood or accidents. You agree that Stratus will be entitled to all legal and equitable remedies otherwise available to it to protect the intellectual property, proprietary rights and Confidential Information of itself and its Licensors, including, without limitation, the right to seek and obtain injunctive relief and enforce the same against you without the necessity of having to post bond or other such guarantee.

7.4 Sections 1.1, 1.3, 1.4, 2, 3.2, 5, 6, and 7 will survive any termination of this EULA. Except and only to the extent prohibited by applicable law, this EULA will in all respects, be governed by and construed and enforced in accordance with the laws of the Commonwealth of Massachusetts and the United States of America, excluding the choice of law principles thereof. The United Nations Convention on the International Sale of Goods will not apply to this EULA or the Products. You consent to the jurisdiction and venue of the state and federal courts in and for Suffolk County, Massachusetts, U.S.A. for the resolution of any dispute arising under or related to this EULA or the Products; provided, however, that Stratus, its affiliate, subsidiaries and the Licensors may initiate legal action in any court with jurisdiction over you for the enforcement of this EULA.

Stratus Technologies acknowledges and agrees that this EULA has been made part of the Contract between the City of Plano, TX and TriTech Software Systems. As a result thereof, Stratus Technologies acknowledges, for purposes of this EULA, it has become a third party to such Contract specifically for acknowledging its obligation to defend the City of Plano against any third party claims as addressed in paragraph 3 above.

LICENSEE:

City of Plano

Stratus Technologies Ireland, Ltd

Signature

Kathleen J. Hefault

Signature

Printed Name and Title

KATHLEEN J. HEFAULT, FINANCE MGR.

Printed Name and Title

Date

August 20, 2012

Date

In the event of a third party claim for patent or copyright infringement, Licensee shall contact Stratus in writing at the following address:

Stratus Technologies
U.S. Operations
111 Powdermill Road
Maynard, MA 01754-3409
Telephone: 1-978-461-700



**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:		09-24-12		
Department:		Development Services		
Department Head		Frank Turner		
Agenda Coordinator (include phone #): Cindy Pierce, ext. 7121				
CAPTION				
A Resolution of the City Council of the City of Plano, Texas, ratifying the terms and conditions of a Consent to Assignment Agreement by and between the City of Plano, Texas, 15th and I, LLC, and Comerica Bank to authorize assignment of the Development Agreement between Southern Land Company, LLC and the City of Plano as security for financing of the development project at the southeast corner of 15th Street and I Avenue; ratifying its execution by the City Manager; 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:	2011-12	Prior Year (CIP Only)	Current Year	Future Years
		0	0	0
Budget		0	0	0
Encumbered/Expended Amount		0	0	0
This Item		0	0	0
BALANCE		0	0	0
FUND(S): N/A				
COMMENTS: This item has no fiscal impact. STRATEGIC PLAN GOAL: Passage of this Resolution relates to the City's Goal of Partnering for Community Benefit.				
SUMMARY OF ITEM				
This item is to ratify the terms and conditions of a Consent to Assignment of Development Agreement by and between the City of Plano and Comerica Bank to authorize assignment of the Development Agreement between Southern Land Company, LLC and the City as security for financing the development project at the corner of 15 th Street and I Avenue.				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Resolution Consent to Assignment of Development Agreement				

A Resolution of the City Council of the City of Plano, Texas, ratifying the terms and conditions of a Consent to Assignment Agreement by and between the City of Plano, Texas, 15th and I, LLC, and Comerica Bank to authorize assignment of the Development Agreement between Southern Land Company, LLC and the City of Plano as security for financing of the development project at the southeast corner of 15th Street and I Avenue; ratifying its execution by the City Manager; and providing an effective date.

WHEREAS, The City and Southern Land Company, LLC entered into a Restated and Amended Development Agreement approved by City of Plano, City Council Resolution No. 2011-11-22(R) and executed on December 28, 2011("Development Agreement"); and

WHEREAS, On, June 7, 2012, the Development Agreement was assigned by Southern Land Company, LLC to 15th and I, LLC, a joint venture partner, pursuant to Section 21(B) of the Development Agreement; and

WHEREAS, On September 14, 2012, the City of Plano, 15th and I, LLC and Comerica Bank, entered into a Consent to Assignment Agreement ("Assignment") authorizing 15th and I, LLC to assign the Development Agreement to Comerica Bank as security for financing the development project at the southeast corner of 15th Street and I Avenue subject to City Council ratification of the Assignment; and

WHEREAS, upon full review and consideration of the Assignment, and all matters attendant and related thereto, the City Council is of the opinion that execution by the City Manager of the terms and conditions thereof should be ratified.

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

Section I. The execution of the terms and conditions of the Assignment by the City Manager, 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 ratified.

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

DULY PASSED AND APPROVED this the 24TH day of September, 2012.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

CONSENT OF ASSIGNMENT OF DEVELOPMENT AGREEMENT BETWEEN
SOUTHERN LAND COMPANY, LLC AND CITY OF PLANO AS SECURITY FOR
FINANCING

This consent agreement ("Consent Agreement") is by and between the CITY OF PLANO, TEXAS ("City"), a home rule municipal corporation, organized under the laws of the State of Texas, 15th & I, LLC, a Delaware limited liability company ("Borrower"), and COMERICA BANK, a Texas banking association ("Lender"), in connection with the Collateral Assignment of Contract Rights between Borrower and Lender ("Collateral Assignment").

1. Background. The City and Southern Land Company, LLC entered into a Restated and Amended Development Agreement approved by City of Plano, City Council Resolution No. 2011-11-22(R) and executed on December 28, 2011, attached hereto as Exhibit "1", ("Development Agreement"). On, June 7, 2012, the Development Agreement was assigned by Southern Land Company, LLC to Borrower, a joint venture partner, pursuant to Section 21(B) of the Development Agreement.

2. Definitions. Capitalized terms used herein and not defined herein shall have the meaning ascribed to them in the Development Agreement.

3. Consent to Assignment. Borrower represents to the City that it will execute the Collateral Assignment for the benefit of Lender for which it needs the City's consent pursuant to Section 21(A) of the Development Agreement. The City hereby consents to the assignment of the Development Agreement by Borrower to the Lender pursuant to the Collateral Assignment as security for a loan for financing related to the project at the Property. The City is not a party to the Collateral Assignment. The City's execution of this Consent Agreement does not signify that the City has reviewed, approved or agreed to the terms of any financing or refinancing or to any terms of the Collateral Assignment or loan documents between Borrower and Lender. This Consent Agreement does not change, modify or alter the terms of the Development Agreement in any way, except as specifically provided for herein, and does not change the rights or obligations of the Borrower or the City under the Development Agreement. In the event of any inconsistency between this Consent Agreement and the Development Agreement pertaining to the rights of the City to enforce its remedies or terminate the Development Agreement, the terms and provisions of the Development Agreement shall control.

4. Conditions to Consent to Assignment. Subject to the terms and conditions of Section 3 and Section 4 of this Consent Agreement, City hereby consents to assignment of the Development Agreement to the Lender, including any successor subject to Section 7 below. The Lender, including any successor, may exercise all rights or remedies against the City under the Development Agreement, and shall have the right to receive any funds payable to the Borrower under the Development Agreement, upon the Lender's, or any successor's satisfaction of the following:

- (a) Delivery of thirty (30) days notification to the City, with a copy to Borrower, in writing of its election (in Lender's sole discretion) to assume the Development Agreement pursuant to its Collateral Agreement with Borrower, followed by the delivery

to the City of a letter agreement executed by the Lender and incorporating the terms of Section 4(b) below, and

(b) Delivery to City of an agreement by Lender, or such successor, in a form reasonably acceptable to City and Lender, or such successor, to accept and be bound by all the terms and conditions of the Development Agreement, and to assume all obligations, covenants, agreements, rights, liabilities and responsibilities of Borrower under the Development Agreement, subject to the terms of this Consent Agreement.

Borrower agrees that upon City's receipt of notice from Lender of its intent to exercise any rights or receive payments under the Development Agreement, it shall be deemed to be conclusive evidence of Borrower's default under the Collateral Assignment, and City shall have the unconditional right to rely on any such notice from Lender, without any obligation to inquire as to the existence of any actual or potential default by Borrower and without liability to the City for reliance on same. **BORROWER AGREES TO HOLD HARMLESS, RELEASE, AND INDEMNIFY CITY FOR ANY ACTION OR FAILURE TO ACT ARISING OUT OF CITY'S RELIANCE ON LENDER'S NOTICE OF ASSUMPTION OF THE DEVELOPMENT AGREEMENT.**

5. Representations. City hereby makes the following representations:

(a) That the Development Agreement attached hereto as Exhibit "1" is a true, correct and complete copy of same, and that it has not been amended, modified, restated, or supplemented, and that the Development Agreement affects the real property described on Exhibit "A" to the Development Agreement.

(b) In addition to all other obligations of the City pursuant to the Development Agreement, and subject to the terms and conditions thereof, the City has agreed to reimburse Borrower for One Hundred Percent (100%) of eligible expenses for Projects Costs for any public improvements or such other work in an amount not to exceed One Million Seven Hundred Thousand Dollars (\$1,700,00.00), as further described in the Development Agreement.

(c) As of the date hereof, the City has not given any notice of a breach or default under the terms and provisions of the Development Agreement and has no knowledge of any default by any party under the Development Agreement. Furthermore, as of the date hereof, the City has no defense, right of set-off, counterclaim or other defense to any of the obligations of City under and pursuant to the Development Agreement.

6. Covenants and Agreements. City hereby agrees as follows:

(a) Southern Land Company, LLC, has executed an assignment of the Development Agreement to and for the benefit of Borrower, in a form acceptable to the City of Plano pursuant to Section 21(B) of the Development Agreement.

(b) City will notify the Lender at the address specified for Lender in this Consent Agreement prior to any modification of the Development Agreement.

(c) City will notify the Lender at the address specified for Lender in this Consent Agreement at the same time and in the same manner that it provides notice to the Borrower of an Event of Default under the Development Agreement and provide the Lender the same right to cure that is available to the Borrower prior to the exercise of any right or remedy by the City, including, but not limited to, termination of the Development Agreement.

(d) Upon notification by Lender to City of the occurrence of an Event of Default (as such term is defined in that certain Construction Loan Agreement between Borrower and Lender dated September 14, 2012), City agrees to refrain from delivering any cash remittance in payment of or related to the Collateral (as defined in the Development Agreement) until such time as (i) Lender has notified City that such Event of Default has been cured, or (ii) Lender (or its assignee or successor) has assumed the obligations of Borrower under the Development Agreement pursuant to Section 4(b) of this Consent Agreement.

7. Successors and Assigns: Notice to City. This Consent Agreement may not be assigned, in whole or in part, by Borrower without the express written consent of the City, except that Borrower may assign this Consent 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 Borrower as long as Borrower 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 the Development Agreement. The provisions of this Consent Agreement shall be binding upon and inure to the benefit of the successors and assigns of Lender, provided, however, that Lender agrees to provide written notice to the City within thirty (30) days of the (x) sale or assignment (but not a participation) of Lender's interest in the loan evidenced by the Loan Documents (as defined in the Development Agreement), or (y) sale of Lender's interest in the Property if it becomes the record owner thereof following a foreclosure.

8. Limitation on Lender's Liability. The City agrees to look solely to Lender's interest in the Property and the rents, income or proceeds derived therefrom for the recovery of any judgment against Lender, and in no event shall Lender or any of its affiliates, officers, directors, shareholders, partners, agents, representatives or employees ever be personally liable for any such obligation, liability or judgment.

9. Address for Notices. The address of the parties for any and all notices and written instructions under and pursuant to the Development Agreement and this Consent is as set forth below the signature of each party below.

10. Venue and governing law. This Agreement is performable in Collin County, Texas and venue of any action arising out of this Agreement shall be exclusively in Collin County, Texas. This Agreement shall be governed and construed in accordance with the laws of the State of Texas.

11. Legal construction. In case 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 any other provision thereof and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

12. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

13. Captions. The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.

14. Authority to Sign. The parties below represent that they have the authority to sign this Agreement on behalf of their respective entities except that the City's execution of this Agreement is subject to City Council approval.

[Signature page follows]

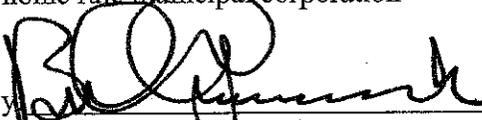
EXECUTED as of the date of the acknowledgements below, but to be effective as of the last date of signatory to the agreement subject to subsequent City of Plano City Council approval.

Address for notices:

City of Plano, Texas
Attn: City Manager
1520 Avenue K
P.O. Box 860358
Plano, Texas 75086-0358

CITY OF PLANO:

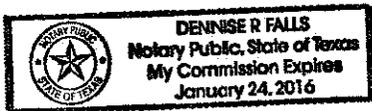
CITY OF PLANO,
a home rule municipal corporation

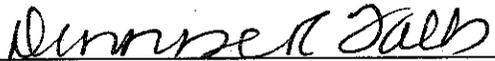
By: 
Name: Bruce Glascock
Title: City Manager

STATE OF TEXAS §
 §
COUNTY OF Collin §

This instrument was ACKNOWLEDGED before me on Sept 14, 2012 by Bruce Glascock, the City Manager of the City of Plano, a home rule municipal corporation organized under the laws of the State Texas, on behalf of said City.

[SEAL]




Notary Public - State of Texas

APPROVED AS TO FORM:

BY: 
Diane C. Wetherbee, City Attorney

ACKNOWLEDGMENT OF LENDER

The Lender joins herein to evidence his acknowledgment and agreement to the provisions of this Consent Agreement.

Address for notices:

Comerica Bank
1717 Main Street, 4th Floor
Dallas, Texas 75265-0282

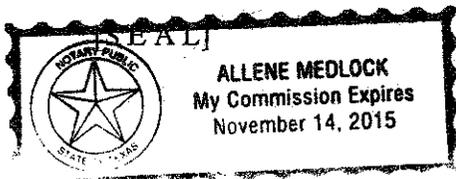
LENDER:

COMERICA BANK,
a Texas banking association

By: [Signature]
Name: Jeff LaBauve
Title: VP

STATE OF TEXAS §
 §
COUNTY OF Dallas §

This instrument was ACKNOWLEDGED before me on 09-06, 2012 by Jeffrey LaBauve, the Vice President of Comerica Bank, a Texas banking association, on behalf of said banking association.



Allene Medlock
Notary Public - State of Texas

EXHIBIT "1"

Development Agreement

A true, complete and correct copy of the Development Agreement is available for review in the City Attorney's office located at 1520 Avenue K, Suite 340, Plano, 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:		09/24/12		
Department:		Sustainability & Environmental Services		
Department Head		Nancy Nevil		
Agenda Coordinator (include phone #): Rita Keys X4393				
CAPTION				
<p>An Ordinance of the City of Plano, Texas, repealing in its entirety Ordinance No. 2011-9-27, codified as Section 18-34 of Article II, Commercial Container Rates, of Chapter 18, Solid Waste of the Code of Ordinances of the City of Plano, Texas and enacting this new Section 18-34 of Article II, Commercial Container Rates, of Chapter 18, Solid Waste, of the Code of Ordinances of the City of Plano, establishing a revised schedule of rates and charges for solid waste disposal and collection applicable to commercial accounts; providing a repealer clause, a severability clause, and providing an effective date.</p>				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input checked="" type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2012-13	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	5,820,115	5,820,115
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	5,820,115	5,820,115
FUND(S): SUSTAINABILITY & ENVIRONMENTAL SERVICES FUND				
COMMENTS: Staff has already accounted for CPI adjustment in budgeted revenues.				
STRATEGIC PLAN GOAL: Updating rates to reflect the increasing expense of providing a service relates to the City's goal of a Financially Strong City with Service Excellence.				
SUMMARY OF ITEM				
<p>The commercial rate increase reflects an annual escalation included in the commercial franchise agreement. The annual escalation is based upon the net percentage of increase or decrease in the Consumer Price Index (CPI) - Urban Wage Earners and Clerical Workers, Dallas-Fort Worth metropolitan area by the Bureau of Labor Statistics of the U.S. Department of Labor.</p>				
List of Supporting Documents: Ordinance			Other Departments, Boards, Commissions or Agencies	

An Ordinance of the City of Plano, Texas, repealing in its entirety Ordinance No. 2011-9-27, codified as Section 18-34 of Article II, Commercial Container Rates, of Chapter 18, Solid Waste of the Code of Ordinances of the City of Plano, Texas and enacting this new Section 18-34 of Article II, Commercial Container Rates, of Chapter 18, Solid Waste, of the Code of Ordinances of the City of Plano, establishing a revised schedule of rates and charges for solid waste disposal and collection applicable to commercial accounts; providing a repealer clause, a severability clause, and providing an effective date.

WHEREAS, on September 26, 2011, the City Council of the City of Plano enacted Ordinance No. 2011-9-27, which was codified as Section 18-34 of Article II, Commercial Container Rates, of Chapter 18, Solid Waste, of the Code of Ordinances of the City of Plano establishing a schedule of rates and charges for the collection and disposal of solid waste from commercial customers within and outside the City; and

WHEREAS, the schedule of rates and charges for solid waste collection and disposal must be reviewed annually in connection with preparation of the City budget and those rates and charges must be adjusted periodically to address increased operational costs and/or increased services being provided; and

WHEREAS, upon recommendation of staff and upon full review and consideration of all matters thereto, the City Council hereby finds and determines that it is necessary to revise the schedule of rates and charges for solid waste collection and disposal, as hereinafter provided, and that such revised schedule of rates and charges is reasonable and in the best interest of the City of Plano and its citizens.

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

Section I. Ordinance No. 2011-9-27, codified as Section 18-34 of Article II, Commercial Container Rates, of Chapter 18, Solid Waste, of the Code of Ordinances of the City of Plano, Texas, is hereby repealed in its entirety.

Section II. Section 18-34 of Article II, Commercial Container Rates, of Chapter 18, Solid Waste, of the Code of Ordinances of the City of Plano, Texas is enacted to read as follows:

“Sec. 18-34. Commercial container rates.

(a) The collection and disposal of solid waste from commercial accounts in the City of Plano shall only be performed by those commercial contractors authorized by the City Council to conduct such business within the City of Plano.

(b) The following rates and charges as set forth in the schedule below are hereby established as the maximum rates that may be charged by an authorized commercial contractor for collection, transportation and disposal of solid waste pursuant to that commercial contractor's contract with the City:

- (1) Rates for commercial container service for containers with a volume between two (2) cubic yards and eight (8) cubic yards shall be as follows plus a fifty-four dollars and fifty-one cents (\$54.51) one-time delivery charge:

<u>SIZE OF CONTAINER</u>	<u>SERVICE</u>	<u>MONTHLY CHARGE</u>
2 Cu. Yd.	1 x Week	56.88
	2 x Week	88.33
	3 x Week	132.47
	Extras	46.57
3 Cu. Yd.	1 x Week	74.21
	2 x Week	136.47
	3 x Week	190.80
	Extras	49.86
4 Cu. Yd.	1 x Week	90.00
	2 x Week	159.11
	3 x Week	228.23
	Extras	54.81
6 Cu. Yd.	1 x Week	124.51
	2 x Week	225.42
	3 x Week	326.78
	4 x Week	439.55
	5 x Week	556.16
	6 x Week	689.17
	Extras	61.72
8 Cu. Yd.	1 x Week	163.11
	2 x Week	287.54
	3 x Week	427.42
	4 x Week	576.56
	5 x Week	690.04
	6 x Week	818.99
	Extras	69.78

- (2) Rates for commercial compactors with a volume between six (6) cubic yards and eight (8) cubic yards shall be as follows plus a fifty-four dollars and fifty-one cents (\$54.51) one-time delivery charge:

COMPACTORS

<u>SIZE OF CONTAINER</u>	<u>SERVICE</u>	<u>MONTHLY CHARGE</u>
6 Cu.Yd., Compactor	1 x week	377.05
	2 x week	754.08
	3 x week	1,131.14
	4 x week	1,508.18
	5 x week	1,885.20
	6 x week	2,262.23
	Extras	69.60
8 Cu.Yd., Compactor	1 x week	502.69
	2 x week	1,005.36
	3 x week	1,508.05
	4 x week	2,010.70
	5 x week	2,513.40
	6 x week	3,016.09
	Extras	92.79

- (3) Rates for container service for open top containers and compactors with a volume in excess of eight (8) cubic yards will be determined and paid based on haul charges plus a per ton disposal charge that is established annually by the North Texas Municipal Water District (NTMWD). Haul charges are determined based on established zones that reflect the contractor's transportation costs using time/distance from the service location to the disposal site. A minimum haul charge of one hundred twenty-three dollars and twelve cents (\$123.12) will be assessed for disposal at one of NTMWD's three transfer stations or the appropriate Zone Charge associated for disposal at the NTMWD RDF 121 Landfill site. Customers renting containers will be charged a delivery fee and per day rental fee. Haul rates and associated fees shall be as follows:

Zone 1	Zone 2	Zone 3	Zone 4	Delivery	Rental
\$163.74	\$204.42	\$245.39	\$286.89	\$83.14	\$5.52
Disposal Fee: \$43.35 per ton					

- (4) Rates for commercial recycling container service shall be as follows:

<u>SIZE OF CONTAINER</u>	<u>SERVICE</u>	<u>MONTHLY CHARGE</u>
2 Cu. Yd.	Every Other Week	37.98
	1 x Week	50.64
	2 x Week	88.62
	3 x Week	126.60
	Extras	30.00
3 Cu. Yd.	Every Other Week	38.17
	1 x Week	50.89
	2 x Week	89.06
	3 x Week	127.23
	Extras	30.00
4 Cu. Yd.	Every Other Week	38.36
	1 x Week	51.14
	2 x Week	89.50
	3 x Week	127.86
	Extras	30.00
6 Cu. Yd.	Every Other Week	38.72
	1 x Week	51.63
	2 x Week	90.35
	3 x Week	129.07
	4 x Week	167.79
	5 x Week	206.51
	6 x Week	245.23
	Extras	30.00
8 Cu. Yd.	Every Other Week	39.10
	1 x Week	52.13
	2 x Week	91.23
	3 x Week	130.33
	4 x Week	169.43
	5 x Week	208.53
	6 x Week	247.63
Extras	30.00	

These monthly commercial recycling container service rates are not subject to the City's Commercial Franchise Fee.

- (5) In addition to the rates specified in subsections (b)(1) and (b)(3) above, there will be a delivery charge of eighty-one dollars and ninety-one cents (\$81.91) for each temporary or on-call container delivered. "Temporary service" shall be defined as service of duration of less than one year.
- (6) All rates for solid waste services are subject to the appropriate state taxes.
- (7) Charges for damages to commercial solid waste containers not caused by the authorized commercial contractor, and charges for replacement of such containers at more frequent intervals than approved by the City Council shall be set forth in the performance standards for the authorized commercial contractor as referenced in the Commercial Franchise Agreement.
- (8) In addition to the charges hereinabove specified, the following additional fees and charges are authorized:

Casters	\$4.15 per lift
Locks	\$1.38 per lift
Gates	\$1.38 per lift
Return Check Charge	\$35.00
Fee for late payment	1.5% per month for balance due over 30 days."

Section III. The rates established in Section 18-34 shall be effective for all services rendered on and after October 1, 2012.

Section IV. All provisions of the Ordinances of the City of Plano, codified or uncodified, 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 uncodified, not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

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

Section VI. This Ordinance shall become effective immediately upon its passage.

DULY PASSED AND APPROVED this 24th day of September 2012.

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:		9/24/12		
Department:		Human Resources		
Department Head		Jim Parrish		
Agenda Coordinator (include phone #): Billy Bailey (x) 5411				
CAPTION				
An Ordinance of the City of Plano, Texas repealing Ordinance No. 2011-9-31; establishing the number of certain classifications within the Fire Department for fiscal year 2012-13; establishing the authorized number and effective dates of such positions for each classification; establishing a salary plan for the Fire Department effective September 24, 2012; and providing a repealer clause, a severability 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: 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	0	0
BALANCE	0	0	0	0
FUND(s): N/A				
COMMENTS: This item has no fiscal impact. STRATEGIC PLAN GOAL: Updates to the Civil Service Compensation and Classification Plan Ordinances relate to the City's Goal of Financially Strong City with Service Excellence and Safe Large City.				
SUMMARY OF ITEM				
New FY 2012-13 Compensation and Pay plan for Plano Fire Department				
List of Supporting Documents: Ordinance and Exhibit A			Other Departments, Boards, Commissions or Agencies	

An Ordinance of the City of Plano, Texas repealing Ordinance No. 2011-9-31; establishing the number of certain classifications within the Fire Department for fiscal year 2012-13; establishing the authorized number and effective dates of such positions for each classification; establishing a salary plan for the Fire Department effective September 24, 2012; and providing a repealer clause, a severability clause and an effective date.

Whereas, on September 26, 2011 by Ordinance No. 2011-9-31, the City Council of the City of Plano, Texas, adopted the Civil Service compensation plan, including the classifications and salaries for the sworn personnel positions within the Fire Department of the City of Plano; and

Whereas, in compliance with Chapter 143 of the Texas Local Government Code, V.T.C.A., as amended, the City Council desires to adopt the specified number of positions effective September 24, 2012, and the classification and salary plan for the sworn personnel of the Fire Department of the City of Plano, Texas as set forth in attached Exhibit "A"; and

Whereas, the department recommends a one-time two percent (2%) lump sum payment for Battalion Chiefs; and

Whereas, the salary plan adopted by this ordinance does not, in any way, limit the ability or authority of the City to implement a reduction in salary due to business or other fiscal needs, nor does it prevent the City Manager or Department Head from reducing, on an individual or a group basis, the number of hours worked per week or per work cycle due to fiscal needs, disciplinary actions, or other allowable reasons.

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

Section I. Ordinance No. 2011-9-31 duly passed and approved by the City Council of the City of Plano, Texas on September 26, 2011 is repealed in its entirety effective September 24, 2012.

Section II. The number of positions in the City of Plano Fire Department effective September 24, 2012 and the classification and salary plan of the City of Plano Fire Department for City of Plano fiscal year 2012-13, as set forth in Exhibit "A" is hereby approved.

Section III. The one-time two percent (2%) lump sum payment for Battalion Chiefs is hereby approved.

Section IV. Any and all advancements from one service plateau to the next, within the salary structure set out in Exhibit "A" is hereby approved and adopted, and shall thereafter be permitted to start of the first payroll period following completion of the required number of continuous service months.

Section V. All provisions of the Ordinances of the City of Plano, codified and 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 VI. It is the intention of the City Council that this Ordinance, and every provision thereof, 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 constitutionality of any other portion of this Ordinance.

Section VII. Upon passage, this Ordinance shall become effective September 24, 2012.

DULY PASSED AND APPROVED, this, the 24th day of September 2012.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

CITY OF PLANO
2012 - 2013 CIVIL SERVICE
COMPENSATION PLAN
Effective 09/24/12

FIRE

RANGE	POSITION	# Positions Effective	BASE	1	2	3	4
			STEP:	6 MOS.	12 MOS.	24 MOS.	
001	Fire Rescue Specialist	09/24/12 - 193 08/01/13 - 208	Hourly: Monthly: Annual:	20,0648 4,869 58,428	21,4797 5,212 62,548	23,6620 5,741 68,903	
002	Fire Apparatus Operator	09/24/12 - 51	Hourly: Monthly: Annual:	26,6129 6,458 77,496			
003	Lieutenant	09/24/12 - 18	Hourly: Monthly: Annual:	29,8487 7,243 86,919			
004	Captain	09/24/12 - 45	Hourly: Monthly: Annual:	33,1954 8,055 96,665			
005	Battalion Chief	09/24/12 - 9	Hourly: Monthly: Annual:	51,2432 8,882 106,585	55,5920 9,635 115,631		
006	Assistant Fire Chief	09/24/12 - 4	Hourly: Monthly: Annual:	62,2800 10,795 129,542			
01A	Fire Recruit		Hourly: Monthly: Annual:	18,2297 4,423 53,084			

The base pay is the same for all personnel within a classification; however the hourly and monthly pay rates may vary based on whether the individual is assigned to a 40 hour per week staff position or a 56 hour per week field position. The City Council can change pay, pay periods, and total hours scheduled at any time.



**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:		9/24/12		
Department:		Human Resources		
Department Head		Jim Parrish		
Agenda Coordinator (include phone #): Billy Bailey (x) 5411				
CAPTION				
An Ordinance of the City of Plano, Texas repealing Ordinance No. 2012-4-9; establishing the number of certain classifications within the Police Department for fiscal year 2012-13; establishing the authorized number and effective dates of such positions for each classification effective September 24, 2012; establishing a salary plan for the Police Department effective September 24, 2012; and providing a repealer clause, a severability 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: 2012-2013	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				
COMMENTS: This item has no fiscal impact. STRATEGIC PLAN GOAL: Updates to the Civil Service Compensation and Classification Plan Ordinances relate to the City's Goal of Financially Strong City with Service Excellence and Safe Large City.				
SUMMARY OF ITEM				
New FY 2012-13 Compensation and Pay plan for the Plano Police Department				
List of Supporting Documents: Ordinance and Exhibit A			Other Departments, Boards, Commissions or Agencies	

An Ordinance of the City of Plano, Texas repealing Ordinance No. 2012-4-9; establishing the number of certain classifications within the Police Department for fiscal year 2012-13; establishing the authorized number and effective dates of such positions for each classification effective September 24, 2012; establishing a salary plan for the Police Department effective September 24, 2012; and providing a repealer clause, a severability clause and an effective date.

Whereas, on April 9, 2012 by Ordinance No. 2012-4-9, the City Council of the City of Plano, Texas, adopted and approved the Civil Service compensation plan, including the classifications and salaries for the sworn personnel positions within the Police Department of the City of Plano; and

Whereas, in compliance with Chapter 143 of the Texas Local Government Code, V.T.C.A., as amended, the City Council desires to adopt the specified number of positions effective September 24, 2012, and the classification and salary plan for the sworn personnel of the Police Department of the City of Plano, Texas as set forth in attached Exhibit "A" and

Whereas, the salary plan adopted by this ordinance does not, in any way, limit the ability or authority of the City to implement a reduction in salary due to business or other fiscal needs, nor does it prevent the City Manager or Department Head from reducing, on an individual or a group basis, the number of hours worked per week or per work cycle due to fiscal needs, disciplinary actions, or other allowable reasons.

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

Section I. Ordinance No. 2012-4-9 duly passed and approved by the City Council of the City of Plano, Texas on April 9, 2012 is repealed in its entirety effective September 24, 2012.

Section II. The number of positions in the City of Plano Police Department effective September 24, 2012 and the classification and salary plan of the City of Plano Police Department for City of Plano fiscal year 2012-13, as set forth in Exhibit "A" is hereby approved and adopted.

Section III. Any and all advancements from one service plateau to the next, within the salary structure set out in Exhibit "A" is hereby approved and adopted, and shall thereafter be permitted at the start of the first payroll period following completion of the required number of continuous service months.

Section IV. All provisions of the Ordinances of the City of Plano, codified and uncodified, 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 uncodified, not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

Section V. It is the intention of the City Council that this Ordinance, and every provision thereof, 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 constitutionality of any other portion of this Ordinance.

Section VI. Upon passage, this Ordinance shall become effective September 24, 2012.

DULY PASSED AND APPROVED, this, the 24th day of September 2012.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

**CITY OF PLANO
2012-2013 CIVIL SERVICE
COMPENSATION PLAN
Effective 09/24/12**

POLICE

RANGE	POSITION	# POSITIONS Effective	Step:	BASE	6 Mos.	12 Mos.	18 Mos.	24 Mos.	30 Mos.	36 Mos.	60 Mos.	120 Mos.	180 Mos.	240 Mos.
				1	2	3	4	5	6	7	8	9	10	11
001	Police Officer	09/24/12 - 288	Hourly: Monthly: Annual:	28,3264 4,909 58,918	29,2812 5,075 60,904	30,2466 5,242 62,912	31,5823 5,474 65,691	32,6215 5,654 67,852	33,7356 5,847 70,170	35,4479 6,144 73,731	36,4483 6,317 75,812	36,6984 6,361 76,332	36,9485 6,404 76,852	37,1986 6,447 77,373
002	Sergeant	09/24/12 - 38	Hourly: Monthly: Annual:	40,2398 6,974 83,698		41,7866 7,243 86,916								
003	Lieutenant	09/24/12 - 13	Hourly: Monthly: Annual:	44,9222 7,786 93,438		47,6148 8,253 99,038								
004	Captain	09/24/12 - 4	Hourly: Monthly: Annual:	51,1867 8,872 106,468		54,2548 9,404 112,849								
005	Assistant Police Chief	09/24/12 - 1	Hourly: Monthly: Annual:	58,3212 10,109 121,308		62,1364 10,770 129,243								
	Recruit:		Hourly:	26,2470										
	01A		Monthly: Annual:	4,549 54,593										

The hourly rate shown above is the base hourly rate at which pay is calculated. The monthly and annual rates shown are for informational purposes only and illustrate potential pay based on hours worked which are not guaranteed. The City Council can change pay, pay periods, and total hours scheduled at any time.



**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:		9/24/12		
Department:		Human Resources		
Department Head		Jim Parrish		
Agenda Coordinator (include phone #): Billy Bailey (x) 5411				
CAPTION				
<p>An Ordinance of the City of Plano, Texas repealing Ordinance No. 2011-3-17; establishing a certification pay plan for classified members of the Plano Fire and Police Departments; establishing an assignment pay plan for members of the Plano Fire Department serving in the capacity of paramedic; establishing a Paramedic Preceptor pay plan for members of the Plano Fire Department; establishing an assignment pay plan for members of the Plano Police Department serving in the capacity of Field Training Officers; and providing a repealer clause, a severability clause and an effective date.</p>				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 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	-\$92,115	-\$253,233	-\$345,348
BALANCE	0	-\$92,115	-\$253,233	-\$345,348
FUND(S): GENERAL FUND				
<p>COMMENTS: Funding for the Police and Fire Department Civil Service personnel in accordance with the Civil Service Plan is included in the FY 2012-13 adopted budget. Establishing a new certification and assignment pay plan for the Fire Department will save an estimated \$92,115 in 2012-13, \$90,327 in 2013-14, \$85,476 in 2014-15 and \$77,430 in 2015-16 for a total projected savings of \$345,348.</p> <p>STRATEGIC PLAN GOAL: Changes to the Certification Pay Plan for the Plano Police and Fire Departments relate to the City's Goal of Financially Strong City with Service Excellence.</p>				
SUMMARY OF ITEM				
New FY 2012-2013 assignment and certification pay plan for Plano Fire Department				
List of Supporting Documents: Ordinance			Other Departments, Boards, Commissions or Agencies	

An Ordinance of the City of Plano, Texas repealing Ordinance No. 2011-3-17; establishing a certification pay plan for classified members of the Plano Fire and Police Departments; establishing an assignment pay plan for members of the Plano Fire Department serving in the capacity of paramedic; establishing a Paramedic Preceptor pay plan for members of the Plano Fire Department; establishing an assignment pay plan for members of the Plano Police Department serving in the capacity of Field Training Officers; and providing a repealer clause, a severability clause and an effective date.

Whereas, on March 28, 2011 by Ordinance No. 2011-3-17, the City Council of the City of Plano, Texas, approved and adopted the certification and assignment pay plans for members of the Fire and Police Departments of the City of Plano; and

Whereas, in compliance with Chapter 143 of the Texas Local Government Code, V.T.C.A., as amended, the City Council desire to revise the Police and Fire Departments certification pay plan; Police and Fire Departments assignment pay plans; and Fire Department preceptor pay plan.

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

Section I. Ordinance No. 2011-3-17 duly passed and approved by the City Council of the City of Plano, Texas on March 28, 2011 is repealed in its entirety effective September 24, 2012.

Section II. In accordance with Section 143.044 of the Texas Local Government Code and the Rules and Regulations of the City of Plano Fire Fighters' and Police Officers' Civil Service Commission, the City of Plano hereby establishes the following certification pay plan for classified members of the Plano Fire and Police Departments:

Fire Department

Texas Commission on Fire Protection Standards and Education

<u>Basic Certificate</u>	<u>Intermediate</u>	<u>Advanced</u>	<u>Master</u>
-0-	\$60/mo	\$80/mo	\$120/mo

Police Department

Texas Commission on Law Enforcement Standards and Education

<u>Basic Certificate</u>	<u>Intermediate</u>	<u>Advanced</u>	<u>Master</u>
-0-	\$60/mo	\$80/mo	\$120/mo

Section III. Classifications for certification compensation for classified members of the City of Plano Fire and Police Departments are as set forth in Section II above. Advancements within the structure set forth in Section II above shall be allowed as established by the Rules and Regulations formulated by the Texas Commission on Fire Protection Standards and Education (Fire) and the Texas Commission on Law Enforcement Officers' Standards and Education (Police).

Section IV. In accordance with Section 143.042 of the Texas Local Government Code and the Rules and Regulations of the City of Plano Fire Fighters' and Police Officers' Civil Service Commission, the City of Plano hereby establishes an assignment pay plan which shall be applicable to members of the City of Plano Fire Department who are; (1) certified as an Emergency Medical Technician (EMT) Paramedic by the Texas Department of Public Health, and (2) authorized to practice as a paramedic in the City of Plano EMS System by the Emergency Medical Director for the City of Plano and are assigned such duties by the Fire Chief of the City of Plano. For those that hold the rank of Fire Apparatus Operators (FAO), Lieutenants (LT) and Captains (CAPT), see pay table 1 below. For Fire Rescue Specialists (FRS), see pay table 2 below.

Pay Table 1 (FAO, LT and CAPT)

Years of Service as <u>Assigned Paramedic</u>	Monthly Assignment <u>Pay</u>
<48 months	\$149
48 months	\$186
96 months	\$335
144 months	\$483

Pay Table 2 (FRS)

Years of Service as <u>Assigned Paramedic</u>	Monthly Assignment <u>Pay</u>
<48 months	\$149
48 months	\$297
96 months	\$335
144 months	\$594

Section V. Paramedic assignment pay shall be initiated at the beginning of the pay period next following receipt of authorization from the Emergency Medical Director to practice as a paramedic in the Plano EMS system and advancement within the structure set forth in Section IV above shall be allowed at the beginning of the pay period immediately following the paramedic's reaching of the service years shown. All prior years of service in which a paramedic was assigned by the Fire Chief of the City of Plano and approved by the Medical Director to practice as a paramedic in the Plano EMS System shall be considered when placing existing paramedics in the structure set forth in Section IV.

Section VI. An ambulance assignment pay of \$10 is authorized for each paramedic and EMT, for each shift the individual is assigned to an ambulance.

Section VII. In accordance with Section 143.042 of the Texas Local Government Code and Rules and Regulations of the City of Plano Fire Fighters' and Police Officers' Civil Service Commission, the City of Plano hereby establishes that members of the Plano Fire Department who are assigned to and perform the following duties shall receive the following additional compensation for the period of assignment:

Paramedic Preceptor	\$45.00 per 24 hour shift
---------------------	---------------------------

Section VIII. In accordance with Section 143.043 of the Texas Local Government Code and Rules and Regulations of the City of Plano Fire Fighters' and Police Officers' Civil Service Commission, the City of Plano hereby establishes that members of the Plano Police Department who are assigned to and perform the following duties and responsibilities of the Field Training Officers program shall receive \$19.00 per day for the period of assignment.

Section IX. All provisions of the Ordinances of the City of Plano, codified and uncodified, 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 uncodified, not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

Section X. It is the intention of the City Council that this Ordinance, and every provision thereof, 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 constitutionality of any other portion of this Ordinance.

Section XI. Upon passage, this Ordinance shall become effective September 24, 2012.

DULY PASSED AND APPROVED, this, the 24th day of September 2012.

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:		09-24-12		
Department:		Economic Development		
Department Head		Frank Turner		
Agenda Coordinator (include phone #): Cindy Pierce, ext. 7121				
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 Collin Creek Mall, LLC and the City of Plano, Texas; authorizing its execution by the City Manager or his authorized designee; 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: 2012-13	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	18,932,420	0	18,932,420
Encumbered/Expended Amount		-9,492,175	-3,855,418	-13,347,593
This Item	0		-600,000	-600,000
BALANCE	0	9,440,245	-4,455,418	4,984,827
FUND(S): ECONOMIC DEVELOPMENT INCENTIVE 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 Rouse Properties for funding to pay expenses including, but not limited to, costs associated with plans, studies, improvements, and tenant retention, attraction and/or attainment for Collin Creek Mall. Rouse Properties agrees to maintain ownership of Collin Creek Mall which shall continue to operate as a retail mall space and be open to the public during the term of this agreement and use its best efforts to retain, expand and/or secure business enterprises at Collin Creek Mall.				
List of Supporting Documents: Resolution Economic Development 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 Collin Creek Mall, LLC and the City of Plano, Texas; 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 Collin Creek Mall, LLC and the City of Plano, Texas, 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 24th day of September, 2012.

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 Collin Creek Mall, LLC, a Delaware limited liability company (“Company”), acting by and through their respective authorized officers and representatives.

WITNESSETH:

WHEREAS, Company is the Owner of Collin Creek Mall, a retail mall space, located at 811 N. Central Expressway, Plano, Texas (the “Property”), and is in the process of retaining and securing business enterprises at the Property; and

WHEREAS, the City of Plano finds that Collin Creek Mall is a vital part of the City’s economy, and recognizes that action to revitalize and diversify the mall will achieve an important public benefit and stimulate the local economy; 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 Collin Creek Mall, LLC, a Delaware 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 in the City. An economic down turn shall not constitute an event of force majeure.

“Property” shall mean Collin Creek Mall located at 811 N. Central Expressway, Plano, Texas.

Article II Term

The term of this Agreement shall begin on the Effective Date and continue until December 31, 2013, 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 maintain ownership of the Property which shall continue to operate as a retail mall space and be open to the public during the term of this Agreement and use its best efforts to retain and/or secure business enterprises at the Property located in the City of Plano.

Article IV Economic Development Grant

4.01 **Grant.** The City agrees to provide the Company a cash grant in an amount not to exceed Six Hundred Thousand Dollars (\$600,000.00) to be paid to Company no later than October 31, 2012.

4.02 **Use of Funds.** Company may use the grant to pay expenses, including but not limited to, costs associated with plans, studies, improvements, and tenant retention, attraction and/or attainment for the Property.

4.03 **Refund/Default.**

(a) If either party breaches any of the terms and conditions herein during the term of this Agreement, it shall be an event of default.

(b) If 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 **Events of Termination.** This Agreement terminates upon any one or more of the following:

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

(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 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) in the preceding paragraph, 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 (30) 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 VII Miscellaneous

7.01 **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.

7.02 **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.

7.03 **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.

7.04 **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: Mr. Bruce D. Glasscock
City Manager
1520 Avenue K
P.O. Box 860358
Plano, TX 75086-0358

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

If intended for the Company:
Rouse Properties, Inc.
Attention: Chief Operating Officer
1114 Avenue of the Americas, Suite 2800
New York City, New York 10036

With Copy to:
Rouse Properties, Inc.
Attention: General Counsel
1114 Avenue of the Americas, Suite 2800
New York City, New York 10036

7.05 **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.

7.06 **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.

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

7.08 **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.

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

7.10 **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.

7.11 **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.

This Agreement shall be effective upon the last date on which all parties have executed this agreement.

ATTEST:

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

Diane Zucco, CITY SECRETARY

Bruce D. Glasscock, CITY MANAGER

Date: _____

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ATTEST:

COLLIN CREEK MALL, LLC, a Delaware
limited liability company

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

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:		September 24, 2012		
Department:		Planning		
Department Head		P. Jarrell		
Agenda Coordinator (include phone #): Doris Carter, x 5350				
CAPTION				
Consideration of an Appeal of the Heritage Commission's Denial of a Certificate of Appropriateness to reinstall a non-permanent retractable cover on the roof top patio located at 1006 E. 15th Street. Zoned Downtown Business/Government (BG); Heritage Resource #26 Designation (H-26). Applicant: Blackgold Partners/Nathan & Bonnie Shea. Tabled 08/13/12.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2011-12	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				
COMMENTS: This item has no fiscal impact. STRATEGIC PLAN GOAL: This item relates to the City's Goal of Exciting Urban Centers – Destination for Residents and Guests				
SUMMARY OF ITEM				
At its August 13, 2012 meeting, the City Council tabled this item to allow time for the applicant to meet with staff to discuss possible modifications/alterations of the patio cover (See Attached Memo).				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Memo				
Letter of Appeal from Applicant			Heritage Commission	
Heritage Commission Follow-up Memo				
Staff Report				

MEMORANDUM

Date: September 13, 2012

To: Mr. Bruce D. Glasscock, City Manager

From: Mr. Bhavesh Mittal, Heritage Preservation Officer

Subject: Appeal of the Heritage Commission's denial of a Certificate of Appropriateness to reinstall a non-permanent retractable cover on the roof top patio located at 1006 E. 15th Street.

At its August 13, 2012 meeting, the City Council tabled this item to allow time for the applicant to meet with staff to discuss possible modifications/alterations of the design of the patio cover. Staff met with the applicant on site on August 27, 2012. At that meeting, staff looked at the structure design and operation closely and discussed any possible modifications to comply with the directions provided by the Heritage Commission at their meeting on June 26, 2012. Following are staff observations and outcome from the meeting:

- The structure is a custom made awning system and any possible modification/alteration would require a complete disassembly.
- The installed structure cannot be modified to incorporate a shed type or sloped roof because the existing gutter system would have to be redesigned to collect the drainage. Additionally, the retractable shade mechanism and vinyl panels would have to be modified to accommodate the shed roof design.
- The overall height could potentially be reduced by 9"-12" but would require a complete disassembly with alterations to the structural framing and the front and side vinyl roll-up panels and screens. Also, the awning system has to be able to collect drainage from the existing roof located behind (south) of the new awning system.
- The existing 2'-0" horizontal panel at front and side elevations (near the top of the awning) cannot be reduced in height since it is designed to incorporate and hide the roof awning retractable mechanism and built-in gutter system.

Additionally at the meeting on August 27, 2012, staff encouraged the applicant to submit a building permit application to the Building Inspections Department, along with a Texas Certified Structural Engineer's report certifying that the awning system meets the 90 mph wind load requirement of the Building Code. As of September 13, 2012 the applicant has not submitted a building permit application nor the required structural engineers report.

The applicant is requesting that City Council approve the shade structure as originally designed and installed. Staff recommends that Council not take any

action related to this item until such time when the building permit application and structural engineer's report is submitted by the applicant and Building Inspections staff has had an opportunity to review the documentation.

cc: Mr. Frank Turner, Deputy City Manager
Ms. Phyllis Jarrell, Planning Director

BLACK GOLD PARTNERS, LLC

1006 E. 15TH STREET
PLANO, TX 75074
(214) 577-0446

RECEIVED
JUL 26 2012
PLANNING DEPT.

July 26, 2012

Bhavesh Mittal
Heritage Preservation Officer
City of Plano - Planning Department
1520 K. Avenue, Suite 250
Plano, TX 75074

Dear Mr. Mittal,

Please be advised that we are requesting to appeal to City Council the Heritage Commission's decision to deny our request for a certificate of appropriateness (CA) to re-install a non-permanent retractable cover on the rooftop patio at 1006 E. 15th Street in Downtown Plano.

Let me know if you have any questions.

Sincerely,



Nathan A. Shea
President, Black Gold Partners, LLC
Owner, Urban Crust, LLC

DATE: July 27, 2012
TO: Applicants with Items before the Heritage Commission
FROM: Chairman Anne Quaintance-Howard *AQH*
SUBJECT: Results of Heritage Commission Meeting of July 24, 2012

AGENDA ITEM NO. 5
CERTIFICATE OF APPROPRIATENESS: 1006 E. 15TH STREET
APPLICANT: BLACKGOLD PARTNERS/NATHAN & BONNIE SHEA

Request for a Certificate of Appropriateness (CA) to reinstall a non-permanent retractable cover on the roof top patio.

APPROVED: _____ **DENIED:** 6-0 **TABLED:** _____

STIPULATIONS:

The Heritage Commission denied the CA request stating the applicant did not comply with the directions offered by the Commission at the previous meeting on June 26, 2012.

The Commission provided the applicant with the following direction to consider:

- Stay close to the outline, scale and massing of the previous approved awning;
- Delete the faux brick decal on the panel and consider a more clear or transparent panel;
- Reduce the overall height of the structure;
- Reduce the massing by:
 - a. Eliminating center posts, if possible (structurally); and
 - b. Reducing the height of the 2'-0" panel
- Make the structure appear more temporary and less visible.

xc: Bonnie and Nathan Shea

CITY OF PLANO
HERITAGE COMMISSION

July 24, 2012

Agenda Item No. 5

Certificate of Appropriateness: 1006 E. 15th Street

Applicant: Blackgold Partners/Nathan & Bonnie Shea

REQUEST:

Request for a Certificate of Appropriateness (CA) to reinstall a non-permanent retractable cover on the roof top patio.

GENERAL INFORMATION:

Location: 1006 E. 15th Street (South side of 15th Street between J Avenue and K Avenue)

Zoning: Downtown Business/Government (BG); Heritage Resource #26 Designation (H-26)

Resource Type: Downtown Plano Heritage District

CASE HISTORY:

Date	Description
Mar 2005	CA approved to remove the false stucco mansard on the front facade, clean the brick beneath, and repaint where needed.
Aug 2007	CA approved to restore the historic front facade; repair the chimney, and remove the stucco partition.
Oct 2007	CA approved to demo the rear facade and construct a rear three-story addition.
Aug 2008	CA approved for modifications to the rear addition; approved signage location and size.
Apr 2009	CA approved to add a hanging sign and amend previously approved wall sign location and style.
Jun 2009	CA staff approved to install copper downspouts on front facade.
Mar 2010	CA approved to install a non-permanent retractable cover for weather purposes for roof top patio.

BACKGROUND:

Building:	Commercial
Architectural Style:	Late 19th - Early 20th Century Vernacular Commercial
Date of Construction:	Circa 1889
Historic Use:	Commercial - Harness and Barber shops
Current Use:	Commercial - Restaurant

Case History

This item was tabled at the Heritage Commission's meeting on June 26, 2012, and needs to be removed from the table for consideration.

The applicant installed a retractable solar shade over the existing roof top patio which was approved by the Heritage Commission on March 23, 2010 (see attachment). The original request was approved by the Commission for several reasons. It was not a permanent structure and could clearly be identified as a new feature in accordance with the Secretary of the Interior Standards. The installation of the original solar shade structure would not harm the building or have an adverse effect on the historic character of the building or the district. Finally, the approved shade structure request was consistent with what other cities have done on the rooftops of their historic downtown buildings.

In early 2012, a member of the Heritage Commission noticed the installed solar shade had holes and asked staff to investigate. Staff inspected the solar shade and concurred with the commissioner that the shade had holes and was in need of repair and or replacement and contacted the property owner to discuss the issue. The property owner was aware of the problem and had plans to address the situation.

Staff inspection of the property located at 1006 E. 15th Street in June 2012 revealed construction was underway for a new shade structure. The new construction did not match the previously approved plans to install a solar shade structure. The applicant was notified that the new proposal required review and approval from the Heritage Commission before it could be installed.

Proposal for New Shade Structure

The applicant is requesting approval to reinstall a non-permanent retractable cover over the existing roof top patio. The cover, as originally proposed, will consist of aluminum frame posts with powder coated exterior to prevent rust and panels which will extend downward from the top of the frame along the sides and front of the structure. A 3M film with laser image of bricks matching the existing building will be applied over the 22 caliber aluminum panels. The proposed awning is a three layer clefy blackout material with radiant barrier and fire retardant-stencil strength. The sides and front of the awning will be clear vinyl with an 8" ferrier fabric border. The entire structure will be 7'-8" high from the top of the existing parapet wall at the front.

The applicant has indicated, that the new cover will be easier to disassemble and remove than the original cover approved by the Commission as it would take five hours to remove and assemble as compared to ten hours with the prior design. The new

cover is manufactured by Corradi USA, the same company who made the first cover. The new shade system has an integrated gutter system to help improve rooftop drainage. The original cover dropped water into the street.

PREVIOUS COMMISSION ACTION:

June 26, 2012 meeting:

Staff findings and analysis: The applicant has removed a previously approved non-permanent retractable cover and started to install a new retractable solar shade system over the existing roof top patio without a Certificate of Appropriateness. The previous non-permanent retractable cover was approved by the Commission with a stipulation that the applicant will get necessary permits from the Building Inspections Department. On checking with the Building Inspections Department, staff was informed that the applicant did not get the required permits for both, the previously approved structure and the new proposed structure.

The staff believes that the proposed structure is more permanent looking than the previously approved non-permanent shade system. The overall height, massing, roof form and materials make the structure look like a vertical addition which will be highly visible from 15th Street and portions of K Avenue.

The use of aluminum panels and digitally printed brick looking film would be inappropriate and incompatible materials for such kind of non-permanent structures. The use of such materials would alter the buildings relationship to others on the street and diminish the public's ability to appreciate the original historic building materials.

In the Downtown Heritage District Guideline's section on awnings, the guidelines are directed toward storefront awnings only, not rooftop or other awning locations. The guidelines do state that vertical additions should not be visible when viewing the front of the structure from the street.

Staff recommended denial of the proposed request due to the following reasons:

1. The proposed retractable solar shade system/design looks like a permanent vertical addition for the following reasons:
 - a) The new shade structure is approximately two feet taller than previously approved non-permanent retractable cover. It is also taller than the existing roof top patio cover located behind this structure.
 - b) The proposed aluminum framework and panel (applied over the aluminum framing) size and scale is substantially more in massing as compared to previously approved simple metal framed non-permanent structure.
2. The proposed materials – Aluminum panels and 3M film with digital printed bricks (to match existing) over these panels are not compatible with the existing architectural and historic materials in Downtown Heritage District.

3. The overall height, scale and roof form makes is highly visible to a person standing on the opposite side (North) of 15th street. The proposed shade structure is not compatible with the size, scale, proportion, massing, material and character of the existing historic building and the Downtown Heritage District. Due to the above reasons, it fails to meet the following guidelines:
 - a) Section 10.1 and section 10.3 of Downtown Heritage District Design Guidelines. Please see attached Applicable Review Criteria attachment.
 - b) 'Preserve the historic character' criteria as suggested by the Secretary of the Interior in Preservation Brief No. 14. Please see attached copy of Preservation Brief 14 with Agenda Item #5 in the packet.
 - c) Section 9 from the Secretary of the Interior's Standard for Rehabilitation. Please see attached Applicable Review Criteria attachment.
4. The proposed shade structure would alter the existing roofline and massing of the group of historic buildings on 15th Street.

Commission Action: The Commission tabled the request to the July 24, 2012, meeting, to allow the applicant additional time to work with staff and consider modifications to the original submitted plans due to the proposed request being inconsistent with the design guidelines and concerns expressed regarding the permanency of the proposed awning system. The Commission provided the following directions to the applicant:

- Stay close to the outline, scale and massing of the previously approved awning;
- Delete the faux brick decal on the panel and consider a more clear or transparent panel;
- Reduce the overall height of the structure;
- Reduce the massing by:
 - a. Eliminating center posts, if possible (structurally); and
 - b. Reducing the height of the 2'-0" panel;
- Make the structure appear more temporary and less visible.

STAFF FINDINGS AND ANALYSIS:

Since the last Commission meeting on June 26, 2012, the staff met with the applicant's architect and the roof shade installer on July 5, 2012, to discuss the recommendations provided by the Commission at the June 26, 2012 meeting. At that meeting, staff requested the applicant's representatives to submit revised drawings before the next Commission meeting. The Staff received a revised drawing on July 19, 2012, showing the faux brick decal on the horizontal panel being removed and the panel is now proposed to be clear polygal to match the clear vinyl roll-up panels on the sides of the structure. The polygal is a clear rigid greenhouse material made of high strength plastic per the applicant's architect. No other changes are proposed to the shade structure. The polygal panel is consistent with the Commission's direction from their June 24, 2012 meeting only. Otherwise, the proposed structure does not comply with the remaining direction provided by the Commission.

As per the Commission's request at the previous meeting, the staff researched rooftop patio cover guidelines followed by other historic downtowns and found no specific guidelines for rooftop covers. The research found that other cities have been following their rooftop addition guidelines for such requests. Below a list of some most commonly used guidelines:

- The rooftop additions shall be setback at least the distance equal to the additional maximum height proposed, and it shall be as minimally visible as possible;
- The additions shall have a flat roof;
- The rooftop addition shall be as inconspicuous as possible when viewed from the street;
- The size, scale and massing of the addition shall be compatible with existing historic building and adjacent buildings in the historic district;
- The materials, detailing and scale of the addition shall not stand out to distract from the historic character and architecture of the existing building and other buildings in the neighborhood;
- The rooftop addition shall not obscure or damage existing historic features; and
- The addition shall be discernible, albeit in a subtle way.

Please see attachment C for downtown rooftop guidelines from the City of New Orleans, Central Business District (CBD) Ordinance, City of San Jose downtown historic resource and San Antonio's Houston Street Design Guidelines.

Staff continues to recommend denial of the proposed shade structure due to the structure being inconsistent with the Downtown District Guidelines; the structure is not compatible with the size, scale, massing, and character of the Downtown Heritage District; and the structure alters the existing roofline and massing of the historic buildings along the 15th Street.

STAFF RECOMMENDATION:

Staff recommends denial of the proposed request.

APPLICABLE REVIEW CRITERIA:

Downtown Heritage District Guidelines

No.	Guideline Statement
New Construction and Additions	
10.1	All new construction should reflect the architectural character of the downtown district, reflecting existing buildings in form, shape, solid-to-void ratio, detail and general appearance, paying particular attention to the elements pointed out in the first section of these guidelines.
10.2	New buildings should abut the sidewalk. The setbacks for all new construction should match the setback of other buildings on the block. Infill buildings between historic buildings should be similar in setback, roof form, cornice line, and materials, to nearby buildings.
10.3	Vertical additions to historic buildings in the district are discouraged but may be appropriate if set back to the rear of the property and not visible to a person standing on the opposite side of the street to which the building faces.
10.4	Maintain the height and rhythm of buildings along the street face. New buildings and additions should respect both the height and bay spacing of adjacent buildings. They should also ensure continuity of cornice lines and windows. The height of an addition and the height of a new building should not exceed the height of the tallest building on the block. New buildings or additions along the south side of 15th Place may exceed the height of the tallest building as long as it cannot be seen by a person standing on the south side of 15th Street.

Secretary of the Interior's Standards for Rehabilitation

No.	Standard Statement
9.	New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.
10.	New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

Revised drawing submitted 7/19/2012

AWNING MATERIAL: 3 LAYER CLEFY BLACKOUT MATERIAL W/ RADIANT BARRIER & FIRE RETARDANT

SIDE MATERIAL: CLEAR VINYL W/ 8" FERRIER FABRIC BORDER

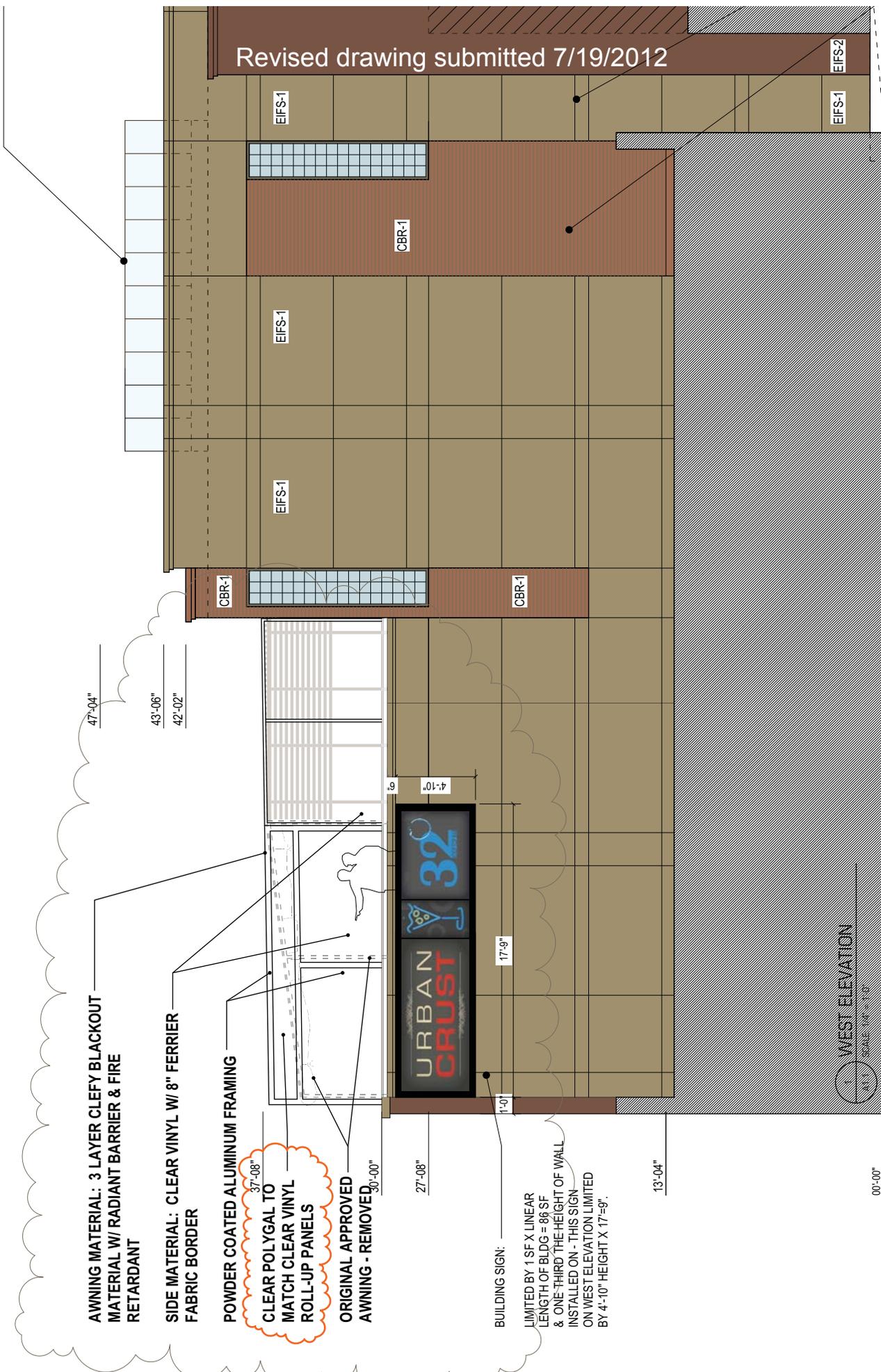
POWDER COATED ALUMINUM FRAMING

CLEAR POLYGL TO MATCH CLEAR VINYL ROLL-UP PANELS

ORIGINAL APPROVED AWNING - REMOVED

BUILDING SIGN:

LIMITED BY 1 SF X LINEAR LENGTH OF BLDG = 86 SF & ONE-THIRD THE HEIGHT OF WALL INSTALLED ON - THIS SIGN ON WEST ELEVATION LIMITED BY 4'-10" HEIGHT X 17'-9".



1 WEST ELEVATION
SCALE: 1/4" = 1'-0"

00'-00"

EIFS-2

EIFS-1

CBR-1

EIFS-1

EIFS-1

EIFS-1

CBR-1

CBR-1

AWNING MATERIAL: 3 LAYER CLEFY BLACKOUT MATERIAL W/ RADIANT BARRIER & FIRE RETARDANT

SIDE MATERIAL: CLEAR VINYL W/ 8" FERRIER FABRIC BORDER

POWDER COATED ALUMINUM FRAMING

DIGITAL PRINTED BRICK ON 3M FILM ADHERED TO ALUMINUM PANEL

ORIGINAL APPROVED AWNING - REMOVED

BUILDING SIGN:

LIMITED BY 1 SF X LINEAR LENGTH OF BLDG = 86 SF & ONE-THIRD THE HEIGHT OF WALL INSTALLED ON - THIS SIGN ON WEST ELEVATION LIMITED BY 4'-10" HEIGHT X 17'-9".

47'-04"

43'-06"

42'-02"

4'-10"

6"

17'-9"

1'-0"

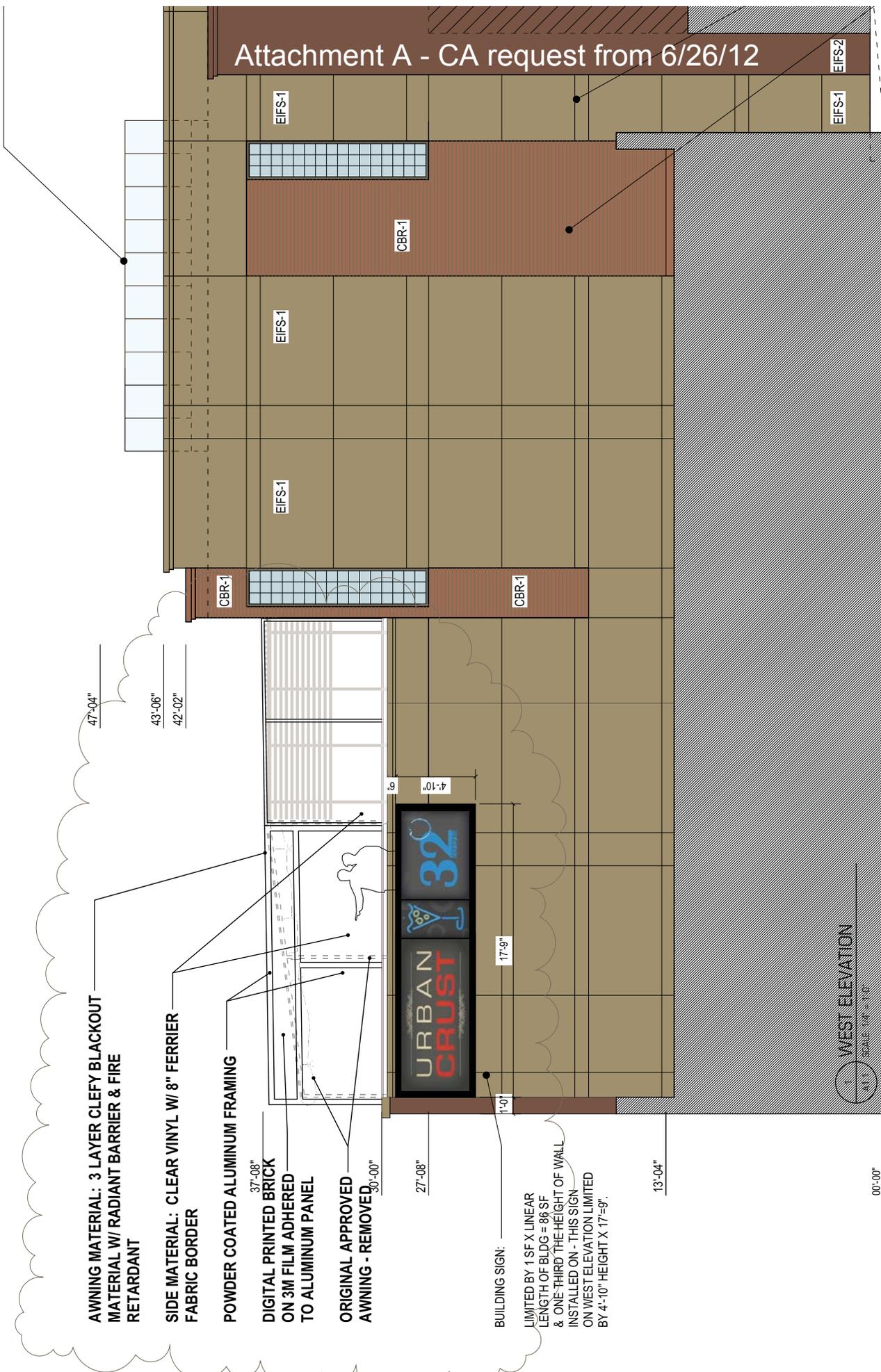
27'-08"

30'-00"

13'-04"

1 WEST ELEVATION
SCALE: 1/4" = 1'-0"

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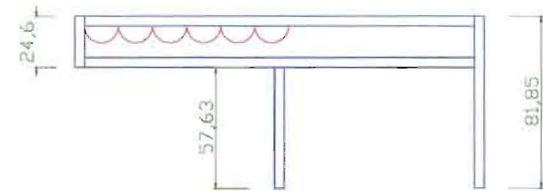
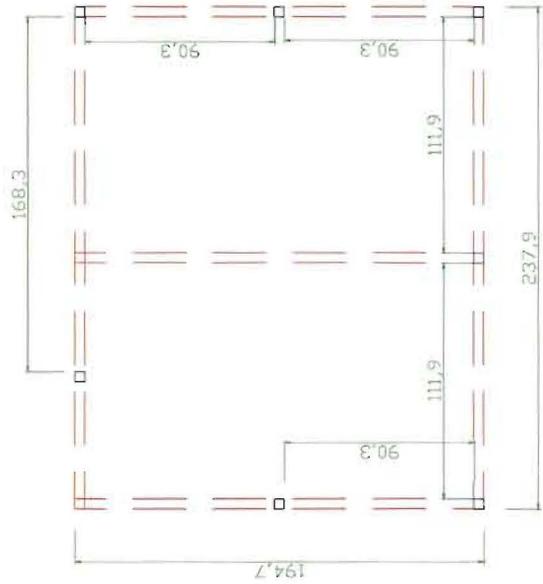
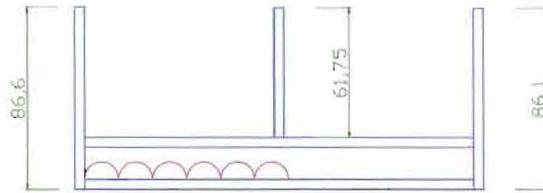
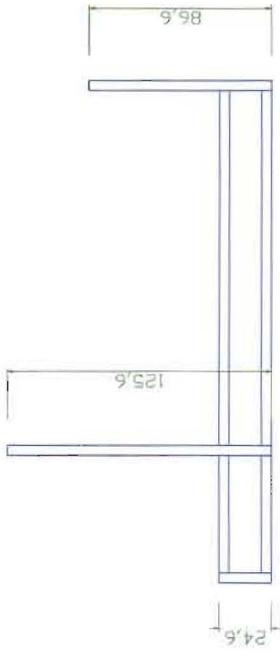
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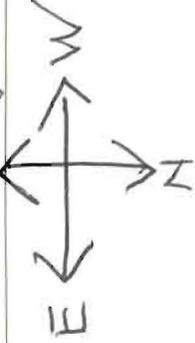
Corradi USA
OUTDOOR LIVING SPACE

Attachment 4

progeCAD 2008 Smart! - Private use only



(Framing Only)

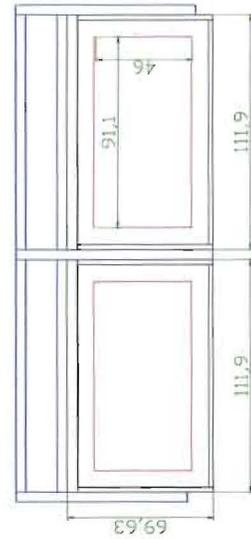
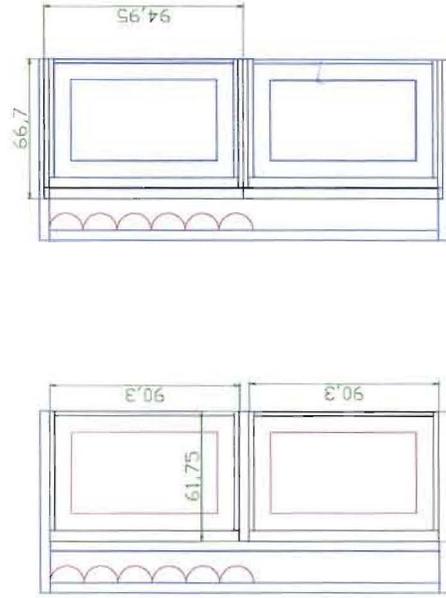
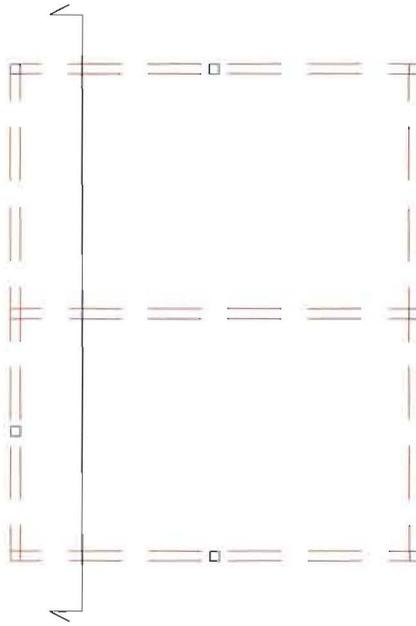
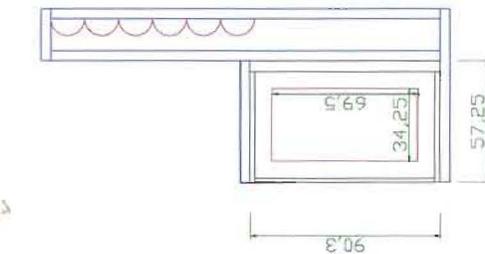
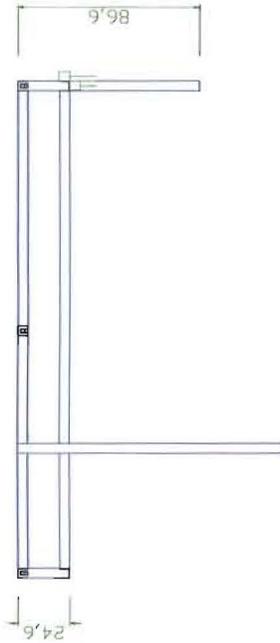


PIANTA e
PROSPETTI

progeCAD 2008 Smart! - Private use only

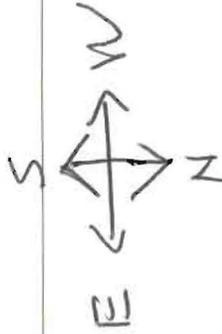
Attachment 4

progeCAD 2008 Smart! - Private use only



ERMETIKA
DIMENSION

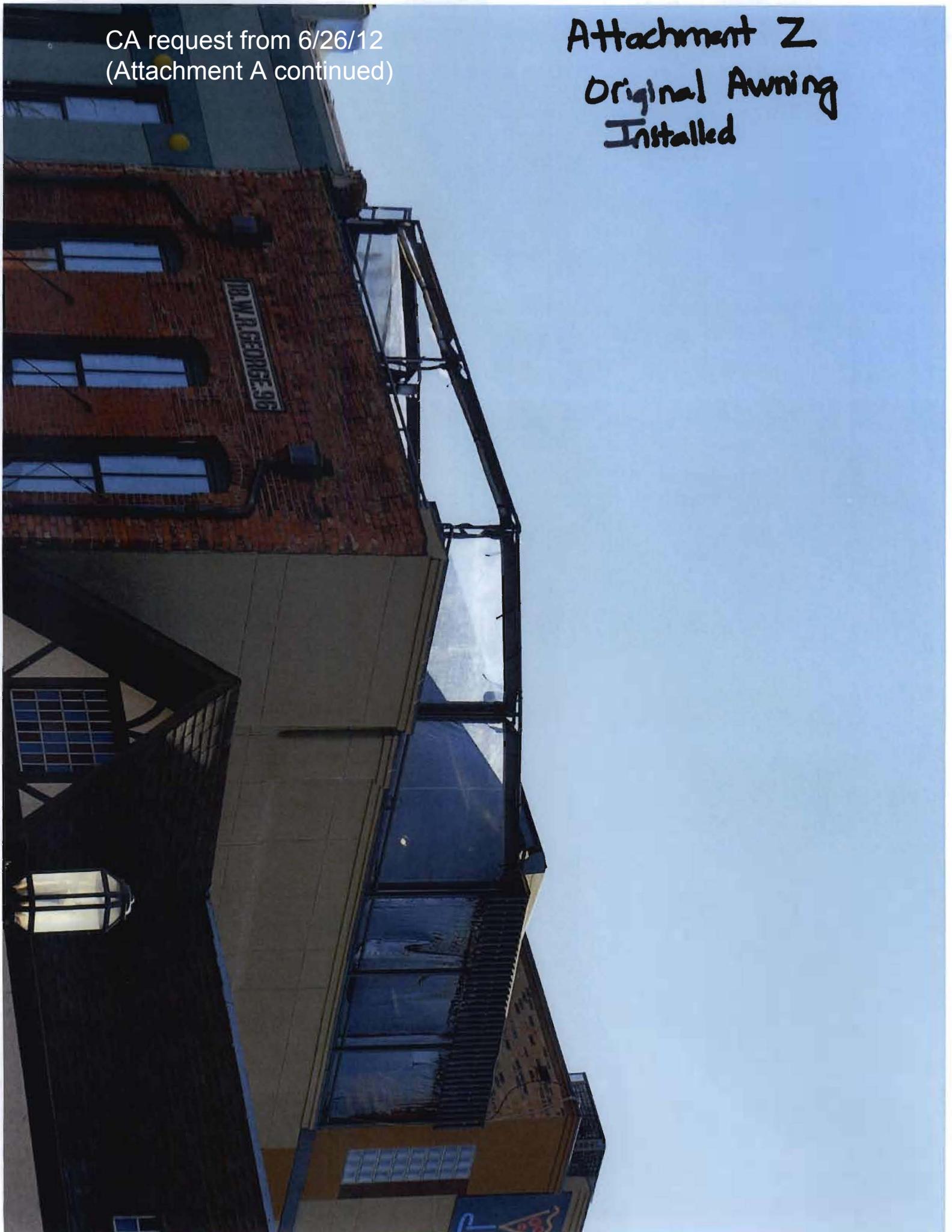
(Vinyls./Covers)



progeCAD 2008 Smart! - Private use only

CA request from 6/26/12
(Attachment A continued)

Attachment Z
Original Awning
Installed



Attachment 4-I

Materials:

**Aluminum posts with powder coated exterior –
no rust**

**Laser imaged bricks to match the exterior of
building is applied over the 22-guage
aluminum top**

**The awning material is 3 layer clefy blackout
material w/ radiant barrier and fire retardant –
stencil strength (new burn safe technology)**

**The sides ^(and the front) are clear vinyl with 8 “ ferrier fabric
border**

Attachment I – continued

- **The new cover is easier to disassemble and remove than the original cover approved two years ago on 4/12/10 by the Heritage Commission**
- **The new cover takes 5 hours to disassemble, and can be put right back together without any modifications (just like it comes down) (each piece remains totally intact – put together by a cordless drill); the old cover took 10 hours to disassemble**
- **The new cover is made by the same company as the original unit – Corradi USA; it is their new model with newer technology**
- **The new cover controls drainage through the internal gutter system, while the old unit dropped water onto the street**
- **The new cover material is completely fire-retardant**

3/23/2010 APPROVED CERTIFICATE OF APPROPRIATENESS
Attachment B



CERTIFICATE OF APPROPRIATENESS
HERITAGE COMMISSION
CITY OF PLANO



I. Property Information:

1. Name of Resource (Historic Name/Current Name): W.R. George Building/Urban Crust - 32° Rooftop Bar
2. Address/Location: 1006 E. 15th Street, Plano, TX 75074

II. Applicant Information:

3. Name of Owner: Blockgold Partners Name of Applicant (if different): Nathan Shea
Company: _____ Relationship to Property: Owner
Address: 3106 Dublin Road Address: _____
City, State: Parker, TX 75002 City, State: _____
Home: _____ Home Phone: _____
Business: 214-577-0446 Business Phone: _____
E-mail: nsheal@verizon.net E-mail: _____

III. Approved Work and Conditions

- Date CA Approved: 03/23/2010
Date CA Expires: 03/23/2011

CITY OF PLANO
HERITAGE PRESERVATION
CERTIFICATE OF APPROPRIATENESS
[Signature]
DATE 4/12/10

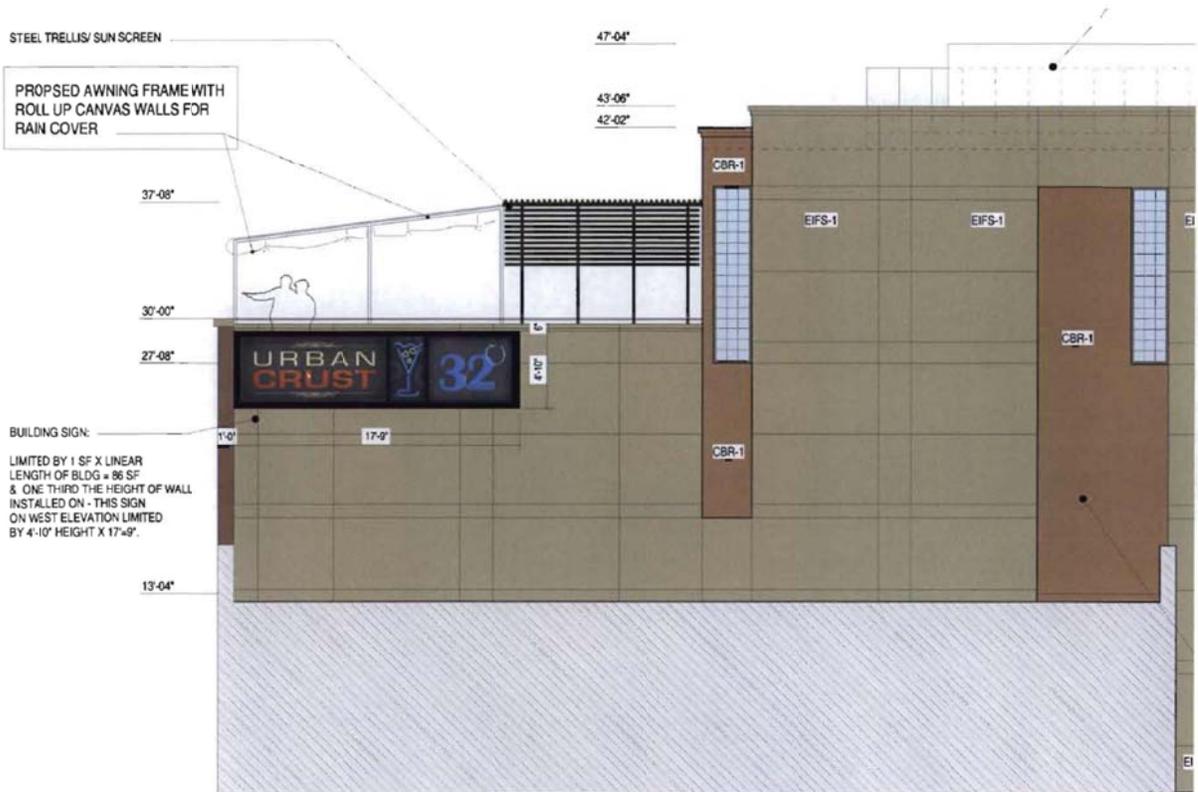
Certificate of Appropriateness approved to:

Install non-permanent, retractable cover for weather purposes for patio.

IMPORTANT: APPROVAL OF THIS APPLICATION BY THE HERITAGE COMMISSION DOES NOT CONSTITUTE A BUILDING PERMIT. APPROPRIATE PERMITS MUST BE OBTAINED IN ADDITION TO A CERTIFICATE OF APPROPRIATENESS (CA). THE HERITAGE COMMISSION MEETS ON THE FOURTH TUESDAY OF EVERY MONTH. APPLICATIONS FOR CA's MUST BE SUBMITTED BY 5:00 P.M. ON THE FIRST TUESDAY OF THE MONTH.

ONCE APPROVED (STAMPED), DISPLAY THIS CERTIFICATE IN A WINDOW OR OTHER PROMINENT PLACE DURING THE COURSE OF THE PROJECT.

**3/23/2010 APPROVED NON-PERMANENT RETRACTABLE SHADE
(Attachment B Continued)**



Sample Image of Side Flaps (Actual flaps will be similar to image below)





**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:		September 24, 2012		
Department:		Planning		
Department Head		P. Jarrell		
Agenda Coordinator (include phone #): D. Carter, ext. 5350				
CAPTION				
Public Hearing and consideration of an Ordinance of the City of Plano as requested in Zoning Case 2012-12 to amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, so as to amend Planned Development-374-Retail on 6.9± acres of land out of the Frances McCullough Survey, Abstract No. 586, located at the northeast corner of Plano Parkway and Independence Parkway, in the City of Plano, Collin County, Texas, to modify the development standards of the district including amending or repealing the limitation on the hours of operation; 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: Racetrac. Tabled 09/10/12.				
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:				
SUMMARY OF ITEM				
This item was tabled by a vote of 7-0 at the September 10, 2012 City Council meeting at the applicant's request. This item needs to be removed from the table. Should the City Council want to approve this request, a super majority vote, or 6 out of the 8 Council members is required (see attached memo).				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
Memo		Planning & Zoning Commission		
P&Z Follow-up				
Staff Write-up				
Maps				
Ordinance				

MEMO

September 17, 2012

TO: Mr. Bruce D. Glasscock, City Manager
Mr. Frank F. Turner, Deputy City Manager

FROM: Mr. Eric Hill, Senior Planner

RE: Zoning Case 2012-12

This item was tabled at the September 10, 2012 City Council meeting per the applicant's request.

The applicant does not accept the Planning & Zoning Commission's action and requests that the hours of operation limitation be removed as requested in their original zoning petition. Therefore, pursuant to Subsection 6.108 of Section 6.100 (Procedural Steps of Zoning Petitions and Amendments) of Article 6 (Procedures and Administration) of the Zoning Ordinance, a 3/4 majority vote, or 6 out of the 8 Council members is required for approval of this zoning case.

Additionally, staff has received letters in opposition to this request that exceed 20% of the area of the lots immediately adjoining the area of request. As such, pursuant to Subsection 6.113 of Section 6.100 (Procedural Steps of Zoning Petitions and Amendments) of Article 6 (Procedures and Administration) of the Zoning Ordinance, a 3/4 majority vote, or 6 out of the 8 Council members is required for approval of this zoning case.

Phyllis Jarrell, Director of Planning and Tina Firgens, Planning Manager will be present at the City Council meeting to address any questions regarding this item.

DATE: August 21, 2012
TO: Honorable Mayor & City Council
FROM: Chris Caso, Chairman, Planning & Zoning Commission
SUBJECT: Results of Planning & Zoning Commission Meeting of August 20, 2012

**AGENDA ITEM NO. 6 - PUBLIC HEARING
ZONING CASE 2012-12
APPLICANT: RACETRAC**

Request to amend Planned Development-374-Retail on 6.9± acres located at the northeast corner of Plano Parkway and Independence Parkway to modify the development standards of the district including amending or repealing the limitation on the hours of operation. Zoned Planned Development-374-Retail/190 Tollway/Plano Parkway Overlay District. Tabled March 19, 2012, April 16, 2012, and July 16, 2012.

APPROVED: 5-2 **DENIED:** _____ **TABLED:** _____

LETTERS RECEIVED WITHIN 200 FOOT NOTICE AREA: **SUPPORT:** 2 **OPPOSE:** 11

LETTERS RECEIVED OUTSIDE 200 FOOT NOTICE AREA: **SUPPORT:** 0 **OPPOSE:** 0

PETITION(S) RECEIVED: N/A **# OF SIGNATURES:** N/A

STIPULATIONS:

Recommended for approval as follows: (Proposed additions are indicated by underlined text; deletions are indicated by strikethrough text.)

Restrictions:

1. Maximum Square Footage: 118,701 square feet of building area
2. Maximum Retail: 100% - Neighborhood Support Retail.
In addition to those uses permitted in the Retail districts, the following uses shall be permitted:
 - Office - showroom/warehouse
 - Office - technical
 - Scientific and research labs
3. Truck docks for these uses shall be located at grade level.
4. Maximum Floor Area Ratio: 0.5:1
5. Maximum Floor Area Ratio on any Given Lot: 0.75:1
6. Maximum Lot Coverage: 40% (inclusive of parking structures)

7. Maximum Building Height: 2 story (36 feet) - all heights shall include mechanical/penthouse
8. Maximum Parking Structure Height: 2 levels above grade (20 feet)
9. Setback Requirements: 50 feet from north property line and 50 feet from Plano Pkwy.

The zoning granted above is granted subject to the following additional stipulations:

1. Regulatory provisions of the Zoning Ordinance pertaining to additional setbacks from residential zoning districts (Sections 3.500, 3.600, and 3.700) shall apply to this tract.
2. A study of Plano Pkwy., from Jupiter Rd. to Preston Rd., shall be conducted by the city to evaluate standards and plans for driveway spacing, median breaks, acceleration/deceleration lanes, signalization, and intersection design. The objective of the study is to enhance the parkway's capacity without adding additional through lanes. The cost of the study shall be borne by the petitioners for zoning. The closing of Longworth Dr. north of Plano Pkwy. shall be a major consideration in the Plano Parkway Study.
3. All landscape areas required by the Design Guidelines (referenced after PD-393-R/O-2) shall be irrigated by an underground, automatic sprinkler system.
4. All subsequently approved preliminary site plans and site plans for this tract shall conform to the Design Guidelines for the Plano Pkwy./S.H. 190 Corridor as adopted by the City Council and as placed by the owner as Restrictive Covenants on the tract binding both the current and future owners to such guidelines.
5. This tract shall be deed restricted to limit the hours of operation to ~~47~~ 19 total hours, preferably ~~41:00 p.m.~~ with 12:00 a.m. to 5:00 a.m. being the closing closed hours.
6. No access to any tract shall be gained from the existing alley or alleys serving the residential area.
7. Truck docks and trash containers shall be to the interior of constructed buildings and at grade.
8. There will be no dedicated street adjacent and parallel to the residential district.
9. Parking structures shall be screened from view of the residential district through the use of natural screens.
10. Sodium vapor lights shall not be used for parking lots and other exterior lighting. All lighting shall meet the requirements of the Plano Lighting Ordinance.

Refer to Design Guidelines after PD-393-R/O-2 for additional stipulations.

The Commissioner's voting in opposition wanted to leave the current restrictions in place with no modifications.

FOR CITY COUNCIL MEETING OF: September 10, 2012 (To view the agenda for this meeting, see www.planotx.org)

PUBLIC HEARING - ORDINANCE

EH/sf

xc: Anita James, Racetrac Petroleum
Tommy Mann, Winstead PC

CITY OF PLANO
PLANNING & ZONING COMMISSION

August 20, 2012

Agenda Item No. 6

Public Hearing: Zoning Case 2012-12

Applicant: RaceTrac

DESCRIPTION:

Request to amend Planned Development-374-Retail on 6.9± acres located at the northeast corner of Plano Parkway and Independence Parkway to modify the development standards of the district including amending or repealing the limitation on the hours of operation. Zoned Planned Development-374-Retail/190 Tollway/Plano Parkway Overlay District. Tabled March 19, 2012, April 16, 2012, and July 16, 2012.

REMARKS:

This item was tabled at the July 16, 2012 Planning & Zoning Commission meeting. It must be removed from the table.

The applicant is requesting to amend Planned Development-374-Retail (PD-374-R) in order to remove a stipulation limiting the hours of operation. The R district is primarily intended to provide areas for neighborhood, local, and regional shopping facilities for the retail sales of goods and services including convenience stores, shopping centers, and regional malls but not including wholesaling and warehousing. A planned development district provides the ability to amend use, height, setback, and other development standards at the time of zoning to promote innovative design and better development controls appropriate to both off- and onsite conditions.

PD-374-R was initially approved by City Council in 1987, along with several other similar PDs in the Plano Parkway corridor. The stipulations of PD-374-R limit the maximum allowable square footage, floor area ratio (FAR), as well as other area, yard, and bulk requirements. The PD also has stipulations regarding landscaping, lighting, truck dock and trash enclosure construction, and other standards specific to the Plano Parkway corridor.

The purpose of this zoning request is to amend the PD to remove a stipulation limiting the hours of operation. Currently, the PD specifies that "this tract shall be deed restricted to limit the hours of operation to 17 total hours, preferably 11:00 p.m. to be the

closing hour.” The applicant owns and operates an existing convenience store with gas pumps facility at this location and would like to operate the store 24 hours a day.

When this PD was created, the surrounding homeowners were concerned about 24 hour operations occurring at this location; therefore, the applicant proposed a PD stipulation deed restricting the hours of operation. The city does not typically impose or enforce deed restrictions, nor does it limit the hours of operation for businesses. Instead, Plano has adopted ordinances which limit noise and lighting, and applies other performance standards. It is the intent of these ordinances to allow businesses to operate 24 hours a day, if preferred, while providing adequate development standards and safeguards important to the welfare and protection of adjacent properties. Although it was never filed, there is an existing deed restriction which meets the intent of the current PD stipulation. The city is not a party to the deed restriction and does not monitor or enforce it.

Additionally, Section 3.1500 (Residential Adjacency Standards) of Article 3 (Supplementary Regulations) of the Zoning Ordinance contains residential adjacency standards which prohibit fuel dispensing facilities from locating within 150 feet of residential zoning districts. The purpose of the residential adjacency standards is to preserve the integrity, enjoyment and property values of residential neighborhoods from uses that may impact the neighborhoods. This setback, along with the performance standard ordinances, protects nearby residential neighborhoods as well as commercial properties from businesses whose operations may impact nearby properties. Staff believes that the language included in this PD is not necessary due to these existing ordinances, and is therefore in support of removing the limitation regarding hours of operations.

Surrounding Land Uses and Zoning

The area of the request is partially developed as a convenience store with gas pumps on the northeast corner of Plano Parkway and Independence Parkway, and vacant properties further to the north and east. The property to the north and east of the PD is zoned Single-Family Residence-9 (SF-9) and is developed as existing residences. There is also an existing office building to the east, zoned Planned Development-375-Retail/General Office (PD-375-R/O-2). To the south, across Plano Parkway, is an existing independent living facility and vacant land, zoned Planned Development-382-Retail/General Office (PD-382-R/O-2). To the west, across Independence Parkway, the property is vacant and zoned Planned Development-373-Retail/General Office (PD-373-R/O-2).

Conformance to the Comprehensive Plan

Future Land Use Plan - The Future Land Use Plan designates this property as Low Intensity Office (LIO). Low Intensity Office includes a variety of employment uses which serve local needs and heights are typically less than four stories with FAR's less than 0.4:1. This request is in conformance with the Future Land Use Plan.

Adequacy of Public Facilities - Adequate water and sanitary sewer services are available via extensions from existing lines along Plano Parkway and Independence Parkway.

Traffic Impact Analysis - A TIA is not required for this request.

SUMMARY:

The applicant is requesting to amend PD-374-R in order to remove a stipulation limiting the hours of operation. The city does not typically enforce or monitor deed restrictions, nor does it limit the hours of operation for businesses. Due to existing residential adjacency and performance standard regulations, staff believes that this PD restriction is no longer necessary. Staff supports the PD amendment as requested.

RECOMMENDATION:

Recommended for approval as follows:

Proposed additions are indicated by underlined text; deletions are indicated by strikethrough text.

Restrictions:

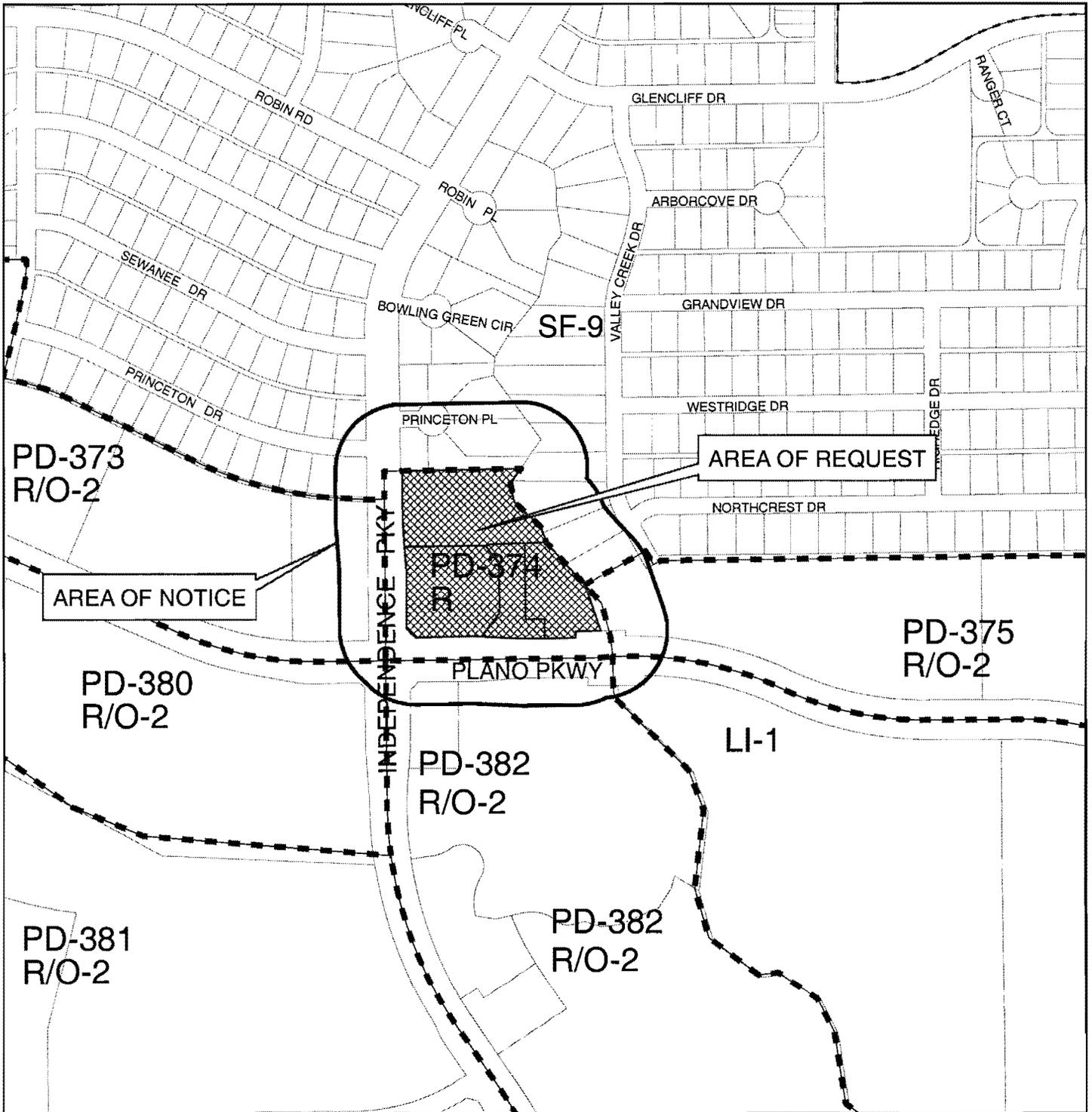
1. Maximum Square Footage: 118,701 square feet of building area
2. Maximum Retail: 100% - Neighborhood Support Retail.
In addition to those uses permitted in the Retail districts, the following uses shall be permitted:
 - Office - showroom/warehouse
 - Office - technical
 - Scientific and research labs
3. Truck docks for these uses shall be located at grade level.
4. Maximum Floor Area Ratio: 0.5:1
5. Maximum Floor Area Ratio on any Given Lot: 0.75:1
6. Maximum Lot Coverage: 40% (inclusive of parking structures)
7. Maximum Building Height: 2 story (36 feet) - all heights shall include mechanical/penthouse
8. Maximum Parking Structure Height: 2 levels above grade (20 feet)
9. Setback Requirements: 50 feet from north property line and 50 feet from Plano Pkwy.

The zoning granted above is granted subject to the following additional stipulations:

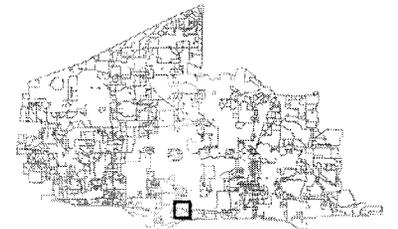
1. Regulatory provisions of the Zoning Ordinance pertaining to additional setbacks from residential zoning districts (Sections 3.500, 3.600, and 3.700) shall apply to this tract.

2. A study of Plano Pkwy., from Jupiter Rd. to Preston Rd., shall be conducted by the city to evaluate standards and plans for driveway spacing, median breaks, acceleration/deceleration lanes, signalization, and intersection design. The objective of the study is to enhance the parkway's capacity without adding additional through lanes. The cost of the study shall be borne by the petitioners for zoning. The closing of Longworth Dr. north of Plano Pkwy. shall be a major consideration in the Plano Parkway Study.
3. All landscape areas required by the Design Guidelines (referenced after PD-393-R/O-2) shall be irrigated by an underground, automatic sprinkler system.
4. All subsequently approved preliminary site plans and site plans for this tract shall conform to the Design Guidelines for the Plano Pkwy./S.H. 190 Corridor as adopted by the City Council and as placed by the owner as Restrictive Covenants on the tract binding both the current and future owners to such guidelines.
- ~~5. This tract shall be deed restricted to limit the hours of operation to 17 total hours, preferably 11:00 p.m. to be the closing hour.~~
- ~~6.~~ 5. No access to any tract shall be gained from the existing alley or alleys serving the residential area.
- ~~7.~~ 6. Truck docks and trash containers shall be to the interior of constructed buildings and at grade.
- ~~8.~~ 7. There will be no dedicated street adjacent and parallel to the residential district.
- ~~9.~~ 8. Parking structures shall be screened from view of the residential district through the use of natural screens.
- ~~10.~~ 9. Sodium vapor lights shall not be used for parking lots and other exterior lighting. All lighting shall meet the requirements of the Plano Lighting Ordinance.

Refer to Design Guidelines after PD-393-R/O-2 for additional stipulations.



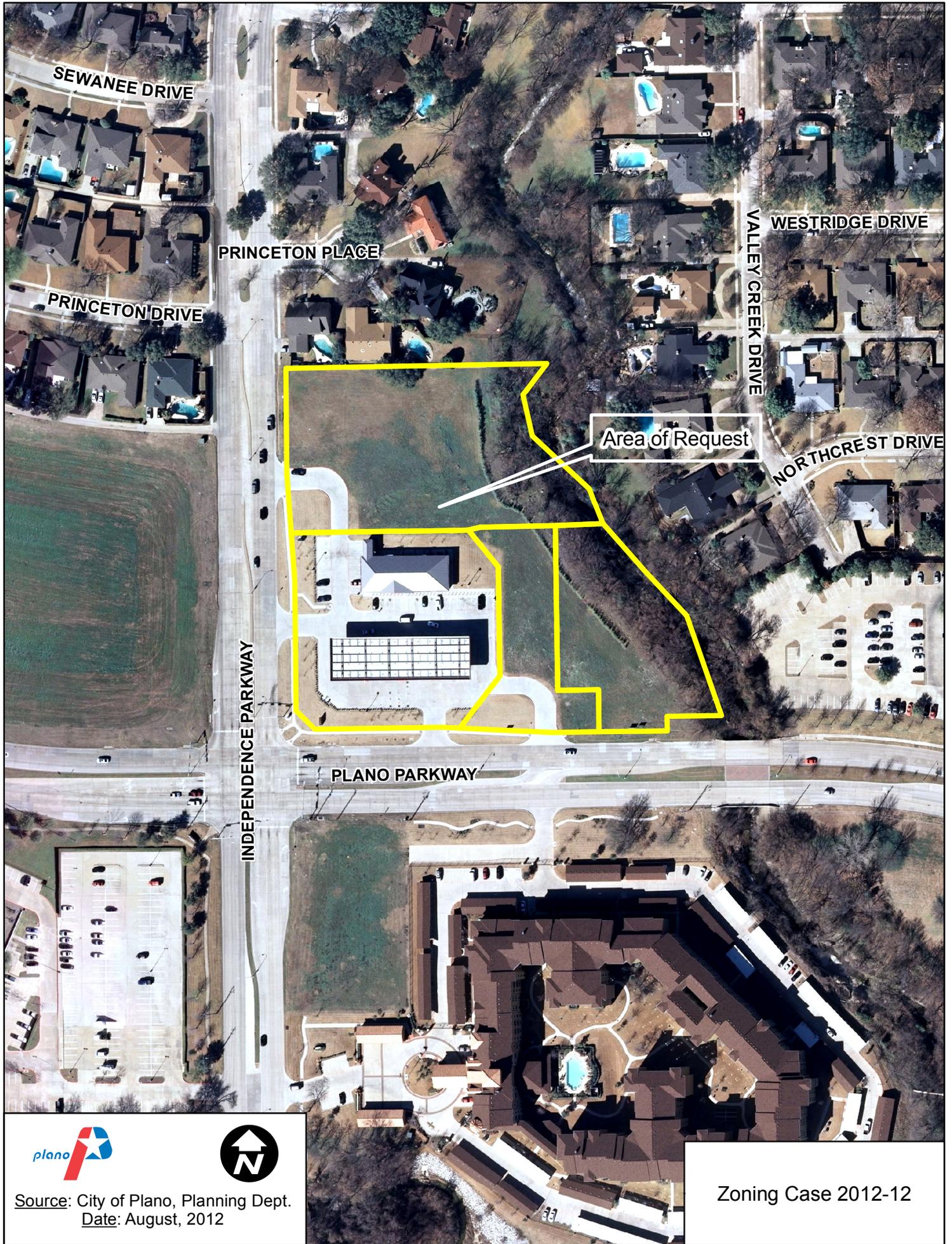
Zoning Case #: 2012-12



Existing Zoning: PLANNED DEVELOPMENT-374-RETAIL/
190 TOLLWAY/PLANO PARKWAY OVERLAY DISTRICT



○ 200' Notification Buffer



Des Saver-4/10/2012 X:\Dept\P&Z Locators & Graphics\Z2012-12A.mxd



Source: City of Plano, Planning Dept.
Date: August, 2012

Zoning Case 2012-12

Zoning Case 2012-12

An Ordinance of the City of Plano amending the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, so as to amend Planned Development-374-Retail on 6.9± acres of land out of the Frances McCullough Survey, Abstract No. 586, located at the northeast corner of Plano Parkway and Independence Parkway, in the City of Plano, Collin County, Texas, to modify the development standards of the district including amending or repealing the limitation on the hours of operation; 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.

WHEREAS, the City Secretary of Plano, Texas, directed that notices of a hearing be issued, as required by the Zoning Ordinance of the City of Plano and laws of the State of Texas, at a meeting of the City Council, to be held on the 10th day of September, 2012, for the purpose of considering amending Planned Development-374-Retail on 6.9± acres of land out of the Frances McCullough Survey, Abstract No. 586, located at the northeast corner of Plano Parkway and Independence Parkway, in the City of Plano, Collin County, Texas, to modify the development standards of the district including amending or repealing the limitation on the hours of operation; and

WHEREAS, the City Secretary of the said City accordingly caused to be issued and published the notices required by its Zoning Ordinance and laws of the State of Texas applicable thereto, the same having been published in a paper of general circulation in the City of Plano, Texas, at least fifteen (15) days prior to the time set for such hearing; and

WHEREAS, the City Council of said City, pursuant to such notice, tabled the request, and held its public hearing and heard all persons wishing to be heard both for and against the aforesaid change in the Zoning Ordinance, on the 24th day of September, 2012; and

WHEREAS, the City Council is of the opinion and finds that such amendment would not be detrimental to the public health, safety, or general welfare, and will promote the best and most orderly development of the properties affected thereby, and to be affected thereby, in the City of Plano, and as well, the owners and occupants thereof, and the City generally.

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

Section I. The Comprehensive Zoning Ordinance No. 2006-4-24, as the same has been heretofore amended, is hereby further amended so as to amend

Planned Development-374-Retail on 6.9± acres of land out of the Frances McCullough Survey, Abstract No. 586, located at the northeast corner of Plano Parkway and Independence Parkway, in the City of Plano, Collin County, Texas, to modify the development standards of the district including amending or repealing the limitation on the hours of operation, said property being described in the legal description on Exhibit "A" attached hereto.

Section II. The change granted in Section I is granted subject to the following:

Restrictions:

1. Maximum Square Footage: 118,701 square feet of building area
2. Maximum Retail: 100% - Neighborhood Support Retail.
In addition to those uses permitted in the Retail districts, the following uses shall be permitted:
 - Office - showroom/warehouse
 - Office - technical
 - Scientific and research labs
3. Truck docks for these uses shall be located at grade level.
4. Maximum Floor Area Ratio: 0.5:1
5. Maximum Floor Area Ratio on any Given Lot: 0.75:1
6. Maximum Lot Coverage: 40% (inclusive of parking structures)
7. Maximum Building Height: 2 story (36 feet) - all heights shall include mechanical/penthouse
8. Maximum Parking Structure Height: 2 levels above grade (20 feet)
9. Setback Requirements: 50 feet from north property line and 50 feet from Plano Pkwy.

The zoning granted above is granted subject to the following additional stipulations:

1. Regulatory provisions of the Zoning Ordinance pertaining to additional setbacks from residential zoning districts (Sections 3.500, 3.600, and 3.700) shall apply to this tract.

2. A study of Plano Pkwy., from Jupiter Rd. to Preston Rd., shall be conducted by the city to evaluate standards and plans for driveway spacing, median breaks, acceleration/deceleration lanes, signalization, and intersection design. The objective of the study is to enhance the parkway's capacity without adding additional through lanes. The cost of the study shall be borne by the petitioners for zoning. The closing of Longworth Dr. north of Plano Pkwy. shall be a major consideration in the Plano Parkway Study.
3. All landscape areas required by the Design Guidelines (referenced after PD-393-R/O-2) shall be irrigated by an underground, automatic sprinkler system.
4. All subsequently approved preliminary site plans and site plans for this tract shall conform to the Design Guidelines for the Plano Pkwy./S.H. 190 Corridor as adopted by the City Council and as placed by the owner as Restrictive Covenants on the tract binding both the current and future owners to such guidelines.
5. This tract shall be deed restricted to limit the hours of operation to 19 total hours, preferably with 12:00 a.m. to 5:00 a.m. being the closed hours.
6. No access to any tract shall be gained from the existing alley or alleys serving the residential area.
7. Truck docks and trash containers shall be to the interior of constructed buildings and at grade.
8. There will be no dedicated street adjacent and parallel to the residential district.
9. Parking structures shall be screened from view of the residential district through the use of natural screens.
10. Sodium vapor lights shall not be used for parking lots and other exterior lighting. All lighting shall meet the requirements of the Plano Lighting Ordinance.

Refer to Design Guidelines after PD-393-R/O-2 for additional stipulation.

Section III. It is directed that the official zoning map of the City of Plano (which is retained in electronic record format) be changed to reflect the zoning classification established by this Ordinance.

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

Section V. The repeal of any ordinance or part of ordinances affectuated 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 provisions of any ordinance at the time of passage of this Ordinance.

Section VI. Any violation of the provisions or terms of this ordinance by any person, firm or corporation shall be a misdemeanor offense and shall be subject to a fine in accordance with Section 1-4(a) of the City Code of Ordinances for each offense. Every day a violation continues shall constitute a separate offense.

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

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

PASSED AND APPROVED THIS THE 24TH DAY OF SEPTEMBER, 2012.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

Zoning Case 2012-12

BEING a tract or parcel of land situated in the City of Plano, Collin County, Texas; and being out of the Francis McCullough Survey, Abstract No. 586; and being more particularly described as follows:

BEGINNING at a point for corner at the intersection of the centerline of Plano Parkway (100 feet wide) and the centerline of Independence Parkway (100 feet wide);

THENCE North, 00° 09' 14" East, along said centerline of Independence Parkway a distance of 563.05 feet to a point for corner;

THENCE South, 89° 48' 28" East, along the southerly line of the Dallas North Estates, 12th Installment, Fourth Section, an addition to the City of Plano as recorded in Cabinet A, Page 4 of the Map Records of Collin County, Texas a distance of 411.57 feet to an iron rod for corner;

THENCE along the westerly line of the Dallas North Estates, 12th Installment, Second Section, an addition to the City of Plano as recorded in Volume 6, Page 59 of the Map Records of Collin County, Texas, the following calls:

South, 37° 23' 12" West, a distance of 53.41 feet to an iron rod for angle point;

South, 11° 37' 44" East, a distance of 60.33 feet to an iron rod for angle point;

South, 46° 37' 44" East, a distance of 108.00 feet to an iron rod for angle point;

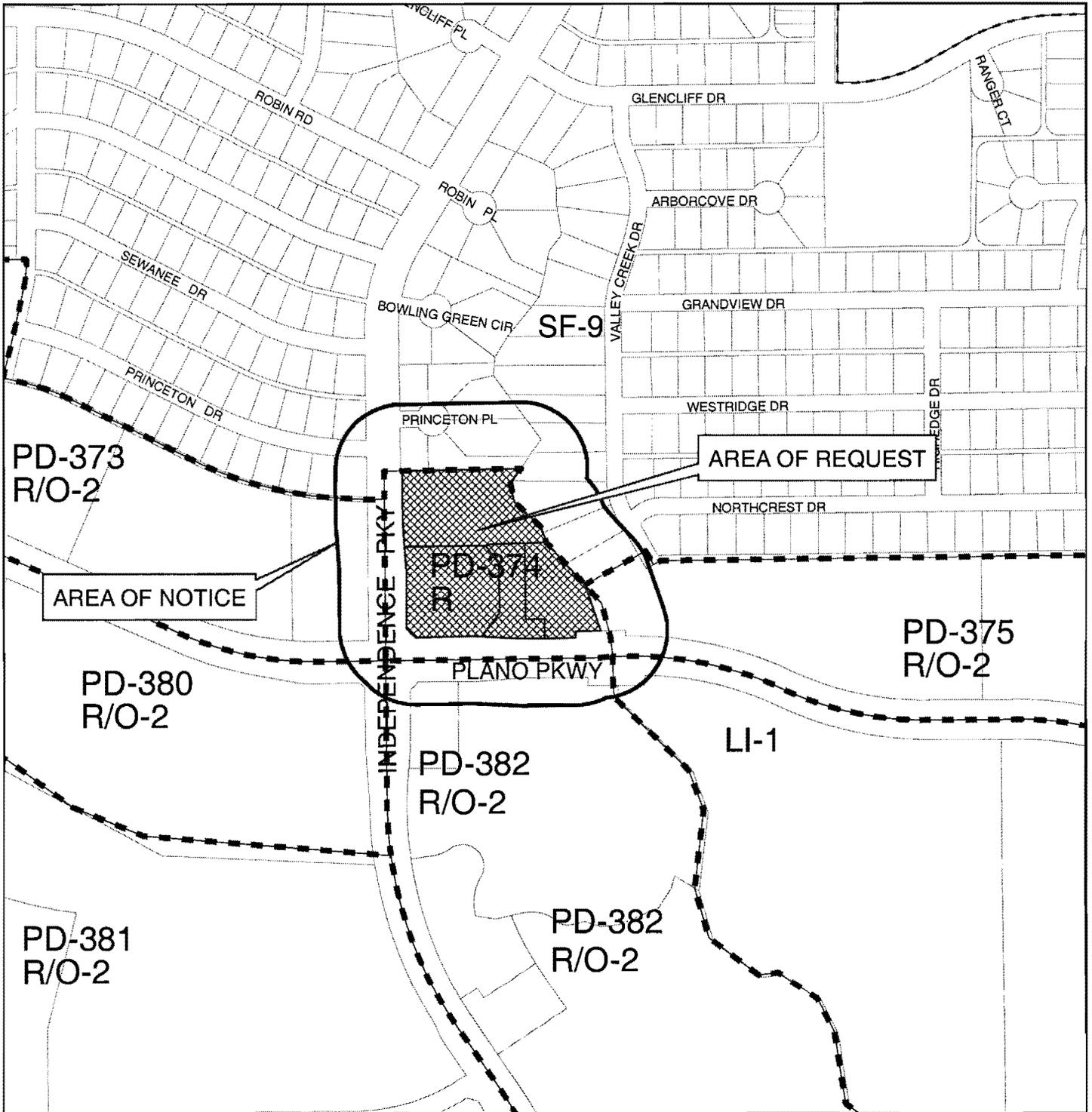
South, 20° 37' 44" East, a distance of 50.00 feet to an iron rod for angle point;

South, 42° 07' 44" East, a distance of 172.26 feet to an iron rod for corner, said rod being the southwesterly corner of said addition;

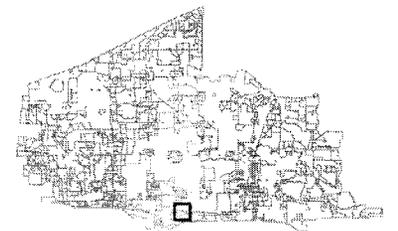
THENCE South, 18° 13' 16" East, a distance of 144.98 feet to an iron rod for corner in the northerly line of said Plano Parkway;

THENCE South 00° 06' 38" West, a distance of 75.00 feet to a point for corner in the centerline of said Plano Parkway;

THENCE North, 89° 53' 22" West, continuing along said centerline of Plano Parkway a distance of 649.68 feet to the POINT OF BEGINNING and CONTAINING 298,600 square feet or 6.8549 acres.



Zoning Case #: 2012-12



Existing Zoning: PLANNED DEVELOPMENT-374-RETAIL/
190 TOLLWAY/PLANO PARKWAY OVERLAY DISTRICT



○ 200' Notification Buffer



**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:		9/24/12			
Department:		City Secretary			
Department Head		Diane Zucco			
Agenda Coordinator (include phone #): Alice Snyder, Ext. 7515					
CAPTION					
A Resolution of the Plano City Council appointing a board member to serve on the Dallas Area Rapid Transit Authority (DART) Board of Directors as provided in Chapter 452 of the Texas Transportation Code 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:	2011-12	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		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					
COMMENTS: This item has no fiscal impact.					
STRATEGIC PLAN GOAL: Appointing a member to the Dallas Area Rapid Transit Authority (DART) Board of Directors relates to the City's Goal of Partnering for Community Benefit.					
SUMMARY OF ITEM					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		
Resolution					

A Resolution of the Plano City Council appointing a board member to serve on the Dallas Area Rapid Transit Authority (DART) Board of Directors as provided in Chapter 452 of the Texas Transportation Code and providing an effective date.

WHEREAS, Chapter 452 of the Texas Transportation Code provides for the appointment of board members to DART; and

WHEREAS, the Plano City Council desires to appoint a full DART board member to represent the City of Plano for a term to begin July 1, 2012 and has duly considered candidates.

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

Section I. The City of Plano appoints _____ to serve as the full DART Board Member to represent the City of Plano for the term beginning on July 1, 2012.

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

DULY PASSED AND APPROVED this the 24th day of September 2012.

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:		9/24/12		
Department:		City Secretary		
Department Head		Diane Zucco		
Agenda Coordinator (include phone #): Alice Snyder, Ext. 7515				
CAPTION				
A Resolution of the Plano City Council affirming the appointment of a shared board member with the City of Farmers Branch to serve on the Dallas Area Rapid Transit Authority (DART) Board of Directors as provided in Chapter 452 of the Texas Transportation Code 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:	2011-12	Prior Year (CIP Only)	Current Year	Future Years
		0	0	0
Budget		0	0	0
Encumbered/Expended Amount		0	0	0
This Item		0	0	0
BALANCE		0	0	0
FUND(s): N/A				
COMMENTS: This item has no fiscal impact.				
STRATEGIC PLAN GOAL: Appointing a joint member to the Dallas Area Rapid Transit Authority (DART) Board of Directors relates to the City's Goal of Partnering for Community Benefit.				
SUMMARY OF ITEM				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Resolution				

A Resolution of the Plano City Council affirming the appointment of a shared board member with the City of Farmers Branch to serve on the Dallas Area Rapid Transit Authority (DART) Board of Directors as provided in Chapter 452 of the Texas Transportation Code and providing an effective date.

WHEREAS, Chapter 452 of the Texas Transportation Code provides for the appointment of board members to DART; and

WHEREAS, the Plano City Council has duly considered candidates for the fractional allocation for a shared member with the City of Farmers Branch.

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

Section I. The City of Plano affirms, with the concurrence of the City of Farmers Branch, the selection of _____ as the shared DART Board Member. Such term shall begin on July 1, 2012, and this appointment shall make use of Plano's additional fractional allocation for a board member, subsequent to a previous agreement with the named city.

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

DULY PASSED AND APPROVED this the 24th day of September 2012.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, City Secretary

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY