

PLANO CITY COUNCIL

WILL CONVENE INTO EXECUTIVE SESSION AT 5:00 P.M. ON OCTOBER 9, 2006, FOLLOWED BY PRELIMINARY OPEN MEETING IMMEDIATELY THEREAFTER, IN THE PLANO MUNICIPAL BUILDING, 1520 K AVENUE, IN COMPLIANCE WITH VERNON'S TEXAS CODES ANNOTATED, GOVERNMENT CODE CHAPTER 551 (OPEN MEETINGS ACT), AS FOLLOWS:

Mission Statement: The mission of the City of Plano is to provide outstanding services and facilities, through cooperative efforts with our citizens, that contribute to the quality of life in our community.

EXECUTIVE SESSION

- | | | | |
|------|--|--------------|---------|
| I. | Legal Advice | Wetherbee | 5 min. |
| | A. Respond to questions and receive legal advice on agenda items | | |
| II. | Litigation | | |
| | A. John P. Nelson v. City of Plano | Wetherbee | 5 min. |
| III. | Economic Development | | |
| | A. Parker Road Station Redevelopment | Frank Turner | 10 min. |
| IV. | Real Estate | | |
| | A. 15 th Street Village | Frank Turner | 5 min. |
| V. | Personnel | | |
| | A. Evaluation of Council Appointees | Council | 5 min. |

PRELIMINARY OPEN MEETING

- | | | | |
|------|---|-----------------|---------|
| I. | Consideration and action resulting from Executive Session discussion: | Council | 5 min. |
| II. | Personnel | | |
| | A. Plano Housing Authority | Council | 5 min. |
| III. | Presentation re Assessment of Zoning Ordinance | Phyllis Jarrell | 10 min. |
| IV. | Council items for discussion/action on future agendas | Council | 5 min. |
| V. | Consent and Regular Agenda | Council | 5 min. |
| VI. | Council Reports | Council | 5 min. |
| | A. Council May Receive Information, discuss and provide direction on the following reports: | | |

- B. Council may receive reports from its other members who serve as liaisons to boards, commissions, and committees

In accordance with the provisions of the Open Meetings Act, during Preliminary Open Meetings, agenda items will be discussed and votes may be taken where appropriate.

Municipal Center is wheelchair accessible. A sloped curb entry is available at the main entrance facing Avenue L, with specially marked parking spaces nearby. Access and special parking are also available on the north side of building. The Council Chamber is accessible by elevator to the lower level. 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.



CITY COUNCIL

1520 AVENUE K

DATE: October 9, 2006

CALL TO ORDER: 7:00 p.m.

INVOCATION: Dr. Leon Aduddell
First Baptist Church Plano

PLEDGE OF ALLEGIANCE: Jr. Girl Scout Troop 1708

ITEM NO.	EXPLANATION	ACTION TAKEN
	<p>THE MISSION OF THE CITY OF PLANO IS TO PROVIDE OUTSTANDING SERVICES AND FACILITIES, THROUGH COOPERATIVE EFFORTS WITH OUR CITIZENS THAT CONTRIBUTE TO THE QUALITY OF LIFE IN OUR COMMUNITY.</p> <p>The City Council may convene into Executive Session to discuss posted items in the regular meeting as allowed by law.</p> <p><u>PROCLAMATIONS AND SPECIAL RECOGNITION</u></p> <p>Special Recognition: Achievement of Excellence in Procurement Award – City of Plano Purchasing Department</p> <p><u>OATHS OF OFFICE</u></p> <p><u>Animal Shelter Advisory Committee</u> Dr. Karen Dubrow Amanda Earl Paula McCracken Eloisa Sue Muzquiz Pylar Pinkston</p> <p><u>Arts of Collin County Commission Board of Directors</u> Dr. Betty Muns</p> <p><u>Board of Adjustment</u> George Elwell Randy Hart Michael Pirek Chris Polito William Gregory Suttle Donnie Swango</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
	<p><u>Building Standards Commission</u> James Wesley Carpenter Danny Morris Richard William Prusha Tina M. Ross John Jeffrey Weeks</p> <p><u>Civil Service Commission</u> Robert Barraclough</p> <p><u>Community Relations Commission</u> Kimberly Jene Brogan Sharon Marsh-Wyly Robert G. Masengill</p> <p><u>Cultural Affairs Commission</u> Cathy Kuo Logan Sankaran A. Basit Siddiqui Beth Weingarden</p> <p><u>DART Board of Directors</u> Faye Moses Wilkins</p> <p><u>Heritage Commission</u> Brian Chaput Clinton L. Osteen Justin Parker Nichols</p> <p><u>Keep Plano Beautiful Commission</u> Johnnene Addison-Gay Kelly Carlson Joseph Celso Holly R. Linskie Paul Pathrose Kernell M. Thaw</p> <p><u>Library Advisory Board</u> Debra Conway Benton Hilton Kong Janelle Twyford-Silvis</p> <p><u>Parks and Recreation Planning Board</u> Ben Harris Mary F. Long Susan Plonka Bill Neukranz</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
	<p><u>Planning and Zoning Commission</u> Lisette Briley Carolyn Kalchthaler Craig N. Perry</p> <p><u>Plano Transition and Revitalization Commission</u> Joyce Beach Robert G. Masengill Marty McGee Pat Miner Tino Trujillo</p> <p><u>Public Arts Committee</u> Robert B. Drotman Jacie Moore Margaret Robinette</p> <p><u>Retirement Security Plan Committee</u> Stephen E. Doud Mark Israelson Denise Tacke</p> <p><u>Self Sufficiency Committee</u> Robert R. Davis II Arthur L. Lowe Gregory R. Huckaby Prissy Wisnewski</p> <p><u>Senior Citizens Advisory Board</u> Dr. Frida Alperovich Sue R. Barron Tracey S. Dry William E. Gibson Helen Gunn Mary Jane Ketcham</p> <p><u>Tax Increment Financing Reinvestment Zone No. 1 Board</u> Michael Booth Keith Dagen Scott Johnson Bruce A. Lewin</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
	<p><u>Technology Commission</u> Michael James Becker Dana Johnson James N. Krusos</p> <p><u>Transportation Advisory Committee</u> Michael W. Copeland Borivoje Dedeitch Reza Molai</p> <p style="text-align: center;"><u>THE CITY SECRETARY RECEIVES SPEAKER CARDS AT THE BEGINNING OF THE MEETING</u></p> <p><u>COMMENTS OF PUBLIC INTEREST</u></p> <p><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>BOARD/COMMISSION REPORTS</u></p> <p>Tax Increment Financing Reinvestment Zones No. 1 and No. 2 Boards</p> <p><u>CONSENT AGENDA</u></p> <p><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>(a) <u>Approval of Minutes</u> September 25, 2006</p> <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> <p>(b) Bid No. 2006-226-C for Biodegradable Paper Bags to Altivity Packaging in the estimated annual amount of \$75,000. This will establish an annual fixed-price contract, with three optional one-year renewals.</p> <p>(c) Bid No. 2006-224-G for Draeger brand SCBA units to Dantack Corporation in the amount of \$32,990 for the Homeland Security Department.</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
	<p>Purchase from Existing Contract/Agreement: (Purchase of products/services through Cooperative Purchasing Interlocal Contract with another governmental/quasi-governmental agency or an additional purchase from current City of Plano annual purchase agreement).</p> <p>(d) To approve the purchase of five (5) Toyota Prius Hybrid Sedans in the amount of \$102,690 from Philpott Motors through an existing contract/agreement with the Texas Building and Procurement Commission, and authorizing the City Manager to execute all necessary documents. (070-A1)</p> <p>(e) To approve the purchase of seven (7) Ford Escape Hybrid vehicles in the amount of \$168,868 from Philpott Motors through an existing contract/agreement with the Texas Building and Procurement Commission, and authorizing the City Manager to execute all necessary documents. (070-A1)</p> <p>Approval of Contract: (Purchase of products/services exempt from State of Texas Competitive Bid Laws)</p> <p>(f) To approve and authorize for the selection of Brockett/Davis/Drake, Inc. to provide Professional Engineering Services for an amount not to exceed \$232,400 for the design of Spring Creek Parkway at Coit Road Intersection Improvements (TxDOT) and authorizing the City Manager to execute all necessary documents to effectuate this contract. Bid No. B113-04</p> <p>(g) To approve a Professional Services Contract by and between the City and James Duncan and Associates, Inc. (d/b/a Duncan Associates), in the amount of \$85,310 for Technical and Legal Review of the City’s Zoning and Development Regulations and authorizing the City Manager to execute all necessary documents. Request for Qualifications Number 2006-147-B.</p> <p>(h) To approve the terms and conditions of a Professional Services Contract between the City of Plano and Crossroads Family Services in the amount of \$115,000 wherein Crossroads Family Services will provide services to the Police Department to combat juvenile delinquency and authorizing execution of such agreement by the City Manager, and providing an effective date.</p> <p>Reimbursement of Oversize Participation</p> <p>(i) To approve and authorize reimbursement to Pasquinelli Portrait Homes-McDermott LP for oversize participation for paving improvements and park land cost in the amount of \$44,445</p> <p>Public Improvement Agreement</p> <p>(j) To approve the terms and conditions of a Public Improvement Agreement by and between the City of Plano, Texas, and EDS Information Services, L.L.C., for participation in Dominion Parkway between Parkwood Boulevard and Headquarters Drive in the amount of \$250,000.</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
	<p><u>Adoption of Resolutions</u></p> <p>(k) To find Thomas H. Muehlenbeck, Cynthia O’Banner, Roxanne Luna and Macklin Wright are entitled to defense representation pursuant to City Code of Ordinances in connection with the lawsuit entitled Jay Sandon Cooper v. City of Plano, Texas; Thomas H. Muehlenbeck, City Manager; City of Plano Planning and Zoning Commission; City of Plano City Council; Cynthia O’Banner, Roxanne Luna, and Macklin Wright, City of Plano Property Standards Department; and providing an effective date.</p> <p>(l) To approve the hiring of a Fire Chief by the City Manager; and providing an effective date.</p> <p>(m) To authorize an expenditure of funds not to exceed two hundred and eight thousand fifty and no/100 dollars (\$208,050) to Poly-Triplex of Texas, Inc., the sole source provider and licensee of the Poly-Triplex Lining System®, a cured-in-place, felt epoxy impregnated vinyl/fiberglass liner, a patented product and system of Poly-Triplex Technologies, Inc.; authorizing the City Manager to take such action and execute such documents as necessary to effectuate this expenditure; and providing an effective date.</p> <p>(n) 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; and providing an effective date.</p> <p>(o) To approve the terms and conditions of a Public Right-of Way Use Agreement by and between the City of Plano, Texas and Terra-Max Engineering, Inc., a Florida S Corporation, to locate, place, attach, install, operate, and maintain monitoring wells in certain specific portions of the public rights-of-way in the City of Plano; authorizing its execution by the City Manager; and providing an effective date.</p> <p>(p) To authorize the purchase of library materials for the Plano Public Library System (PPLS) in the amount of \$300,000 from the Brodart Company through the Northeast Texas Library System (NETLS) contract; authorizing the City Manager to take such action and execute such documents as necessary to effectuate the purchase approved herein and providing an effective date.</p> <p>(q) To authorize the purchase of various library materials, including books, compact disks, books-on-CD, and DVDs for Plano Public Library System (PPLS), from Baker & Taylor under Texas State Contract 715-N1, Section IV (715-10-50), Section V (715-10-60), Section VIII (715-90-10), Section IX (715-05-10) and Section X (715-05-11); and for non-print materials only under the annual Northeast Texas Library System (NETLS) contract in the amount of \$400,000; authorizing the City Manager to take such action and execute such documents as necessary to effectuate the purchase approved herein; and providing an effective date.</p> <p>(r) To authorize the purchase of specific library reference materials for the Plano Public Library System in the total amount of \$35,401.33 from Standard & Poor’s, the sole source supplier of such specific library reference materials; authorizing the City Manager to take such action and execute such documents as necessary to effectuate the purchase approved herein; and providing an effective date.</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
(s)	To approve the terms and conditions of an Interlocal Cooperation Agreement for Library Services by and between the City of Plano and Collin County, Texas providing the terms and conditions for receipt of funding in the amount of \$77,729.29 from Collin County; authorizing the City Manager to take such action and execute such documents as necessary to effectuate the agreement herein; and providing an effective date.	
(t)	To authorize the purchase of specialized online database library services for Plano Public Library System from Amigos Library Services in the amount of \$35,500 through Plano Public Library System's membership with OCLC, the sole source supplier of comprehensive interlibrary loan and bibliographic record purchases; authorizing the City Manager to take such action and execute such documents as necessary to effectuate the purchase approved herein; and providing an effective date.	
(u)	<p><u>Adoption of Ordinances</u></p> <p>To amend Section 12-102(e) of Article V, Stopping, Standing, and Parking of Chapter 12, Motor Vehicles and Traffic of the Plano Code of Ordinances to include no stopping, standing, or parking prohibition along the west side of Gillespie Drive from National Drive south to 100' south of the south drive for Taylor Elementary School between the hours of 7:30 a.m. to 8:15 a.m. and 2:45 p.m. to 3:30 p.m. on school days; declaring the parking of motor vehicles in said section of Gillespie Drive within the defined time limits as unlawful and a misdemeanor; and providing a severability clause, a penalty clause, and an effective date.</p> <p><u>ITEMS FOR INDIVIDUAL CONSIDERATION:</u></p> <p><u>Public Hearing Items: Applicants are limited to fifteen (15) minutes presentation time with a five (5) minute rebuttal, if needed. Remaining speakers are limited to thirty (30) total minutes of testimony time, with three (3) minutes assigned per speaker. The presiding officer may extend these times as deemed necessary.</u></p> <p><u>Non-Public Hearing Items: The Presiding Officer may permit limited public comment for items on the agenda not posted for a Public Hearing. The Presiding Officer will establish time limits based upon the number of speaker requests, length of the agenda, and to ensure meeting efficiency, and may include a cumulative time limit. Speakers will be called in the order cards are received until the cumulative time is exhausted.</u></p>	
(1)	Public Hearing and an Ordinance to designate a certain area within the City of Plano as Reinvestment Zone No. 100 for a tax abatement consisting of a 4.351 acre tract of land located at 1500 Plano Parkway in the City of Plano, Texas; establishing the boundaries of such zone; ordaining other matters relating thereto; and providing an effective date.	
(2)	A Resolution to approve the terms and conditions of an agreement by and between the City of Plano, Texas, the County of Collin, Texas, the Collin County Community College District, DCI Plano Venture, LP, a Delaware Limited Partnership, Dataside Plano, LLC, a Texas Liability Company, and Capital One Services, Inc., a Texas Corporation, and providing for a business personal property and real property tax abatement, and authorizing its execution by the City Manager; and providing an effective date.	

ITEM NO.	EXPLANATION	ACTION TAKEN
(3)	<p>An Ordinance to amend Chapter 19 “Streets and Sidewalks,” Article IV “Right-of-Way Management Regulations” at Section 19-72(b)(3) “General Rights-of-Way Use and Construction” by adding a new subparagraph to prohibit the use of nonwashable substances in the public right-of-way to mark the location of existing underground utilities; providing a severability clause; a repealer clause, a savings clause, and an effective date. Item pulled on 9-25-06</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>	



Pat Evans
Mayor

Scott Johnson
Mayor Pro Tem

Sally Magnuson
Deputy Mayor Pro Tem

Shep Stahel
Place 1

Loretta Ellerbe
Place 3

Harry LaRosiliere
Place 5

Jean Callison
Place 7

Lee Dunlap
Place 8

Thomas H. Muehlenbeck
City Manager

October 5, 2006

Mayor Pat Evans
City Council Members
City of Plano
Plano, TX 75074

Honorable Mayor and City Council:

We will begin Monday evening in Executive Session where we will receive advice from the City Attorney. The City Attorney will also provide advice on current litigation. Frank Turner will present updates regarding the Parker Road Station redevelopment and the 15th Street Village. We will also have an opportunity to discuss the evaluation of City Council appointees.

The Preliminary Open Meeting agenda consists of a personnel appointment to the Plano Housing Authority and a presentation by Phyllis Jarrell regarding the assessment of the City's Zoning Ordinance.

I look forward to seeing you Monday.

Sincerely yours,

Thomas H. Muehlenbeck
City Manager

THM/cp

MEMO

DATE: October 3, 2006

TO: Honorable Mayor and City Council
City Manager Muehlenbeck
City Secretary Bealke

FROM: Di Zucco, Assistant City Secretary 

RE: Personnel Appointments/Reappointments
Executive and Worksession Meetings

The following personnel appointments/reappointments will be considered at the October 9, 2006 Council Meeting.

<u>Executive Session</u>	<u>Worksession Meeting</u>
No Items for Consideration	Plano Housing Authority

IIa

October 1, 2006

MEMO

TO: Thomas H. Muehlenbeck, City Manager
Frank F. Turner, Executive Director

FROM: Phyllis M. Jarrell, Director of Planning

SUBJECT: Consultant Contract for Zoning Ordinance Assessment

On City Council's October 9th agenda is a contract with a consultant, Duncan Associates, to perform an assessment of the city's Zoning Ordinance. The Zoning Ordinance was totally rewritten in 1986, and today's document reflects hundreds of incremental changes and amendments made over the years. The 1986 ordinance has served the city well through unprecedented growth and development. As we enter a period with less greenfield development and more infill and redevelopment, it is an appropriate time to take stock of the ordinance and to update it where necessary to address new opportunities.

The ordinance assessment is intended to provide guidance on the following:

- Updating definitions and use charts to reflect changing technologies and new categories of use
- Integrating graphics and illustrations to assist users in understanding the regulations
- Clarifying regulations for non-conforming uses and buildings and determining procedures for amortizing non-conforming uses
- Insuring continued conformance with changes in state and federal laws, including project "vesting" and stormwater permit requirements
- Addressing needed changes in regulations to accommodate infill and redevelopment projects
- Reorganizing and reformatting to insure that the ordinance regulations are clearly written and the ordinance is easy to use

III a

The consultant will work with the Planning staff and the City Attorney's office over the next 9-10 months to complete the assessment. The consultant's recommendations will then be reviewed and implemented based on the results of the study and direction from the Planning & Zoning Commission and City Council.

Unlike the 1986 ordinance revision process, this assessment will not affect the zoning on individual properties. It will only suggest amendments to be undertaken at a later date. We do not anticipate major changes to our current zoning district classifications and basic framework of regulations. While the consultant may make recommendations such as combining the LI-1 and LI-2 zoning districts (only 2 small areas of the city are currently zoned LI-2), these will be assessed as to the benefits and drawbacks of such an action before any changes are proposed.

The Plano Homeowners Council and the Plano Developers Council have been provided information on the upcoming assessment and its goals, and we will keep these two groups informed throughout the process. The consultant will present the initial findings in a preliminary report to the Planning & Zoning Commission and City Council in about 5 months. The estimated time frame for completion of the assessment is 9-10 months.

I will be available at Council's October 9th preliminary open meeting to make a brief presentation on the assessment. Please let me know if you need additional information.

XC: Tom Elgin, Development Review Manager
Christina Day, Senior Planner

III b

IV^u

Discussion/Action Items for Future Council Agendas

Additional rescheduling of Council meetings may be necessary due to elections and the PISD calendar. These changes will be made as soon as the dates are confirmed.

October 10 - Council/P&Z Retreat and Transition and Revitalization Commission, 12 n - 5 p.m., Plano Station

October 23

Mobility Report

DART Report

Comprehensive Monthly Financial Report

Youth Advisory Committee Report

Appreciation Certificates for Outgoing Boards & Commission Members

Public Hearing: Comprehensive Plan Revision - Request to amend the Utilities Element of the Comprehensive Plan. **Applicant: City of Plano**

Public Hearing: Zoning Case 2006-22 - Request for a Specific Use Permit for Day Care Center on one lot on 0.1± acre located 110± north of Chapel Hill Boulevard and 1,418± feet east of Midway Road. Zoned Regional Commercial. **Applicant: Kiddin' Around Property Management Corporation**

October 25-28, Texas Municipal League, Austin, Texas

November 9 – District 2 Roundtable Plano Sports Authority StarCenter, 7 p.m.

November 18 & 19 - Police Re-accreditation Conference/Ceremony, Reno, NV

November 13

Technology Commission Report

November 23, 24 – Thanksgiving Holidays

November 27

Mobility Report

DART Report

Comprehensive Monthly Financial Report

December 5 - 9, National League of Cities, Reno, Nevada

December 11

December 14, City of Plano Employee Holiday Luncheon, Plano Centre, 11 am – 1 pm

December 19

Mobility Report

DART Report

Comprehensive Monthly Financial Report

December 22, 25 Christmas Holidays

January 1, 2007 – New Year Holiday



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular	<input type="checkbox"/> Statutory	Reviewed by Budget	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
Council Meeting Date:	10/9/06		Reviewed by Legal	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
Department:	City Manager's Office		Initials	Date	
Department Head	Tom Muehlenbeck		Executive Director		
Dept Signature:		City Manager	<i>[Signature]</i>	<i>10/5/06</i>	
Agenda Coordinator (include phone #): Sharon Wright ext. 7107					

ACTION REQUESTED: ORDINANCE RESOLUTION CHANGE ORDER AGREEMENT
 APPROVAL OF BID AWARD OF CONTRACT OTHER

CAPTION

Special Recognition: Achievement of Excellence in Procurement Award - City of Plano Purchasing Department

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0

FUND(S):

COMMENTS:

SUMMARY OF ITEM

List of Supporting Documents:

Other Departments, Boards, Commissions or Agencies

**PLANO CITY COUNCIL
PRELIMINARY OPEN MEETING
September 25, 2006**

COUNCIL MEMBERS

Pat Evans, Mayor
Scott Johnson, Mayor Pro Tem
Sally Magnuson, Deputy Mayor Pro Tem
Shep Stahel
Loretta Ellerbe
Harry LaRosiliere
Jean Callison
Lee Dunlap

STAFF

Thomas H. Muehlenbeck, City Manager
Frank Turner, Executive Director
Bruce Glasscock, Executive Director
Rod Hogan, Executive Director
Diane C. Wetherbee, City Attorney
Elaine Bealke, City Secretary

Deputy Mayor Pro Tem Magnuson called the meeting to order at 5:06 p.m., Monday, September 25, 2006, in Training Room A of the Municipal Center, 1520 K Avenue. All Council Members were present with the exception of Mayor Evans and Mayor Pro Tem Johnson. Deputy Mayor Pro Tem Magnuson 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 and to discuss Litigation, Section 551.071, 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.

Deputy Mayor Pro Tem Magnuson reconvened the meeting back into the Preliminary Open Meeting at 6:06 p.m. in the Council Chambers where the following matters were discussed:

Consideration and Action Resulting From Executive Session Discussion

Personnel Appointments/Reappointments

DART Board of Directors

Upon a motion made by Council Member Stahel and seconded by Council Member Ellerbe, the Council voted 6-0 to reappoint Faye Moses Wilkins as Shared Representative.

Personnel/Appointments/Reappointments

Animal Shelter Advisory Committee

Upon a motion made by Council Member Ellerbe and seconded by Council Member Callison the Council voted 6-0 to appoint Paula McCracken as the Animal Shelter/Plano Animal Services Manager.

Plano Housing Authority

This item was deferred.

Plano Transition and Revitalization Commission

Upon a motion made by Council Member LaRosiliere and seconded by Council Member Dunlap the Council voted 6-0 to appoint Marty McGee.

Retirement Security Plan Committee

At the recommendation of City Manager Muehlenbeck and upon a motion made by Council Member Dunlap and a second by Council Member Stahel the Council voted 6-0 to name Ron Timmons as Chair.

Senior Citizens Advisory Board

Upon a motion made by Council Member Dunlap and seconded by Council Member Callison the Council voted 6-0 to name Mary Jane Ketcham as Chair.

Patriotic Etiquette Presentation

Dick Belmore of the VFW Post Casey Joyce advised the Council regarding patriotic flag etiquette, spoke to the importance of proudly and respectfully representing the nation, and handed out information to the Council regarding his presentation.

North Texas Municipal Water District Report

North Texas Municipal Water District (NTMWD) Executive Director Jim Parks addressed the Council regarding ranges of drought intensity, seasonal outlook, records in previous years, various lake levels and corresponding deficits, and issues with evaporation. He stated that the area water supply comes from Lake Lavon in Collin County, Lake Texoma in Northern Grayson County between Texas and Oklahoma, and Jim Chapman Lake located between the Delta and Hopkins County line.

Mr. Parks spoke to current Lake Lavon levels and stated that a lake goes into a drought condition the moment it drops below the full level. He stated that it has been seventeen months since Lake Lavon has been full, forty-one months for Lake Chapman, and 20 months for Lake Texoma. Mr. Parks spoke to conservation efforts, water consumption rates, rain events, and to drought planning stages. He spoke to stabilization levels, water use rights for the lakes, pumping strategies from one lake to another, the District's Master Plan projects, multiple strategies and implementation schedules, and to water supply projects. Mr. Parks stated that Conservation, Upper Sabine Basin Supply and East Fork Raw Water Supply projects will add 154,000 acre-feet of water to the supply, and further that Interim DWU Supply, Additional Wilson Creek Supply, Additional Lavon Yield and Interim GTUA Supply projects will together add 45,000 acre-feet of water to the supply realizing the equivalent of two Lake Lavons. He reviewed the particulars of the projects, costs involved, and time frames for completion. Mr. Parks spoke to problems with building a lake in Texas, and to relying on the Toledo Bend Lake water supply even though it is very expensive water and a long distance away.

Council Member Stahel spoke to the seven year period of time that it takes to complete the permitting process for the building of a lake and to this being excessively long. Mr. Parks spoke to other projects taking equally as long to complete and stated there is no finite time frame within the existing process, and further spoke to the need for a more expedient process. He spoke to forwarding a "white paper" list of applicable issues to the Council with potential dialogue forthcoming, and responded to the Council regarding the period of time for filling a lake and stating that it depends on rain fall weather patterns and needing four and five inch rains falling one week to ten days apart.

Council Member LaRosiliere spoke to the immediate future and to the possibility of going to Stage Four of the Drought Plan. Mr. Parks spoke to reduction calculations to stabilize the situation, allocating supply and conservation efforts and strategies that can be adopted and followed by the member cities, and to not affecting businesses who depend on water usage. He spoke to the probabilities of continuing the existing stage through the winter and to protecting the water supply. Mr. Parks responded to the Council that use of Lake Texoma requires demineralization and blending with Lakes Lavon and Cooper, and further spoke regarding costs of other ground water supply projects being two and one-half times the normal cost of delivery. He responded to the Council regarding drought periods and to the current drought becoming the new benchmark as the drought of record, and stated that if NTMWD planning and forthcoming statements do not include and identify conservation for this time period, the laws existing today will not extend a permit to the District. Mr. Parks responded that development is moving forward in addressing the existing drought and expediting water supply sources for corporations wishing to locate in Plano. He responded regarding gray water being fed back into the system and to waste water plants discharging flow into nearby Texas lakes. He further responded that dredging land that is currently dry is being done mainly for maintenance operations and spoke to changing the operating elevation of the lake as a means to increase lake volume.

Mr. Parks responded to City Manager Muehlenbeck that all member cities are following the requirements to some degree, with the biggest problem being consistency. He stated that each city is following some form of the plan within Stage Three. Mr. Parks responded regarding cities meeting the 5% reduction under Stage Three and to this being calculated on an annual average for the entirety of the district and not broken down by cities. City Manager Muehlenbeck spoke to having a problem with an accelerated stage three for Plano's citizens who have more than met the requirements for conservation when there are some cities who have not followed the one day per week watering recommendations when there is even more talk of implementation of additional restrictions and to this being a question of equity. He stated that he realizes that Plano uses 25% of the water, spoke to being diligent in reducing this in the community, and to there being no incentive for further reduction when the comparison is made to other communities. Mr. Muehlenbeck asked that more attention be given to this fact.

Mr. Muehlenbeck spoke to his disappointment in the take-or-pay study done and to consideration of alternatives, and further spoke to refinancing of debt occurring that will impact Plano and asked if the two finance departments might look into this. Mr. Parks spoke to conservation efforts and to inequities that appear to be there from city to city, and to the thirteen member cities making the 5% reduction. He spoke to difficulties in compliance and to working together to get through the drought and stated that the surest way to make the program fail is to do thirteen different things. Mr. Parks stated that if the water supply continues to diminish, the only true action to be taken is to allocate the supply. He spoke to the take-or-pay contract and to taking any proposal that the City might have to the Board. Council Member Stahel spoke to concurrence and to possibly adjusting the take-or-pay contract to encourage conservation as a way of life and not just a problem to be solved when there is a drought. Council Member Dunlap spoke to the dilemma of building a city based on water to be consumed if this information is not known. Mr. Parks spoke to the percentage of conservation reduction not being a clear number to be calculated and to other factors regarding industry, population numbers, and to assessments made as to what the 5% level actually is.

Deputy Mayor Pro Tem Magnuson convened the meeting directly into the Regular Meeting at 7:10 p.m. where remaining items were discussed.

Sally Magnuson, Deputy Mayor Pro Tem

ATTEST:

Elaine Bealke, City Secretary

PLANO CITY COUNCIL
September 25, 2006

COUNCIL MEMBERS

Pat Evans, Mayor
Scott Johnson, Mayor Pro Tem
Sally Magnuson, Deputy Mayor Pro Tem
Shep Stahel
Jean Callison
Loretta L. Ellerbe
Harry LaRosiliere
Lee Dunlap

STAFF

Thomas H. Muehlenbeck, City Manager
Frank Turner, Executive Director
Bruce Glasscock, Executive Director
Rod Hogan, Executive Director
Diane C. Wetherbee, City Attorney
Elaine Bealke, City Secretary

Deputy Mayor Pro Tem Magnuson convened the Council into the Regular Session directly from the Preliminary Session on Monday, September 25, 2006, at 7:10 p.m. in the Council Chamber of the Plano Municipal Center, 1520 K Avenue. All Council members were present with the exception of Mayor Evans and Mayor Pro Tem Johnson. Deputy Mayor Pro Tem Magnuson requested a moment of silence to recognize the death of Neighborhood Services Manager Bob Buffington.

The invocation was led by Pastoral Intern John Yurk with Preston Meadow Lutheran Church.

The Pledge of Allegiance was led by Den 6 and Den 8 of Pack 179 from Barksdale Elementary.

Deputy Mayor Pro Tem Magnuson presented a proclamation recognizing Mental Illness Awareness Week and a presentation of the Food Safety Excellence Award.

COMMENTS OF PUBLIC INTEREST

Jack Lagos, citizen of the City, spoke to concerns regarding the filings of the Arts of Collin County Commission's Articles of Incorporation with the Secretary of State. City Attorney Wetherbee stated that the attorney for the Arts of Collin County Commission has found everything in order.

BOARD/COMMISSION REPORTS

Plano Housing Authority Executive Director Helen Macey spoke to the development of programs to enable families to achieve self sufficiency. She spoke to programs in place which include the Disaster Voucher Program for victims of Hurricane Katrina which will terminate in September of 2007, the housing program for which the Plano Housing Authority leases homes to participants with rents set at 30% of income, the Housing Choice Voucher Program which allows families the freedom to choose a home depending on their circumstances and the Home Ownership Program which is used as a model for other housing authorities and in which vouchers may be used for home purchases. She advised that to date, the housing authority has 43 home ownership participants. Ms. Macey spoke to the Family Self Sufficiency Committee providing a journey to economic independence and to the recently held fundraiser with all proceeds funding educational scholarships for participants. She spoke to the Fall Festival and final stages of construction of the new administration building located at 18th Street and G Avenue. Ms. Macey spoke to the board adopting the dedication statement for the new building which clearly defines their vision, "Investing in the Present...Reaping Dividends in Generations to Come." She responded to the Council that they anticipate moving into the new building in December with the dedication in January.

The Council resumed discussion of the Preliminary Open Meeting at this time.

Arts of Collin County Report

Executive Director James Baudoin provided the Council an update on the project, advising that Phase 1 would include the 2,100-seat theater, a large community gathering space, outdoor performance area, sculpture garden and development of a creekwalk. He advised that a grant from Collin County will be used to extend the Six City Trail along Rowlett Creek and further reviewed the unique design features of the building which include a park setting and community focus. Mr. Baudoin spoke to the total project budget of \$85,324,617 including the total construction budget, design and consultant fees, inspections and permits, owner contingency and fixtures, furniture and equipment. He advised that funding includes \$57 million from each of the owner cities with the remainder coming from the County Open Space Program, donations/pledges, value engineering, donation of materials, deferring of theater/building/ground costs, infrastructure cost sharing, and reduction of design contingencies. Mr. Baudoin stated that this funding totals \$80 million with \$5 million yet to be raised.

Mr. Baudoin spoke to the impact of inflation and value engineering including adjustments made to the conceptual design along the way in the amount of \$7.5 million. He spoke to the BRAVO fundraising campaign whose "silent" phase will continue through early 2007 and other commitments to date. Mr. Baudoin spoke to items "in the pipeline" worth \$10-15 million and proposals in preparation of \$13 million and regarding the positive momentum of the project.

Mr. Baudoin spoke to the recommendation of the Arts of Collin County Commission that authorization be given to proceed with the construction document phase, the funding from existing owner city bond funds and stated that consequences of delay may be a project cost escalation, spoke to loss by reassignment of design team members, and to difficulty in raising private funds without a targeted construction date. He spoke to design process completion, completion of construction documents in June 2007 and complete construction in Mid-2010.

Mr. Baudoin responded to the Council that the value engineering is an adjustment and not a funding source and that Phase 1 includes not only the facility, but the infrastructure, development of the open meadow and the trails. He advised that by making cost adjustments there are contingency dollars available and that the Commission is prepared to go to the guaranteed maximum price of \$85 million for the project and stay at that level and that adjustments will be made if needed to maintain the costs. Mr. Baudoin spoke to fundraising efforts being focused on the private sector and responded to the Council that he anticipates \$7.5 million being raised during construction to cover those items targeted by value engineering, spoke to deferring equipment costs because of advances in technology and to possible donations of services in the construction of the building. He responded to City Manager Muehlenbeck that operation/maintenance funds would not cover deferral of theater/building/grounds costs.

Mobility Report

Transportation Engineering Manager Neal spoke to implementation of revised signal timing strategies and to the Safe Streets Program moving forward. He spoke to participation by the City in an *Integrated Corridor Management Program* which will look at ways to better use and manage U.S. 75. He spoke to involvement by public and private entities, federal funding and the sharing of information directed at getting people to shift modes of travel to reduce pollution and congestion.

Comprehensive Monthly Financial Report

Director of Finance McGrane spoke to the continued increase in sales tax revenue, a stable unemployment rate in Plano, and to a significant increase in the time new homes are on the market and advised that Staff would monitor this area. He spoke to an increase in commercial building permit values, an increase in the annualized water/sewer fund, and to monitoring the Consumer Confidence Index.

Discussion and Direction Regarding Rescheduling the Second Council Meeting in November 2007.

The Council concurred to move the meeting scheduled for Monday, November 26, 2007 to Tuesday, November 27, 2007.

Council Items for Discussion/Action on Future Agendas

Council Member Stahel spoke to scheduling an agenda item to delete the \$4.3 million in the CIP budget in 2009 for the Arts of Collin County in light of the presentation this evening.

Consent and Regular Agendas

Council Member Stahel requested that Consent Agenda Item “H,” to authorize the purchase of Netqos Network Management Software and Consulting and “I,” to authorize the purchase of a Premier Support Service Contract be removed for individual consideration due to possible conflicts of interest.

Director of Parks and Recreation Wendell responded to Council Member Ellerbe regarding Consent Agenda Item “J,” to approve and authorize a contract with Land Design Partners – DFW, Inc. to provide Landscape Architectural Services in conjunction with the 2006 Parks and Trail Improvements, that trees are being supplemented and no trees are being removed.

Council Member Dunlap requested that Consent Agenda Item “G,” rejection of Bids for Bid No. 2006-1-B for 15th Street Reconstruction (Avenue G to Avenue I) be removed for individual consideration due to a possible conflict of interest.

City Attorney Wetherbee advised that a substitute payment schedule has been created for Consent Agenda Item “J” which did not change the overall costs. She further advised that there have been two non-substantive edits made to Consent Agenda Item “T,” a resolution to approve a Funding Agreement among the cities of Allen, Frisco and Plano for additional funding in the amount of \$1,277,600 each for construction document development and related design services for a proposed project pertaining to the Arts of Collin County Commission, Inc. She stated that in the agreement the word “DOLLARS” has been inserted in paragraph 4 of page 1 following the dollar figure and that the word “each” has been inserted in paragraph 1 on page 2 following the dollar figure.

City Manager Muehlenbeck advised that Consent Agenda Item “GG,” an ordinance to amend Chapter 19 “Streets and Sidewalks,” Article IV “Right-of-Way Management Regulations” at Section 19-72(b)(3) “General Rights-of-Way Use and Construction” by adding a new subparagraph to prohibit the use of nonwashable substances in the public right-of-way to mark the location of existing underground utilities has been pulled and will be brought back at a later date.

Citizen Jack Lagos requested Consent Agenda Item “U,” a resolution to approve an agreement adding the City of Melissa as a member of the Arts of Collin County Commission, Inc. be removed for individual consideration.

Council Reports

No reports were presented.

CONSENT AGENDA

Upon a motion made Council Member Stahel and seconded by Council Member Dunlap, the Council voted 6-0 to approve and adopt all remaining items on the Consent Agenda as recommended and as follows:

Approval of Minutes [Consent Agenda Item (A)]

September 11, 2006

Approval of Expenditures

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

Bid No. 2006-164-B for the Jack Carter Pool Parking Lot to Advanced Paving Company, L.P. in the amount of \$245,462. [Consent Agenda Item (B)] (Exhibit "A")

Bid No. 2006-211-C to establish an annual contract for Streets, Drainage and Utility Operations Aggregates in the estimated annual amount of \$25,785. This will establish an annual contract with three renewals. [Consent Agenda Item (C)] (Exhibit "B")

Bid No. 2006-203-P for the 2006 Traffic Signal Construction Requirements Contract to Roadway Solutions, Inc. in the amount of \$504,327. This will establish an annual fixed price contract with two optional one-year renewals. [Consent Agenda Item (D)] (Exhibit "C")

Bid No. 2006-184-C for Municipal Center Elevator Upgrade and Maintenance in the amount of \$71,211. [Consent Agenda Item (E)] (Exhibit "D")

Rejection of Bids for Bid No. 2006-213-B for Parker Road Elevated Storage Tank Repaint. [Consent Agenda Item (F)] (Exhibit "E")

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

To approve and authorize a contract with Land Design Partners – DFW, Inc. to provide Landscape Architectural Services in conjunction with the 2006 Parks and Trail Improvements in an amount not to exceed \$133,950 and authorizing the City Manager to execute any and all documents necessary to effectuate the contract. [Consent Agenda Item (J)]

To approve a fixed-price contract with United Behavioral Health Company, a carrier of Proprietary Managed Care Networks 2006-90-C, in the amount of \$72,000 for 2007 and providing an escalation clause for future years, relating to claims administration services for the City's self-funded Employee Assistance Program for full-time City employees and qualified retirees. This will be a five-year contract with three optional one-year renewals. [Consent Agenda Item (K)]

To approve a fixed-price contract with United HealthCare Insurance Company, a carrier of Proprietary Managed Care Networks 2006-90-C, in the amount of \$1,106,688 annually for claims administration services for the City's self-funded health plan, flexible spending account program, self-funded dental and vision insurance coverage for full-time employees and qualified retirees. This will be a five-year contract with three optional one-year renewals. [Consent Agenda Item (L)]

To approve a Professional Services Contract by and between the City of Plano and Ronald G. German, P.E. Consulting Engineer, in the amount of \$27,000 for electrical engineering services for the redesign of the electrical power system in the Technical Services Data Center and authorizing the City Manager to execute all necessary documents. [Consent Agenda Item (M)]

Change Order: (Change to current City of Plano contract allowable under State law)

To Barson Utilities, increasing the contract by \$58,215 for Whiffletree Water Rehabilitation, Change Order No. 1. Bid No. 2006-38-B. [Consent Agenda Item (N)]

To Hencie International, Inc., increasing the contract by \$157,000 for the 2005-2006 Residential Street & Alley Pavement Rehabilitation Project, Zone 16 & 17, Phase II, Project No. 5692, Change Order No. 1, Bid No. 2006-83-B. [Consent Agenda Item (O)]

Reimbursement of Oversize Participation

To approve and authorize reimbursement to Regency Park, L.P. for oversized paving and drainage participation adjacent to Rasor Boulevard in the amount of \$46,650. [Consent Agenda Item (P)]

Contract Modification

To approve a Second Modification to the contract with Datamatic, Ltd. for Automated Meter Reading Equipment and Installation of all related parts and equipment to include quality control services and extension of warranty coverage. [Consent Agenda Item (Q)]

Adoption of Resolutions

Resolution No. 2006-9-17(R): To approve the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano, Texas and the City of Lucas, Texas, under which the City of Plano will dispatch calls for emergency fire and emergency medical assistance for the City of Lucas; authorizing execution of the Agreement by the City Manager; and providing an effective date. [Consent Agenda Item (R)]

Resolution No. 2006-9-18(R): To approve the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano, Texas and the City of Parker, Texas, under which the City of Plano will dispatch calls for emergency fire and emergency medical assistance for the City of Parker; authorizing execution of the Agreement by the City Manager; and providing an effective date. [Consent Agenda Item (S)]

Resolution No. 2006-9-19(R): To approve a Funding Agreement among the cities of Allen, Frisco and Plano for additional funding in the amount of \$1,277,600 each for construction document development and related design services for a proposed project pertaining to the Arts of Collin County Commission, Inc.; authorizing the City Manager to execute the Agreement; and providing an effective date. [Consent Agenda Item (T)]

Resolution No. 2006-9-20(R): To approve the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano, Texas, and the North Texas Municipal Water District providing terms and conditions for the use of a Community Garden at the Parkway Transfer Station Facility, authorizing its execution by the City Manager; and providing an effective date. [Consent Agenda Item (V)]

Resolution No. 2006-9-21(R): To approve the terms and conditions of a Professional Services Agreement by and between the City of Plano and Southern Methodist University for educational services at a fee not to exceed thirty thousand dollars (\$30,000); authorizing its execution by the City Manager; and providing an effective date. [Consent Agenda Item (W)]

Resolution No. 2006-9-22(R): To adopt a new Tax Abatement Policy of the City of Plano establishing criteria for evaluating incentive applications; establishing procedural guidelines and criteria governing tax abatement agreements; and providing an effective date. [Consent Agenda Item (X)]

Resolution No. 2006-9-23(R): To authorize the City of Plano to participate in and receive funding through the Texas Highway Traffic Safety Program for an Intersection Traffic Control Project, PIN 17560006409000, targeting intersections regulated by means of a signal light; authorizing the City Manager to execute the Grant Agreement and any other documents necessary to effectuate the action taken; and providing an effective date. [Consent Agenda Item (Y)]

Resolution No. 2006-9-24(R): To affirm the appointment of a shared board member with the cities of Cockrell Hill, Dallas, and Glenn Heights 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. [Consent Agenda Item (Z)]

Resolution No. 2006-9-25(R): To approve the purchase of SearchCam Cameras, a Delsar Life Detector seismic/acoustic listening device system, and victim simulator equipment in an amount not to exceed \$35,720 from Search Systems Incorporated, as defined by the 2005 UASI Homeland Security Grant, the sole source vendor of such equipment and services; authorizing the City Manager to take such action and execute such documents as necessary to effectuate the purchase; and providing an effective date. [Consent Agenda Item (AA)]

Adoption of Ordinances

Ordinance No. 2006-9-26: To repeal City of Plano Ordinance No. 2004-8-15, adopting new permit fees for the operation and maintenance of all public and semipublic swimming pools within the City; removing Environmental from department name; and revising name change from Department of Health to Texas Department of State Health Services, codified as Article X, Swimming Pools, of Chapter 6 of the Code of Ordinances; providing a penalty clause, a repealer clause, a severability clause, a savings clause and an effective date. [Consent Agenda Item (BB)]

Ordinance No. 2006-9-27: To amend specific sections of Ordinance Nos. 2005-3-22 and 2006-4-15 codified as Sections 21-135, 21-136 and 21-147, of Article IV, Service Charges Generally, of Chapter 21, Utilities, of the Code of Ordinances of the City of Plano, to increase the fee schedules for water and sewer services, and to revise the winter quarter averaging method for calculating residential sanitary sewer charges; and providing a repealer clause, a severability clause, a savings clause, and an effective date. [Consent Agenda Item (CC)]

Ordinance No. 2006-9-28: To repeal Ordinance Nos. 2005-9-23, 2005-11-27, and 2005-12-15; establishing the number of certain classifications within the Police and Fire Departments for fiscal year 2006-2007; establishing the authorized number and effective dates of such positions for each classification effective October 1, 2006, January 1, 2007 and April 1, 2007 respectively; establishing a new salary plan for the Police and Fire Departments effective October 2, 2006; and providing a repealer clause, a severability clause and an effective date. [Consent Agenda Item (DD)]

Ordinance No. 2006-9-29: To rescind Ordinance No. 2006-6-8 relating to City of Plano Retirement Security Plan as restated January 1, 2006, and adopting a new City of Plano Retirement Security Plan, as the restated January 1, 2006 2nd Version to revise the definition for actuarial (or actuarially) equivalent under Article II 2.1(b); authorizing its execution by the City Manager; providing a repealer clause, a severability clause, a savings clause, and an effective date. [Consent Agenda Item (EE)]

Ordinance No. 2006-9-30: To amend Ordinance No. 2006-9-11 by adding specific clauses to the ordinance as required by Senate Bill 18; and providing an effective date.

To amend Chapter 19 “Streets and Sidewalks,” Article IV “Right-of-Way Management Regulations” at Section 19-72(b)(3) “General Rights-of-Way Use and Construction” by adding a new subparagraph to prohibit the use of nonwashable substances in the public right-of-way to mark the location of existing underground utilities; providing a severability clause; a repealer clause, a savings clause, and an effective date. [Consent Agenda Item (FF)]

To amend Chapter 19 “Streets and Sidewalks,” Article IV “Right-of-Way Management Regulations” at Section 19-72(b)(3) “General Rights-of-Way Use and Construction” by adding a new subparagraph to prohibit the use of nonwashable substances in the public right-of-way to mark the location of existing underground utilities; providing a severability clause; a repealer clause, a savings clause, and an effective date. [Consent Agenda Item (GG) (Item Pulled)]

Ordinance No. 2006-9-31: To adopt and enact Supplement Number 75 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 (HH)]

ITEMS FOR INDIVIDUAL CONSIDERATION:

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

Rejection of Bids for Bid No. 2006-1-B for 15th Street Reconstruction (Avenue G to Avenue I). [Consent Agenda Item (G)] (Exhibit “F”)

Upon a motion made by Council Member Callison and seconded by Council Member Ellerbe, the Council voted 5-0 to reject Bid No. 2006-1-B for 15th Street Reconstruction (Avenue G to Avenue I).

Council Member Dunlap resumed his seat at the bench.

Due to possible conflicts of interest, Council Member Stahel stepped down from the bench on the following two items which were considered concurrently.

Purchase from Existing Contract/Agreement: To authorize the purchase of Netqos Network Management Software and Consulting in the amount of \$190,000 from Global Data Systems through a Department of Information Resources (DIR) Contract, and authorizing the City Manager to execute all necessary documents. (DIR#SDD-230) [Consent Agenda Item (H)]

Purchase from Existing Contract/Agreement: To authorize the purchase of a Premier Support Service Contract in the amount of \$62,160 from Microsoft Corporation through a State of Texas Department of Information Resources (DIR) Contract, and authorizing the City Manager to execute all necessary documents. (DIR-BUSOP-180) [Consent Agenda Item (I)]

Upon a motion made by Council Member LaRosiliere and seconded by Council Member Dunlap, the Council voted 5-0 to authorize the purchase of Netqos Network Management Software and Consulting in the amount of \$190,000 from Global Data Systems through a Department of Information Resources (DIR) Contract and to authorize the purchase of a Premier Support Service Contract in the amount of \$62,160 from Microsoft Corporation through a State of Texas Department of Information Resources (DIR) Contract.

Council Member Stahel resumed his seat at the bench.

Resolution No. 2006-9-32(R): To approve the terms and conditions of an Agreement by and among the City of Melissa, the cities of Allen, Frisco and Plano and the Arts of Collin County Commission, Inc. for Melissa to be a “Member” of the Arts of Collin County Commission, Inc.; authorizing its execution by the City Manager; and providing an effective date. [Consent Agenda Item (U)]

Jack Lagos, citizen of the City, spoke to the Articles of Incorporation of the Arts of Collin County indicating that the corporation shall have no “members,” to amending the word to read “patron” or “associate” and to the Commission being a signatory to this agreement. City Attorney Wetherbee responded that the issue of making a change in terminology has been raised but spoke to it being done in the interlocal agreement. Council Member Stahel spoke to working towards making a revision in the terminology of the interlocal agreement and Executive Director of the Arts of Collin County Commission Baudoin spoke to arts organizations having members as contributors as opposed to members in the bylaws, but stated that he would agree with Ms. Wetherbee and that a recommendation will be made to the board.

Upon a motion made by Council Member Stahel and seconded by Council Member Callison, the Council voted 6-0 to approve the terms and conditions of an Agreement by and among the City of Melissa, the cities of Allen, Frisco and Plano and the Arts of Collin County Commission, Inc. for Melissa to be a “Member” of the Arts of Collin County Commission, Inc.; authorizing its execution by the City Manager; and providing an effective date; and further to adopt Resolution No. 2006-9-32(R).

Adoption of City Council Strategic Plan for 2006-2021 [Regular Agenda Item (1)]

Executive Director Glasscock provided highlights of the City Council Strategic Plan for 2006-2021 advising that a change was made to the vision statement adding “sustainable city.” He stated that no changes were made to the mission statement. Mr. Glasscock spoke to Goal 1: Premier City in Which to Live and stated that a revision was made to refer to Plano as livable and sustainable and the objectives were unchanged. He spoke to Goal 2: Service Excellence, advising that there were no changes in the objectives and that the Council identified twelve short-term actions. Mr. Glasscock stated that Goal 3: Livable and Sustainable Community, advising that an objective was added to encourage and facilitate “green” buildings and development and spoke to there being nine short-term actions. He spoke to Goal 4: Diverse Business Center which has been revised under the second objective to include reference to retail and industrial centers. Mr. Glasscock spoke to Goal 5: Safe, Efficient Travel, advising that no changes have been made and that there are seven objectives, the only new one being speed table direction and funding.

Upon a motion made by Council Member Stahel and seconded by Council Member Callison, the Council voted 6-0 to adopt the City Council Strategic Plan for 2006-2021.

An ordinance to amend existing franchise Ordinance No. 2006-8-17 between the City of Plano and TXU Electric Delivery Company, a Texas Corporation, its successors and assigns, to correct an error in the date that final payment under the franchise will be made; providing for TXU Electric Delivery acceptance; finding and determining that the meeting at which this ordinance is passed is open to the public as required by law; and providing a repealer clause, a severability clause and an effective date. First Reading [Regular Agenda Item (2)]

Director of Customer and Utilities Services Israelson spoke regarding the need to make a change to the ordinance with regard to payment dates.

Upon a motion made by Council Member Stahel and seconded by Council Member Ellerbe the council voted 6-0 to approve the first reading of an ordinance to amend existing franchise Ordinance No. 2006-8-17 between the City of Plano and TXU Electric Delivery Company, a Texas Corporation, its successors and assigns, to correct an error in the date that final payment under the franchise will be made; providing for TXU Electric Delivery acceptance; finding and determining that the meeting at which this ordinance is passed is open to the public as required by law.

Review of Annual Performance Report for the Use of Federal Funds in 2005-2006.
[Regular Agenda Item (3)]

Director of Planning Jarrell advised that this report is a requirement of the grant programs and that it includes funding provided to the Plano Housing Authority. She spoke to Plano receiving \$10,401,696 in federal funds with 97.7% of which is being used to provide housing for low and moderate income residents. Ms. Jarrell stated that the City provided \$503,000 in community service funds with 20% of those being used for housing and that these accomplishments support both the Council's Strategic Plan and Goals as well as the City's Housing and Community Development Plan.

Public Hearing and adoption of Ordinance No. 2006-9-33 requested in Zoning Case 2006-17 – To amend Subsection 2.502 (Schedule of Permitted Uses) of Section 2.500 (Permitted Uses) of Article 2 (Zoning Districts and Uses) and related sections of the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, to allow the Automobile Leasing/Renting use with approval of a Specific Use Permit in the Retail zoning district subject to Residential Adjacency Standards; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date. Applicant: City of Plano [Regular Agenda Item (4)]

Director of Planning Jarrell advised that this item is presented at the request of a shopping center manager to consider whether auto leasing and renting should be allowed with a Specific Use Permit (SUP) in retail districts. She spoke to it being allowed currently only as a secondary use to automotive uses and advised that this ordinance would not allow moving vans/trucks to be leased in retail shopping centers. Ms. Jarrell stated that the Planning and Zoning Commission recommended the Schedule of Permitted Uses (use charts) be amended to allow the automobile leasing/renting use with approval of an SUP in the Retail zoning district subject to Residential Adjacency Standards. She responded to Council Member Dunlap that restrictions on trucks and large vehicles will not be affected and that used car sales are not allowed in retail zoning districts.

Deputy Mayor Pro Tem Magnuson opened the Public Hearing. Alan Sandgarten, property manager of Coit/Legacy LP Shopping Center spoke in support of the request. No one else spoke either for or against the request. The Public Hearing was closed.

Upon a motion made by Council Member Dunlap and seconded by Council Member Ellerbe, the Council voted 6-0 to amend Subsection 2.502 (Schedule of Permitted Uses) of Section 2.500 (Permitted Uses) of Article 2 (Zoning Districts and Uses) and related sections of the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, to allow the Automobile Leasing/Renting use with approval of a Specific Use Permit in the Retail zoning district subject to Residential Adjacency Standards as requested in Zoning Case 2006-18 and as recommended by the Planning and Zoning Commission; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date; and further to adopt Ordinance No. 2006-9-33.

Public Hearing and adoption of Ordinance No. 2006-9-34 as requested in Zoning Case 2006-18 – To amend Subsection 2.502 (Schedule of Permitted Uses) of Section 2.500 (Permitted Uses) of Article 2 (Zoning Districts and Uses) regarding helistop use and related sections of the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, to allow helistop use by right within the Central Business-1 and Commercial Employment zoning districts of the Comprehensive Zoning Ordinance; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date. Applicant: City of Plano [Regular Agenda Item (5)]

Director of Planning Jarrell advised that the Planning and Zoning Commission recommended approval of helistop uses being permitted by right within the CB-1 and CE zoning districts in order to correct an error in the Zoning Ordinance.

Deputy Mayor Pro Tem Magnuson opened the Public Hearing. No one spoke either for or against the request. The Public Hearing was closed.

Upon a motion made by Council Member Stahel and seconded by Council Member Callison, the Council voted 6-0 to amend Subsection 2.502 (Schedule of Permitted Uses) of Section 2.500 (Permitted Uses) of Article 2 (Zoning Districts and Uses) regarding helistop use and related sections of the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, to allow helistop use by right within the Central Business-1 and Commercial Employment zoning districts of the Comprehensive Zoning Ordinance as requested in Zoning Case 2006-18 and as recommended by the Planning and Zoning Commission; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date; and adoption of Ordinance No. 2006-9-34.

Public Hearing and adoption of Ordinance No. 2006-9-35 as requested in Zoning Case 2006-19 – To amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, granting Specific Use Permit No. 576 so as to allow the additional use of Service Contractor (with storage yard) on one lot on 0.5± acre of land located on the west side of K Avenue, 484± feet south of 14th Street in the City of Plano, Collin County, Texas, presently zoned Light Commercial; 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, and an effective date. Applicant: Bill Lisle, III [Regular Agenda Item (6)]

Director of Planning Jarrell advised the Council that the Planning and Zoning Commission recommended approval as submitted.

Deputy Mayor Pro Tem Magnuson opened the Public Hearing. Applicant Bill Lisle, III responded to Council Member Stahel that the addition will be approximately 2,000 square feet and that the existing building is smaller. No one else spoke either for or against the request. The Public Hearing was closed.

Ordinance No. 2006-9-35 (cont'd)

Ms. Jarrell responded to Council Member Ellerbe regarding the screening requirements and stated that this property is partially screened with a chain link fence on two sides and wood fence on the north side and that they will be seeking a variance from the Board of Adjustment for the open storage requirement. Mr. Lisle spoke to the property's location and visibility on K Avenue.

Upon a motion made by Council Member Stahel and seconded by Council Member Callison the Council voted 6-0 to amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, granting Specific Use Permit No. 576 so as to allow the additional use of Service Contractor (with storage yard) on one lot on 0.5± acre of land located on the west side of K Avenue, 484± feet south of 14th Street in the City of Plano, Collin County, Texas, presently zoned Light Commercial as requested in Zoning Case 2006-19 and as recommended by the Planning and Zoning Commission; 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, and an effective date; and further to adopt Ordinance No. 2006-9-35.

Public Hearing and adoption of Ordinance No. 2006-9-36 as requested in Zoning Case 2006-20 – To amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, granting Specific Use Permit No. 577 so as to allow the additional use of Automobile Leasing/Renting on 0.1± acre of land located 578± feet south of Legacy Drive and 745± feet west of Coit 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, and an effective date. Applicant: Coit/Legacy, L.P. [Regular Agenda Item (7)]

Director of Planning Jarrell advised that the Planning and Zoning Commission recommended approval of the request subject to the Council's approval of Zoning Case 2006-17.

Deputy Mayor Pro Tem Magnuson opened the Public Hearing. Alan Sandgarten, representing the applicant, spoke to plans for the property and requested approval. No one else spoke either for or against the request. The Public Hearing was closed.

Ordinance No. 2006-9-35 (cont'd)

Upon a motion made by Council Member LaRosiliere and seconded by Council Member Stahel, the Council voted 6-0 to amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, granting Specific Use Permit No. 577 so as to allow the additional use of Automobile Leasing/Renting on 0.1± acre of land located 578± feet south of Legacy Drive and 745± feet west of Coit Road in the City of Plano, Collin County, Texas, presently zoned Retail; directing a change accordingly in the official zoning map of the City as requested in Zoning Case 2006-20 and as recommended by the Planning and Zoning Commission; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date; and further to adopt Ordinance No. 2006-9-36.

There being no further discussion, Deputy Mayor Pro Tem Magnuson adjourned the meeting at 9:02 p.m.

Sally Magnuson, DEPUTY MAYOR PRO TEM

ATTEST:

Elaine Bealke, City Secretary



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular	<input type="checkbox"/> Statutory	Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date:	10/9/06		Reviewed by Legal	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
Department:	Purchasing		Initials	Date	
Department Head	Mike Ryan		Executive Director		
Dept Signature:	<i>[Signature]</i>		City Manager	<i>[Signature]</i> 10/9/06	
Agenda Coordinator (include phone #): Dianna Wike Ext. 7549					

ACTION REQUESTED: ORDINANCE RESOLUTION CHANGE ORDER AGREEMENT
 APPROVAL OF BID AWARD OF CONTRACT OTHER

CAPTION

Award/Rejection of Bid/Proposal for Bid No 2006-226-C for Biodegradable Paper Bags to Altivity Packaging in the estimated annual amount of \$75,000.00.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR:	06/07, 07,08, 08/09	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): WAREHOUSE

COMMENTS: This item approves price quotes for an annual fixed price contract with three optional one-year renewals. Funding for this item is included in the FY 2006/07 budget. The estimated annual amount is \$75,000.

STRATEGIC PLAN GOAL: Biodegradable Paper Bags relates to the City's goal of "Service Excellence".

SUMMARY OF ITEM

Annual Contract With Renewals

Staff recommends bid of Altivity Packaging in the estimated annual amount of \$75,000.00, be accepted as lowest responsive, responsible bid, and conditioned upon timely execution of any necessary contract documents. This will establish an annual fixed price contract, with three optional one-year renewals for the purchase of Biodegradable Paper Bags.

List of Supporting Documents:
Bid Summary

Other Departments, Boards, Commissions or Agencies

b-1

CITY OF PLANO

BID NO. 2006-226-C BIODEGRADABLE PAPER BAGS

BID RECAP

Bid opening Date/Time: 9/21/2006 @ 3:30pm

Number of Vendors Notified: 392

Vendors Submitting "No Bids": 4

Number of Bids Submitted: 2

Altivity Packaging
Ampac Holdings, LLC

Bids Evaluated Non-Responsive to Specification: 0

Recommended Vendor(s):

Altivity Packaging

Dianna Wike

September 25, 2006

Dianna Wike, Buyer

Date

b-2



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date:	10/09/06	Reviewed by Legal	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
Department:	Purchasing	Initials	Date	
Department Head	Mike Ryan	Executive Director		
Dept Signature:	<i>[Signature]</i>	City Manager	<i>[Signature]</i> 9/27/06	
Agenda Coordinator (include phone #): Glenna Hayes x 7074				
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input checked="" type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
Award/Rejection of Bid/Proposal for Bid No. 2006-224-G for Draeger brand SCBA units to Dantack Corporation in the amount of \$32,990.00 (Bid # 2006-224-G)				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	06/07	Prior Year (CIP Only)	Current Year	Future Years
Budget		0		0
Encumbered/Expended Amount		0	0	0
This Item		0	32,990.00	32,990.00
BALANCE		0	32,990.00	32,990.00
FUND(S): GRANT FUND				
Comments: funds are available in the 2005 UASI Homeland Security grant fund for the purchase of SCBA equipment. The balance of funds will be used for other equipment purchases and items as allowed under the UASI grant.				
STRAGIC PLAN GOAL: Rescue equipment relates to the City's Goal of "Service Excellence".				
SUMMARY OF ITEM				
Staff recommends bid of Dantack Corporation be accepted as the lowest responsive, responsible bid meeting specifications for Draeger brand SCBA Units in the estimated amount of \$32,990.00. (2006-224-G)				
List of Supporting Documents: Bid Recap;		Other Departments, Boards, Commissions or Agencies		

C-1

CITY OF PLANO

BID NO. 2006-224-G
DRAEGER SCBA UNITS

BID RECAP

Bid opening Date/Time: August 18, 2006 @ 3:30 PM

Number of Vendors Notified: 570

Vendors Submitting "No Bids": 5

Number of Bids Submitted: 7

LoneStar Maintenance & Service Inc.
Dantack Corporation
Global Protection LLC
VWR International
911 Safety Equipment
SunWest Sales Company
AramSCO

Bids Evaluated Non-Responsive to Specification: 1

Recommended Vendor(s):

Dantack Corporation \$32,990.00

Glenna Hayes

Glenna Hayes
Senior Buyer, A.P.P.

September 27, 2006

Date

C-2

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**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular	<input type="checkbox"/> Statutory	Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date: 10/9/06		Reviewed by Legal	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable	
Department:	Fleet & Equipment Services			Initials	Date
Department Head:	Mark Jerome	Jimmy Foster	Executive Director	<i>[Signature]</i>	9-29-06
Dept Signature:	<i>[Signature]</i>			City Manager	<i>[Signature]</i>
Agenda Coordinator (include phone #):		Linda M. Robinson x4180			
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT					
<input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input checked="" type="checkbox"/> OTHER PURCHASE OFF EXISTING CONTRACT					

CAPTION

Approval of the purchase of five (5) Toyota Prius Hybrid Sedans in the amount of \$102,690.00 from Philpott Motors through an existing contract/agreement with the Texas Building and Procurement Commission, and authorizing the City Manager or his designee to execute all necessary documents. (070-A1)

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR: 06/07	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	119,000	0	119,000
Encumbered/Expended Amount	0	0	0	0
This Item	0	-102,690	0	-102,690
BALANCE	0	16,310	0	16,310

FUND(S): GENERAL FUND AND SUSTAINABILITY & ENVIRONMENTAL SERVICES FUND

COMMENTS: Funds are included in the approved FY 2006-07 budget for the purchase of (5) new additions to the fleet. The balance of funds will be used for other rolling stock purchases.

STRATEGIC PLAN GOAL: Vehicle purchase relates to the City's Goal of "Service Excellence."

SUMMARY OF ITEM

Equipment Services request the purchase of five Toyota Prius Hybrid Sedans through the Texas Building and Procurement Commission, Contract #070-A1 awarded to Philpott Motors. All five units are approved in the FY 06/07 budget for: Two (2) units are new additions to the fleet for Dept-619/Property Standards, Account 01-619-8421, Supplement #619001. Two (2) units are new additions for Dept-623/Rental Registrations and Inspections, Account 01-623-8421, Supplement #623001 and one (1) new addition for Dept-752/Commercial Diversion Program; Account 45-752-8421; Supplement #752001.

The City is authorized to purchase from the State Contract list pursuant to Chapter 271, Subchapter D of the Tex.Loc.Govt.Code and by doing so satisfies any State Law requiring local governments to seek competitive bids for items.

Total purchase price of all 5 units is \$102,690.00.

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
Cover, Memo	



MEMORANDUM

Date: September 28, 2006
To: January Cook & Steve Tillman, Senior Buyer
From: Mark Jerome, Fleet & Equipment Services Manager
Subject: Request to purchase five (5) Toyota Prius Hybrid Sedans from Philpott Motors through the Texas Building and Procurement Contact, #070-A1, Commodity Code 070-15-04001-2.

Contract price each:	\$20,538.00 x 5 =	\$ 102,690.00
Amount budgeted for Dept 619 (2-New Additions):		\$ 46,000.00
Amount budgeted for Dept 623 (2-New Additions):		\$ 69,000.00
Amount budgeted for Dept 752 (1-New Addition):		<u>\$ 27,000.00</u>
TOTAL Budgeted Amount:		\$ 142,000.00

Note: Two (2) units are new additions to the fleet for Dept-619/Property Standards, Account 01-619-8421, Supplement #619001. Two (2) units are new additions for Dept-623/Rental Registrations and Inspections, Account 01-623-8421, Supplement #623001 and one (1) new addition for Dept-752/Commercial Diversion Program; Account 45-752-8421; Supplement #752001. All five units are approved in the FY 06/07 budget.

Please reference Purchase Order Requisition No. _____.

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

Cc: Jimmy Foster
Cynthia Banner
Nancy Nevil
Reid Choate
Diane Palmer
Stephen Teiper

d-2



Government and Commercial Sales

1400 US Highway 69 North Nederland, TX 77627 Phone: 1-888-97-FLEET Fax: 1-409-724-0934

Date: 9/26/2006

Prepared by: Richard Hyder

phone: (409) 727-1451 x1048

toll free phone: (888) 973-5338

fax: (409) 724-0934

email: richard.hyder@philpottmotors.com

Prepared for: City of Plano

Reid Choate

phone: 972 769-4182

fax: 972 461-9349

Proposal:	# of items	Description	Price	Extension
	5	2006 Toyota Prius per TBPC contract Commodity Code 070-15-04001-2	\$ 20,538.00	\$ 102,690.00
	5	Options requiring additional PO: 5-piece floor mats	\$ 155.00	\$ 775.00
ALL VEHICLES SUBJECT TO AVAILABILITY			TOTAL:	\$ 103,465.00

Notes:

Please call if you have any questions. Thank you

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**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular	<input type="checkbox"/> Statutory	Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date:	10/9/06		Reviewed by Legal	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
Department:	Fleet & Equipment Services			Initials	Date
Department Head:	Mark Jerome	Jimmy Foster	Executive Director	<i>[Signature]</i>	9-29-06
Dept Signature:	<i>[Signature]</i>		City Manager	<i>[Signature]</i>	9/29/06
Agenda Coordinator (include phone #): Linda M. Robinson x4180					

ACTION REQUESTED: ORDINANCE RESOLUTION CHANGE ORDER AGREEMENT
 APPROVAL OF BID AWARD OF CONTRACT OTHER PURCHASE OFF EXISTING CONTRACT

CAPTION

Approval of the purchase of seven (7) Ford Escape Hybrid vehicles in the amount of \$168,868.00 from Philpott Motors through an existing contract/agreement with the Texas Building and Procurement Commission, and authorizing the City Manager or his designee to execute all necessary documents. (070-A1)

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR:	06/07	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	167,000	0	167,000
Encumbered/Expended Amount		0	0	0	0
This Item		0	-168,868	0	-168,868
BALANCE		0	-1,868	0	-1,868

FUND(S): GENERAL FUND AND MUNICIPAL DRAINAGE UTILITY FUND

COMMENTS: Funds are included in the approved FY 2006-07 Budget for the purchase (7) new additions to the fleet. The overage will be funded through savings in other Rolling Stock purchases.

STRATEGIC PLAN GOAL; Vehicle purchased relates to the City's Goal of "Service Excellence."

SUMMARY OF ITEM

Equipment Services request the purchase of seven Ford Escape Hybrid vehicles through the Texas Building and Procurement Commission, Contract #070-A1 awarded to Philpott Motors. One (1) unit is a new addition to the fleet for Dept-321/Records Management, carry over funds from FY 05/06 budget approved by Bruce Glasscock. One (1) unit is a new addition for Dept-473/Storm Water, Account 01-473-8421; Supplement #473001 and five (5) new additions for Dept-721/Engineering, Account 01-721-8421; Supplement #721001; with the exception that funds for the 5th unit to be transferred from Dept 623/Rental Registrations and Inspections; Supplement #623001 as approved by Rod Hogan.

The City is authorized to purchase from the State Contract list pursuant to Chapter 271, Subchapter D of the Tex. Loc. Govt. Code and by doing so satisfies any State Law requiring local governments to seek competitive bids for items.

Total purchase price of all 7 units is \$168,868.00

List of Supporting Documents: Cover, Memo,	Other Departments, Boards, Commissions or Agencies
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MEMORANDUM

Date: September 28, 2006
To: January Cook & Steve Tillman, Senior Buyer
From: Mark Jerome, Fleet & Equipment Services Manager
Subject: Request to purchase seven (7) Ford Escape Hybrid vehicles from Philpott Motors through the Texas Building and Procurement Contact, #070-A1, Commodity Code 070-15-06001-0.

Contract price each:	\$24,124.00 x 7 =	\$ 168,868.00
Amount budgeted for Dept 321 (1-New Addition):		\$ 33,000.00
Amount budgeted for Dept 473 (1-New Addition):		\$ 28,000.00
Amount budgeted for Dept 721 (5-New Additions):		<u>\$ 111,000.00</u>
TOTAL Budgeted Amount:		\$ 172,000.00

Note: One (1) unit is a new addition to the fleet for Dept-321/Records Management, carry over funds from FY 05/06 budget approved by Bruce Glasscock. One (1) unit is a new addition for Dept-473/Storm Water, Account 01-473-8421; Supplement #473001 and five (5) new additions for Dept-721/Engineering, Account 01-721-8421; Supplement #721001; with the exception that funds for the 5th unit to be transferred from Dept 623/Rental Registrations and Inspections; Supplement #623001 as approved by Rod Hogan.

Please reference Purchase Order Requisition No. _____

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

Cc: Jimmy Foster
Billie Clayton
Steve Berry
Alan Upchurch
Reid Choate
Diane Palmer
Stephen Teiper

e-2



Government and Commercial Sales

1400 US Highway 69 North Nederland, TX 77627 Phone: 1-888-97-FLEET Fax: 1-409-724-0934

Date: 9/27/2006

Prepared by: Richard Hyder
 phone: (409) 727-1451 x1048
 toll free phone: (888) 973-5338
 fax: (409) 724-0934
 email: richard.hyder@philpottmotors.com

Prepared for: City of Plano
 Reid Choate
 phone: 972 769-4182
 fax: 972 461-9349

Proposal:	# of items	Description	Price	Extension
	7	Ford Escape Hybrid TBPC Commodity Code 070-15-06001-0	\$ 24,124.00	\$ 168,868.00
ALL VEHICLES SUBJECT TO AVAILABILITY			TOTAL:	\$ 168,868.00

Notes: Please call if you have any questions. Thank you

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**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date:	10/9/06	Reviewed by Legal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Engineering	Initials	Date	
Department Head	Alan L. Upchurch	Executive Director	<i>[Signature]</i>	<i>10/2/06</i>
Dept Signature:	<i>[Signature]</i>	City Manager	<i>[Signature]</i>	<i>10/3/06</i>
Agenda Coordinator (include phone #):		Pegues (7198)	(Project No. 5389)	

ACTION REQUESTED: ORDINANCE RESOLUTION CHANGE ORDER AGREEMENT
 APPROVAL OF BID AWARD OF CONTRACT OTHER

CAPTION

Approval and authorization for the selection of Brockette/Davis/Drake, Inc. to provide Professional Engineering Services for an amount not to exceed \$232,400 for the design of Spring Creek Parkway at Coit Road Intersection Improvements (TxDOT) and authorizing the City Manager or his designee to execute all necessary documents to effectuate this contract. Bid No. B113-04

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR: 2006-07	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	50,792	260,208	1,656,000	1,967,000
Encumbered/Expended Amount	-50,792	0	0	-50,792
This Item	0	-232,400	0	-232,400
BALANCE	0	27,808	1,656,000	1,683,808

FUND(S): **STREET IMPROVEMENT CIP**

COMMENTS: Funds are included in the 2006-07 Street Improvement CIP. This item, in the amount of \$232,400, will leave a current year balance of \$27,808 for the Spring Creek at Coit Intersection project.

STRATEGIC PLAN GOAL: Intersection design relates to the City's Goal of Safe, Efficient Travel.

SUMMARY OF ITEM

This agreement with Brockette/Davis/Drake, Inc. is for engineering design of Spring Creek Parkway at Coit Road Intersection Improvements (TxDOT) to include paving, drainage, utility relocation, signal installation and modification, pavement markings and right-of-way procurement.

The contract fee is for \$232,400 and is detailed as follows:

Basic Services

Preliminary Design (30% Schematic)	\$ 54,350
Preliminary Design (65% complete)	\$ 36,040
Final Design (95% and 100% complete)	\$ 42,510
Bid Phase Services	\$ 4,500
Construction Phase Services	\$ 11,650
Printing and other reimbursables	\$ 5,000
Total Basic Services	\$154,050

CONTINUED ON PAGE 2

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**CITY OF PLANO
COUNCIL AGENDA ITEM**

Special Services

Right of Way/Easement Services	\$ 6,800
Construction Control Survey Staking	\$ 850
Design Survey	\$ 14,400
Signal Design	\$ 34,300
Environmental Services/Categorical Exclusion	<u>\$ 22,000</u>
Total Special Services	\$ 78,350

TOTAL ALL SERVICES \$232,400

Funding is available from the Street Improvement Community Investment Program. Staff feels the fee is reasonable for this project estimated to cost \$1,500,000.

List of Supporting Documents:

Engineering Services Agreement
Location Map

Other Departments, Boards, Commissions or Agencies
N/A

f-a

**SPRING CREEK PARKWAY AT COIT ROAD
INTERSECTION IMPROVEMENTS (TXDOT)**

PROJECT NO. 5389

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 **BROCKETTE/DAVIS/DRAKE, 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 **SPRING CREEK PARKWAY AT COIT ROAD INTERSECTION IMPROVEMENTS (TXDOT)** project located in the City of Plano, Collin County, Texas, hereinafter referred to as the "Project"; and

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

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

I. Employment of the Engineer

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

II. Scope of Services

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

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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. DBE/HUB PARTICIPATION

Engineer shall meet the 20% participation goal established by the Texas Department of Transportation ("TxDOT") for Disadvantaged Business Enterprises and Historically Underutilized Businesses ("DBE/HUB") in the performance of this Contract. If Engineer does not satisfy this goal in its performance of this Contract, Engineer shall document in writing all good faith efforts made to comply with this goal.

V. 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.

VI. 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.

VII. 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.

VIII. Indemnity

Engineer shall release, defend, indemnify and hold City and its officers, agents and employees harmless from and against all damages, injuries (including death), claims, property damages (including loss of use), losses, demands, suits, judgments and costs, including reasonable attorney's fees and expenses, in any way arising out of, related to, or resulting from the services provided by Engineer and to the extent caused by the negligent act or omission or intentional wrongful act or omission of Engineer, its officers, agents, employees, subcontractors, licensees, invitees or any other third

f-4

parties for whom Engineer is legally responsible (hereinafter "Claims"). Engineer is expressly required to defend City against all such Claims.

In its sole discretion, City shall have the right to approve defense counsel to be retained by Engineer in fulfilling its obligation hereunder to defend and indemnify 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 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 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 Engineer fails to retain counsel within such 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 City.

IX. 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.

X. 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.

XI. 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.

XII. 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.

XIII. 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.

XIV. 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.

XV. 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.

XVI. 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
Engineering Department
P.O. Box 860358
Plano, TX 75086-0358

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

Glenn Hitt
Brockette/Davis/Drake, Inc.
4144 North Central Expressway #1100
Dallas TX 75204

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.

XVII. Miscellaneous

A. Paragraph Headings:

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

B. Contract Interpretation:

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

C. Venue/Governing Law:

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

D. Successors and Assigns:

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

E. Severability:

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

F. Effective Date:

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

SIGNED on the date indicated below.

BROCKETTE/DAVIS/DRAKE, INC.
A Texas Corporation

DATE: _____

BY: _____
Robert E. Hill, PRESIDENT

CITY OF PLANO, TEXAS

DATE: _____

BY: _____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee
CITY ATTORNEY

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ACKNOWLEDGMENTS

STATE OF TEXAS §
§
COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of _____, 2____, by **ROBERT E. HILL, PRESIDENT**, of **BROCKETTE/DAVIS/DRAKE, INC.**, a **TEXAS** corporation, on behalf of said corporation.

Notary Public, State of Texas

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2____, by **THOMAS H. MUEHLENBECK, City Manager**, of the **City of Plano, Texas**, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

Notary Public, State of Texas

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**EXHIBIT A
SCOPE OF SERVICES**

**SPRING CREEK PARKWAY AT COIT ROAD
INTERSECTION IMPROVEMENTS (TxDOT) – PS&E
PROJECT NUMBER 5389**

PROJECT DESCRIPTION:

The City of Plano (the City) intends to design and construct improvements at the intersection of Spring Creek Parkway and Coit Road. A traffic study had been previously prepared for the City (Spring Creek Parkway at Coit Road Traffic Study Phase 1 and Phase 1- Additional Services by Turner Collie & Braden, Inc.), which recommends the implementation of the “Modified Median Lefts” intersection design. This recommendation has been accepted by the City of Plano and is the project to be designed.

The project will be funded by the Texas Department of Transportation (TxDOT) and the North Central Texas Council of Governments (NCTCOG). Thus, the project must meet TxDOT procedural standards (drafting standards, environmental clearance, public hearings, and advertising procedures). Per the agreement between the City and TxDOT, American Association of State Highway and Transportation Officials (AASHTO) geometric guidelines will be used. However, all roadway items must meet TxDOT construction specifications. The project must meet requirements set forth in the TxDOT Local Government Project Procedures (LGPP) publications “Project Development and Engineering Design” and “Highway Construction and Related Projects”.

This project consists of the design of intersection improvements at Spring Creek Parkway and Coit Road, including required utility adjustments and traffic signals. The intersection will be a “Modified Median Lefts” design. Under the standard Median Lefts design, the interlocking left turn movements are eliminated at divided roadways and two median crossovers are added. For the Modified Median Lefts design, left turn movements are allowed from one road but are prohibited from the other road at the intersection. At this particular intersection, traffic on Coit Road is prohibited from making a direct left turn onto Spring Creek Parkway. Instead, the left turning traffic approaching the intersection makes a right turn movement from Coit Road onto Spring Creek Parkway first, then merges into the left lane and makes a “U” turn on Spring Creek Parkway using the median crossover. The traffic then completes the Median Left Turn movement by continuing straight through the intersection (crossing Coit Road). Left turns from Spring Creek Parkway onto Coit Road will be allowed.

The improvements required to implement the Modified Median Lefts design at the Spring creek Parkway at Coit Road intersection are summarized below:

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- Remove the advance left turn bays for the Coit Road approaches at both intersections with buttoning or striping modifications.
- Remove or modify the median crossover currently under construction on Spring Creek west of Coit Road, as required.
- Add right turn bays for the north bound approach for Coit Road at its intersection with eastbound Spring Creek and to the southbound for Coit Road at its intersection with westbound Spring Creek Parkway. Also add a right turn bay for eastbound traffic on Spring Creek Parkway turning south onto Coit Road. A right turn bay for westbound traffic on Spring Creek Parkway turning north onto Coit Road is currently under design to be constructed in the near future.
- Modification of the existing U-turn (east to west) in the median immediately west of Coit Road and installation of a new U-turn (west to east) in the median immediately east of Coit Road.
- Construct the two median crossovers on Spring Creek Parkway in the existing right-of-way. The eastern crossover will be placed approximately 660 feet to the east of the Coit Road centerline. The western crossover will be placed approximately 600 feet to the west of the Coit Road centerline, so that it will align with a new driveway to be constructed for a proposed development southwest of the Spring Creek Parkway at Coit Road intersection. It will provide two (2) lanes: one (1) to align with the south bound entry into the new driveway and one (1) to provide for traffic turning to go east on Spring Creek. A crossover currently under construction will be evaluated to determine its adequacy to serve as the western crossover. If deficiencies are determined, modifications shall be designed and constructed with this project.
- Provide left turn or U-turn acceleration or deceleration lanes for traffic on Spring Creek using U-turn or median cross-over areas.
- Install a new traffic signal at east bound Spring Creek Parkway, west of Coit Road, to avoid unsafe traffic movement from the median crossover onto the private property driveways and for west bound traffic east of Coit at the crossover. Install new traffic signals or signal modifications at locations where existing signals must be relocated due to widening or intersection operational modifications. The consultant must determine if signal relocation will be needed. All new signal equipment will be furnished by the City and installed by the contractor. All signals must be equipped with video detection equipment. Signal design at all locations must be coordinated with City Engineering Transportation in the early stages of design.
- Install additional permanent signage for the improved intersection as required by the City.
- Provide a means to prevent traffic exiting the Wal-Mart parking lot on the south side of Spring Creek from crossing the through east bound lanes on Spring Creek to enter the proposed median cross-over east of Coit.
- The left turn lanes on Coit Road for the intersections immediately north and south of Spring Creek will not be lengthened on this project.

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BASIC SERVICES:

A. Design Standards

1. This project will be designed in accordance with the following:

AASHTO Design Standards

TxDOT Standard Construction Details and Specifications

City of Plano Standard Construction Details and Specifications

City of Plano Design Standards

NCTCOG Standard Specifications for Public Works Construction

Texas Commission Environmental Quality Requirements

Architectural Barriers Act

EPA Regulations

2. All plans submitted to the City shall be signed and sealed in accordance with state law.

B. Research and Data Collection –

1. Meet with City of Plano and Texas Department of Transportation (TxDOT) engineering staff and obtain design criteria, pertinent utility plans, street plans, plats and right-of-way maps, existing easement information, and other information available for the project area.
2. Meet with the City of Plano project manager and conduct an on-site review and walk through.
3. Meet with TxDOT engineering staff to obtain proposed and existing roadway construction plans, to coordinate proposed connections and construction phasing related to TxDOT roadways in the project area.

C. Design Survey –

1. Establish a horizontal and vertical control network and project control baseline for the project areas. The network and baseline are to be tied into the existing City of Plano control network.
2. Establish horizontal and vertical project control monumentation.
3. Tie right-of-way lines and corners/monuments, property lines and corners/monuments, buildings, fence lines, trees 4-inches in diameter and

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larger, edges of pavements and all other visible surface features to the project control baseline. Existing utility structures shall be located and referenced by utility name (i.e. TXU Elec., Verizon Telephone, Atmos Gas, Etc.).

4. Vertical topographic information tying pavement, drives, walls, manholes (top and inverts), storm drain inlets (top and inverts), and other improvements as needed within the project areas for the design.
5. Provide roadway cross sections at a fifty-foot (50') interval relative to the project baseline and at driveways, street intersections, drainage channels/outfalls or other areas of significance. Cross sections are for project design review and quantity takeoffs and will be a part of the final construction plan set.
6. Perform ground topographic survey to satisfy TxDOT requirements.
7. When underground utilities are exposed, tie to project control baseline.
8. Identify the street address of all adjacent properties to the proposed construction and show on drawings.

D. Right-of-way and Easement Requirements –

1. Prepare a preliminary list of right-of-way parcels and easements necessary to construct the project (if any). Submit to the City of Plano and TxDOT as soon as possible and prior to the preliminary plan submittal.
2. Meet with the City of Plano and TxDOT Staff to determine easement and right-of-way requirements for preparation of field notes and exhibits.

E. Right of Way Preparation –

Preliminary Right of Way Preparation

1. Meet with the City of Plano and TxDOT staff to determine easement and right of way requirements for preparation of field notes and exhibits. Prepare preliminary right of way map (to TxDOT standards) for the project based on meetings with TxDOT and the City of Plano.
2. Plan will illustrate existing right of way, proposed right of way, existing and proposed TxDOT easements, current ownership and other requirements for a TxDOT preliminary map
3. Meet with City of Plano and TxDOT staff to discuss comments.

Final Right of way Map Preparation

1. Revise preliminary right of way map incorporating comments from the City of Plano and TxDOT.
2. Prepare individual parcel plats and descriptions for all parcels and easements identified on the preliminary map for review and approval (See Special Services).
3. Monument the new right of way line and parcels as required by TxDOT
4. Submit final right of way map as approved by TxDOT.

F. Preliminary Design – (30% and 65% design packages)

1. Prepare a TxDOT Schematic Plan (~30% design submittal) and preliminary construction plans for a typical 65% TxDOT design submittal. Prepare the following sheets at the engineering scale indicated (scale for 22" x 34" sheets):
 - Cover sheet.
 - Project layout control sheet(s). Scale 1"= 20'.
 - Quantity sheet. (sheet by sheet itemized breakdown)
 - Typical sections and detail sheets.
 - Construction phasing and temporary traffic control sheets, including temporary traffic signals. Scale 1"= 20'.
 - Paving plan & profile sheets for street improvements. Scale 1"= 20':H; 1"=5':V
 - Storm drain improvement plan & profile sheets. Scale 1"= 20':V; 1"=5':V.
 - SWPPP sheets meeting EPA and City of Plano requirements. Scale 1"= 20'.
 - Final buttoning and signage plan sheets. Scale 1"= 20'.
 - Traffic signal plans. Scale 1"= 20'.
 - Illumination (Street Light) plans. Scale 1"=20'
 - Cross Sections. Scale 1"=20':H; 1"=2':V
 - Water & Sanitary Sewer Adjustment plans (mains, valve boxes, meters, manholes). Scale 1"= 20'
 - Other sheets as required by TxDOT.
2. Information required can be combined on sheets if the information can be clearly shown and is approved by the City of Plano project manager.
3. Coordinate with affected utilities such as water, gas, telephone, cable TV and electric to obtain accurate information for the location of their facilities.
4. Prepare outline of any special technical specifications needed for the project (if any).
5. Prepare an estimate of construction quantities and develop the preliminary statement of probable construction cost.
6. Submit five (5) sets of preliminary plans and one (1) set of an outline of special technical specifications and preliminary statement of probable construction cost to the City for review. Submit additional sets as required to TxDOT for review.
7. Meet with City of Plano and TxDOT staff to discuss comments on preliminary plans, specifications and cost estimates.
8. Distribute the preliminary plans and proposed schedule for bidding and start of construction to local utility companies to obtain information regarding impacts to their facilities.

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G. Final Design – (95% and 100% submittals)

1. Revise preliminary plans incorporating comments from the City of Plano and TxDOT.
2. Incorporate comments from the utility companies.
3. Finalize construction plans for proposed improvements.
4. Finalize special technical specifications and special conditions (if any).
5. Incorporate standard details into the construction plans and prepare additional details as required.
6. Take off final construction quantities and prepare final construction cost estimates.
7. Submit five (5) set of pre-final plans and one (1) set of special technical specifications, draft bid schedule and final statement of probable construction cost to the City for review. Submit additional sets as required to TxDOT for review.
8. Incorporate City and TxDOT final comments into the plans and bid documents.
9. Submit three (3) sets of final blue line prints, seven (7) bound copies of the bid documents and one unbound original bid document set to the City of Plano. Submit additional sets as required to TxDOT.
10. Attend a utility coordination meeting to start relocation process with affected franchise utilities. Distribute copy of final plans and proposed schedule for bid letting and construction to all affected franchise utilities.

Note: All preliminary and final plans will be prepared on 11"x17" paper if acceptable to TxDOT.

H. Bid Phase Services –

1. Assist the City staff in advertising for bids.
2. Furnish plans and specifications for bidding. Cost for these to be recouped by non-refundable deposit from contractors. Maintain a list of plan holders.
3. Furnish plans and bid documents for up to eight (8) plan review rooms to be determined by the City. These documents are to be furnished at no cost to the plan review rooms.
4. Assist City staff in conducting a pre-bid conference, if required.
5. Prepare and distribute addenda to bid documents as necessary.
6. Assist City staff as required in bid opening. Submit list of plan holders to the City, 48-hours prior to the bid letting.
7. Provide bid tabulation to the City of Plano within four working days of the bid letting.
8. Evaluate the low and second low bidders. Prepare letter of recommendation to the City of Plano for awarding a contract to the lowest responsible bidder within four working days of the bid letting.
9. Assist City staff in a pre-construction conference.

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10. Furnish eleven (11) full size (22" x 34") sets and three (3) half size (11"x 17") sets of final construction plans and seven (7) sets of the contract documents manual to the City for construction.

Note: Plans issued for construction will be on 22"x34" paper.

I. Construction Administration –

1. Provide periodic site visits by the design engineer with a written inspection report submitted to the City for each visit.
2. Provide written responses to requests for information or clarifications.
3. Prepare plan and quantity revisions for change orders. The City will prepare and process the change orders.
4. Assist the City staff in conducting the final inspection.
5. Recommend final acceptance of work when acceptable.
6. Prepare construction "Record Drawings" based upon mark-ups and information provided by the construction contractor(s). Submit one blackline set to the City and two (2) CD-ROM disk containing scanned images of the 22" x 34" final "as constructed" blackline drawings (with "record drawing stamps" bearing the signature of the Engineer and the date). The drawings shall be scanned 1 to 1 as Group 4 TIF files at a minimum resolution of 200 dots per inch and a maximum resolution of 400 dots per inch. The TIF files shall be legible and shall include any post processing that may be required to enhance image quality (e.g., de-speckling, de-shading, de-skewing, etc.). Each file shall be named in numeric order.

J. Construction Control Survey –

1. Set vertical and horizontal control stakes for construction at 500' intervals, and a minimum of one at each end of the project.

SPECIAL SERVICES:

A. Right-of-Way and Easement Surveying –

1. Prepare a metes and bounds description and an 8-1/2" x 11" exhibit for any additional right-of-way on a per tract basis. Deliver three (3) reviewed and approved originals to the City. (Assume four (4) parcels in this work effort)
2. Prepare a metes and bounds description and an 8-1/2" x 11" exhibit for temporary construction easements on a per tract basis. Deliver three (3) reviewed and approved originals to the City. (Assume four (4) parcels in this work effort)
3. Set new iron pins at all new corners, PC's and PT's of new right-of-way.

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B. Environmental Services

The Engineer will provide professional environmental services related to the preparation of a Categorical Exclusion (CE) document in accordance with TxDOT Dallas District guidelines for the Intersection Improvements project at Spring creek Parkway and Coit Road in the City of Plano, Collin County, Texas. In developing the CE document, the Engineer will prepare and coordinate the environmental documentation to support the TxDOT Dallas District in obtaining the State environmental clearance for the project. The proposed project involves intersection improvements to facilitate traffic through the intersection and improve safety. The Engineer will perform all work necessary to complete the document.

The following scope of work is adapted from the contract scope of work (TxDOT ENV) as it relates to the preparation of a CE document and performance of associated activities.

Scope of Work

FC 120 – Environmental Studies:

1. The tasks to be performed by the Engineer include data collection and evaluation; field review; state and federal regulatory databases review and field observations relative to potential hazardous materials and substances; data synthesis; project impacts evaluation if necessary; preparation of the preliminary draft, final draft, and final CE document. The scope does not include air and noise modeling, it would not be necessary for intersection improvements.

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EXHIBIT "B"
SCHEDULE OF WORK
SPRING CREEK PARKWAY AT COIT ROAD
INTERSECTION IMPROVEMENTS (TXDOT)
PROJECT NO. 5389



These drawings are prepared by the Engineer of Record. All work shall be in accordance with the specifications of the Texas Department of Transportation (TxDOT) and the City of Dallas. The Engineer of Record is not responsible for any errors or omissions in these drawings.

TXDOT District Office: Dallas, TX
 City of Dallas: Dallas, TX
 Project No. 5389

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**EXHIBIT C
PAYMENT SCHEDULE
SPRING CREEK PARKWAY AT COIT ROAD
INTERSECTION IMPROVEMENTS (TxDOT) – PS&E
PROJECT NUMBER 5389
(All fees “Not to Exceed without prior approval)**

WORK STAGE SUBMITTAL OR COMPLETION	FEE AMOUNT
BASIC SERVICES	
A. Preliminary Design (30% complete - Schematic) (See Exhibit C-1 for detailed breakdown)	\$ 54,350.00
B. Preliminary Design (65% complete) (See Exhibit C-1 for detailed breakdown)	36,040.00
C. Final Design (95% and 100% complete) (See Exhibit C-1 for detailed breakdown)	42,510.00
D. Bid Phase	4,500.00
E. Construction Phase	11,650.00
F. Printing and Reimbursables	<u>5,000.00</u>
TOTAL BASIC SERVICES	\$ 154,050.00
SPECIAL SERVICES	
A. Right of Way/Easement Services	
1. 4 permanent ROW parcels with monuments @ \$850.00/ea.	\$ 3,400.00
2. 4 temporary construction easements @ \$850.00/ea.	3,400.00
Total Right of Way/Easement Services	6,800.00
B. Construction Control Survey Staking	850.00
C. Design Survey	14,400.00
D. Signal Design	34,300.00
E. Environmental Services/Categorical Exclusion	<u>22,000.00</u>
TOTAL SPECIAL SERVICES	\$ 78,350.00
TOTAL FEE ALL SERVICES	\$232,400.00

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EXHIBIT C-1 CITY OF PLANO

SPRING CREEK PARKWAY AT COIT ROAD
PROPOSAL ALLOCATION - PRELIMINARY AND FINAL DESIGN

	Associate \$140 / HR	PM 120 / HR	PE \$100 / HR	SR. CADD \$90 / HR	CADD \$75 / HR	Clerical /\$50/HR	TOTAL COST
I. Preliminary Design							
Schematic Design (30%)							
Prepare Project Base File							
Collect/Edit Survey Data	2	8	6	8	10	4	\$3,510.00
Plot As Built Information	2	8	16	8	12	4	\$4,660.00
Prepare Computer Models	2	8	16	8	12	4	\$4,660.00
Review Existing Reports/Data	2	8	6	8	8	4	\$3,360.00
Obtain Traffic Data	2	8		8	8	4	\$2,760.00
Establish Baselines	2	16	6	16	16	4	\$5,640.00
Prepare Profiles	2	16	6	16	16	4	\$5,640.00
Geometric Design	2	16	16	16	16	4	\$6,640.00
Meetings	4	8		4	4	4	\$2,380.00
Drainage Analysis	2	8	6	8	8	4	\$3,360.00
Traffic/Signing Analysis	2	8	6	8	8	4	\$3,360.00
Coordinate w/ Subconsultants	2	8	2	8	8	2	\$2,860.00
Meetings	4	8		4	4		\$2,180.00
QC/QA	4	8	4	8	8	2	\$3,340.00
SUBTOTAL	34	136	90	128	138	48	\$54,350.00
65% Design							
Prepare Project Plan Sheets	1	16	12	16	16	1	\$5,950.00
Geometric Design	2	16	12	16	16	2	\$6,140.00
Signing Design	1	8	6	8	8	2	\$3,120.00
Pavement Markings	1	12	8	12	12	2	\$4,460.00
Coordinate with Sub Consultants	2	8	4	8	8	2	\$3,060.00
Determine R.O.W. Takes	2	8	6	10	10	4	\$3,690.00
Excavation Calculations	2	8	6	8	8	2	\$3,260.00
Calculate /Tabulate Quantities	2	6	6	8	8	2	\$3,020.00
QC/QA	4	8	4	8	8	2	\$3,340.00
SUBTOTAL	17	90	64	94	94	19	\$36,040.00
II. Final Design							
Geometric Design	2	8	8	8	8	2	\$3,460.00
Signing Design	1	8	6	8	8	2	\$3,120.00
Pavement Markings	1	8	4	8	8	2	\$2,920.00
Response to Comments	2	20	6	18	16	4	\$6,300.00
Excavation Calculations	1	8	8	8	8		\$3,220.00
Coordinate with Sub Consultants	2	4	12	8	8	8	\$3,680.00
Calculate /Tabulate Quantities	4	6	8	8	10	2	\$3,650.00
Prepare Specifications&Manual	4	24	12	16	16	16	\$8,080.00
QC/QA	8	10	12	16	16	8	\$6,560.00
Meetings	4	8					\$1,520.00
SUBTOTAL	29	104	76	98	98	44	\$42,510.00
TOTAL	80	330	230	320	330	111	\$132,900.00

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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, material change, or reduction in coverage without first providing the Risk Manager, City of Plano, at least ten (10) days prior written notice."

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

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

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

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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.

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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.

2.2 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

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 and aggregate |
| <input type="checkbox"/> 17. Garage Liability | \$ _____ BI & PD each occurrence |

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- 18. Garagekeepers' Legal \$ _____ - Comprehensive
\$ _____ - Collision
- 19. Owners Protective Liability \$500,000 Combined single limits
- 20. City named as additional insured on General Liability policy. This coverage is primary to all other coverages the City may possess.
- 21. City provided with Waiver of Subrogation on Workers' Compensation or Alternative program if applicable.
- 22. Ten (10) days notice of cancellation, non-renewal, material change or coverage reduction endorsement required. The words "endeavor to" and "but failure" (to end of sentence) are to be eliminated from the Notice of Cancellation provision on standard ACORD certificates.
- 23. The City of Plano prefers an A.M. Best's Guide Rating of "A-", "VI" or better or Standard and Poors Rating AA or better; Authorized to do business in the State of Texas (not applicable for workers' compensation assigned through pool or alternative compensation programs).
- 24. The Certificate must state project title and project number.
- 25. Other Insurance Required:

INSURANCE AGENT'S STATEMENT

I have reviewed these requirements with the Engineer named below. Additionally:

- 26. The above policy(s) carry the following deductibles: _____

Full limits of coverage available for:
 General Liability _____ Professional Liability _____
 Automobile Liability _____

- 27. Liability policies are (indicate):

OCCURRENCE []

CLAIMS MADE []

Signature

Date

Insurance Agent (Print)

Name of Insured

Date

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EXHIBIT "E"

AFFIDAVIT OF NO PROHIBITED INTEREST

I, the undersigned declare and affirm that no person or officer of _____ (herein "Contractor") 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 Contractor

By: _____
Signature

Print Name

Title

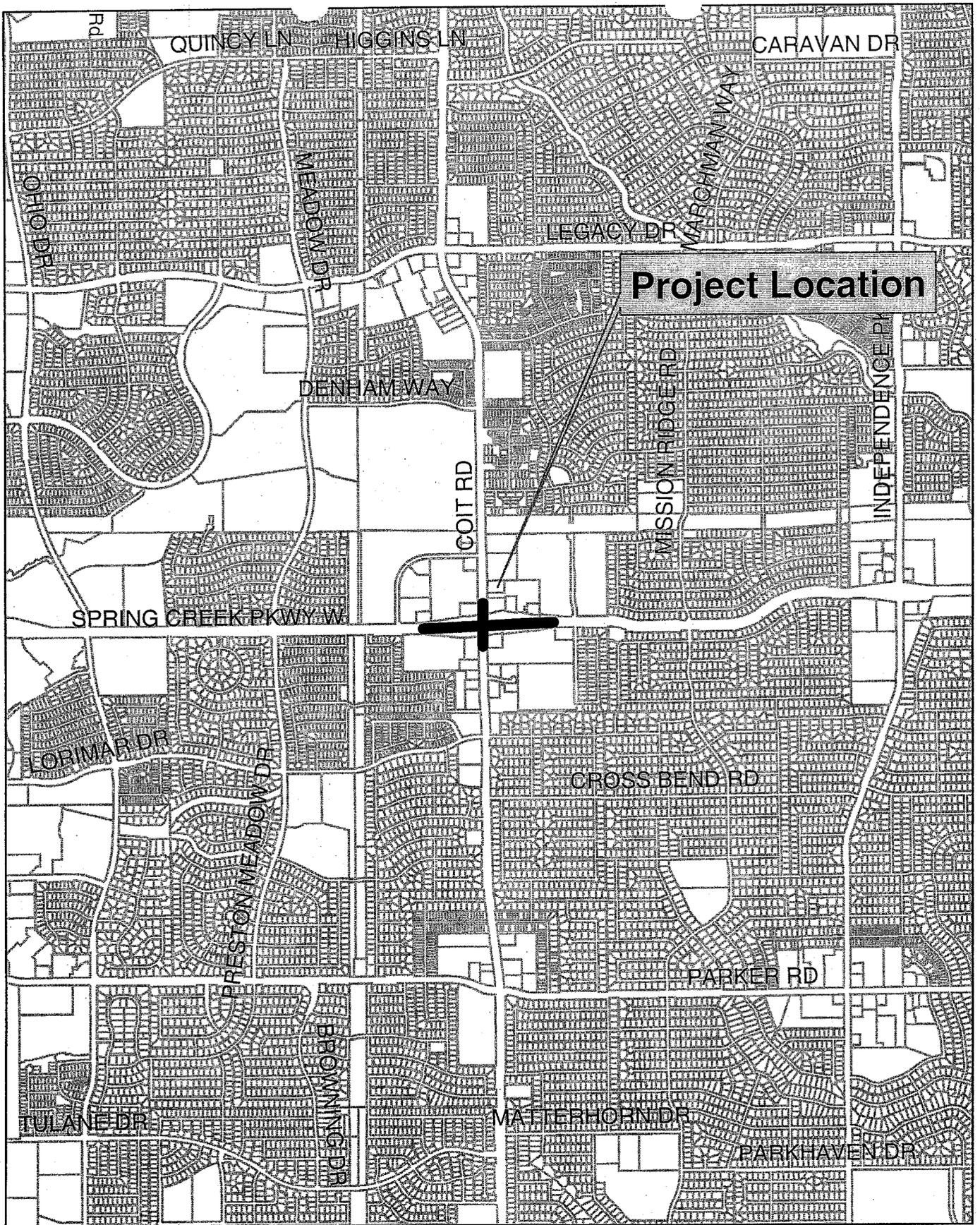
Date

STATE OF TEXAS §
 §
COUNTY OF _____ §

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

Notary Public, State of Texas

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Project No. 5389

**Spring Creek Parkway @ Coit Intersection Improvements
Location Map**

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**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date:	10/09/2006	Reviewed by Legal <i>JM</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Purchasing		Initials	Date
Department Head	Mike Ryan	Executive Director		
Dept Signature:	<i>Mike Ryan</i>	City Manager	<i>JM</i>	<i>10/02/06</i>
Agenda Coordinator (include phone #):		Dianna Wike Ext. 7549		
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input checked="" type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
Approval of a Professional Services contract by and between the City and James Duncan and Associates, Inc. (d/b/a Duncan Associates), in the amount of \$85,310.00 for Technical and Legal Review of the City's Zoning and Development Regulations and authorizing the City Manager or his designee to execute all necessary documents. Request for Qualifications number 2006-147-B.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	2006-07	Prior Year (CIP Only)	Current Year	Future Years
Budget		0	100,000	0
Encumbered/Expended Amount		0	0	0
This Item		0	-85,310	0
BALANCE		0	14,690	0
FUND(S): GENERAL FUND				
COMMENTS: Funds are included in the 2006-07 Planning Department budget. This item, in the amount of \$85,310, will leave a current year balance of \$14,690 to be used for the Zoning and Development Regulations Update project.				
STRATEGIC PLAN GOAL: Updating the Zoning and Development Regulations relates to the City's Goal of "Service Excellence".				
SUMMARY OF ITEM				
Staff recommends award of RFQ to James Duncan and Associates, Inc. (d/b/a Duncan Associates) in the amount of \$85,310.00 as the most qualified, conditioned upon timely execution of any necessary contract documents. The contract will be for the purchase of Technical and Legal Review of the City's Zoning and Development Regulations.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
RFQ Summary				

M E M O R A N D U M

DATE: September 20, 2006
TO: Diane Palmer, Purchasing Manager
FROM: Christina Day, Senior Planner
RE: Recommendation of Award for RFQ #2006-147-B: Technical and Legal Review of the City's Zoning and Development Regulations

In the 2005 – 2006 budget year, the planning department received funding for a professional services contract to perform an analysis of the existing development regulations. An RFQ was issued in May of 2006. There were two responses, Camiros and Duncan Associates. The planning department appointed a committee to review the qualifications statements. The committee included the following individuals:

- Phyllis Jarrell – Planning
- Tom Elgin – Planning
- Christina Day – Planning
- Paige Mims – Legal
- Cliff Bormann – Building Inspections
- Alan Upchurch – Engineering
- Diane Palmer – Purchasing (non-voting)

Committee members were each provided a copy of the RFQ responses and asked to rank the two respondents on the criteria outlined in the RFQ. The responses were as follows:

Combined Matrix for RFQ 2006-147-B										
Criteria	Camiros					Duncan Associates				
	A	B	C	D	E	A	B	C	D	E
Vote 1	5	4	3	2	5	5	5	4	3	5
Vote 2	4	4	4	3	4	4	5	4	4	4
Vote 3	4	2	4	3	4	5	5	4	5	5
Vote 4	5	4	5	4	5	5	4	4	5	4
Vote 5	4	4	4	-	4	4	4	5	-	5
Vote 6	3	3	5	3	3	5	5	4	5	5
Total	25	21	25	15	25	28	28	25	22	28
Grand Total	111					131				

- A = Experience related to project
- B = Experience in similar communities
- C = Organization and management capacity
- D = Team qualifications
- E = Understanding of project goals

Camiros scored a total of 111 points. Duncan scored a total of 131 points. Since there was a clear consensus among the group that Duncan was the most qualified, we invited

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Duncan to sit for an interview with the committee on August 15, 2006. The committee drafted questions for the consultant which were sent prior to the interview. After the interview, the committee voted unanimously to enter into contract negotiations with Duncan Associates.

Duncan submitted a proposed "Scope of Services" and "Compensation" documents on August 18, 2006 including a cost estimate of \$97,710. Planning staff considered the proposal and responded with changes that resulted in a modified proposal for \$85,310. The planning department is satisfied with the results of the negotiation and wishes to recommend award of a contract to Duncan Associates based on their most recent scope of services and compensation proposal (attached Exhibits A & B).

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CITY OF PLANO

REQUEST FOR QUALIFICATIONS NO. 2006-147-B FOR TECHNICAL AND LEGAL REVIEW OF THE CITY'S ZONING AND DEVELOPMENT REGULATIONS

RFQ RECAP

RFQ opening Date/Time: May 30, 2006 @ 3:00pm

Number of Vendors Notified: 344

Vendors Submitting "No Bids": 4

Number of Bids Submitted: 2

James Duncan and Associates, Inc. (d/b/a Duncan Associates).
Camiros, LTD.

Bids Evaluated Non-Responsive to Specification: None

Recommended Vendor(s):

Duncan Associates (\$85,310.00)

Dianna Wike

September 21, 2006

Dianna Wike, Buyer

Date

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**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular	<input type="checkbox"/> Statutory	Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date: 10/9/06		Reviewed by Legal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
Department:	Police Department				
Department Head	Gregory W. Rushin	Executive Director	Date: 10.03.06		
Dept Signature:	<i>Gregory W. Rushin</i>	City Manager	Date: 10/3/06		
Agenda Coordinator (include phone #): Jane Wester, Ext 2410					

ACTION REQUESTED: ORDINANCE RESOLUTION CHANGE ORDER AGREEMENT
 APPROVAL OF BID AWARD OF CONTRACT OTHER

CAPTION

Approving the terms and conditions of a professional services contract between the City of Plano and Crossroads Family Services wherein Crossroads Family Services will provide services to the Police Department to combat juvenile delinquency and authorizing execution of such agreement by the City Manager, or in his absence, and Executive Director, and providing an effective date.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR: 06/07	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	115,000	0	115,000
Encumbered/Expended Amount	0	0	0	0
This Item	0	-115,000	0	-115,000
BALANCE	0	0	0	0

FUND(S):

COMMENTS: Funds are included in the 2006/07 proposed Police Department Budget for this item.

STRATEGIC PLAN GOAL: Providing alternatives to prosecution for youth offenders, and victim assistance coordination, relates to the City's goal of a "Premiere City for Families" and "Service Excellence".

SUMMARY OF ITEM

This is an ongoing agreement for alternatives to prosecution for youth offenders. This contract also provides for victims assistance coordination.

List of Supporting Documents:

Other Departments, Boards, Commissions or Agencies

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PROFESSIONAL SERVICES CONTRACT

This Contract entered this 1st day of October, 2006 between the **CITY OF PLANO**, a home-rule municipal corporation, Collin County, Texas, hereinafter called "City" and **Crossroads Family Services**, a Texas non-profit organization whose address is 2600 Avenue K, Suite 140, Plano, Texas, hereinafter referred to as "CFS" for services to the City of Plano by and through the Plano Police Department for the purpose of combating, preventing and controlling juvenile delinquency.

WHEREFORE, for and in consideration of the payments and mutual covenants contained herein, and for other good and valuable consideration, the parties agree as follows:

I. SCOPE OF SERVICES

CFS will provide a comprehensive, systematic, integrated program to incorporate appropriately referred juveniles into activities, groups and organizations in the City of Plano for rehabilitative purposes.

CFS, at its own expense, will furnish all labor, material and facilities in order to provide non-exclusive services to City in order to combat, prevent and control juvenile delinquency. This includes short-term counseling for appropriately referred juveniles and their families, referrals, and assisting other information and referral centers and planning agencies in the City of Plano in providing services to divert juveniles from the juvenile justice system. CFS will give priority to referrals from City and may accept referrals from the judicial and public school system, parents and minors themselves if space is available after serving City referrals. CFS will also provide structured assistance programs to victims of crimes.

The specific programs to be provided by CFS are as follows:

- A. **FIRST OFFENDER PROGRAM:** CFS will implement programs for group and individual counseling for juveniles from committing status or criminal offenses; and individual group and/or family counseling for juveniles referred to CFS. CFS may provide these services directly and/or by subcontracting with other non-profit organizations to provide these services.
- B. **VICTIM ASSISTANCE PROGRAM.** CFS will implement, coordinate and manage a program designed to help victims of certain, specified crimes obtain state-funded benefits. CFS will provide a Victim Assistance Coordinator who will report directly to the CFS Executive Director.
- C. **MINOR IN POSSESSION PROGRAM:** CFS will coordinate and manage a program designed to address those adolescents cited by law enforcement officials for MIP (of alcohol) offenses. This program will be sanctioned by the

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Texas Commission on Alcohol and Drug Abuse (TCADA) and follow state guidelines and requirements.

- D. **TOBACCO AWARENESS AND PREVENTION:** CFS will implement, coordinate and manage a program designed to address issues of adolescent use and/or possession of tobacco products. This program shall be sanctioned by the State of Texas.

II. SUBCONTRACTING/INDEPENDENT CONTRACTOR

CFS understands and agrees that if it opts to subcontract with other entities to satisfy any portion of CFS's obligations, CFS is not relieved of its full obligation to the City as provided by this Contract.

CFS and its subcontractors are independent contractors and shall not, with respect to their acts or omissions, be deemed an agent or employee of the City, its officers, officials, agents and employees.

III. COMPENSATION; TERM

The City will pay CFS up to \$115,000 for services deemed satisfactory by City which are rendered from October 1, 2006 through September 30, 2007. Payment will be made on a pro-rated basis over the term of the Contract. One twelfth of this amount (\$9,583.33) will be paid to CFS for satisfactorily completed services after each month's services upon submission of an invoice and approval of such invoice by the City.

This Contract will not automatically renew and includes no option for additional terms. It may be terminated as provided in Article VIII. If CFS wishes to initiate negotiations for a new Contract for October 2007, CFS shall submit a detailed report to the City no later than June 30, 2007; and said report shall include CFS's 2005 and 2006 budgets and charges for services as well as an analysis of services provided in 2005 and 2006.

IV. INDEPENDENT CONTRACTOR

The operations and activities of CFS and its subcontractors shall be in accordance with guidelines established by the CFS Board of Directors and by the Chief of the Plano Police Department. The actual administration and operation of all programs and services provided by CFS shall be performed by CFS in its capacity as an Independent Contractor. CFS shall at all times function as an Independent Contractor.

CFS covenants and agrees that it is an Independent Contractor and not an officer, agent, servant or employee of City; that CFS 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 CFS, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between City and CFS.

**V.
INDEMNITY**

CFS agrees that it will, to the extent allowed by the laws and constitution of the State of Texas, defend, indemnify and hold harmless, the City, including but not limited to, the Plano Police Department, officers agents and employees from and against all damages, injuries (including death), claims, property damages (including loss of use), losses, demands, suits, judgment and costs, including reasonable attorney's fees, in any way arising out of or resulting from the performance of the work or alleged to have been caused by the negligent act or omission of CFS, its officers, agents, employees, subcontractors, licensees or invitees.

**VI.
VENUE**

The laws of the State of Texas shall govern the interpretation, validity, performance, and enforcement of this Contract, and the exclusive venue for any legal proceedings involving this Contract shall be Collin County, Texas.

**VII.
SUCCESSORS AND ASSIGNS**

This Contract shall be binding upon the parties hereto, their successors, personal representatives and assigns.

**VIII.
TERMINATION**

Notwithstanding the "Term" provision in Article III above, this Contract may be unilaterally terminated by City or CFS without cause upon thirty (30) days prior written notice to the other party. Upon receipt of notice of termination, CFS shall not incur any expenses other than its customary services and charges rendered through date of termination. If the termination date occurs prior to the end of a month, CFS will be paid a pro-rated portion of the monthly compensation of \$9,583.00.

Notice to parties shall be as follows:

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

Crossroads Family Services
2600 Avenue K, Suite 140
Plano, Texas 75074

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AGREEMENT

There is an existing contract between the CITY OF PLANO, a home-rule municipal corporation, Collin County, Texas, hereinafter called "City" and Crossroads Family Services, a Texas non-profit organization whose address is 2600 Avenue K, Suite 140, Plano, Texas, hereinafter referred to as "CFS" for services to the City of Plano by and through the Plano Police Department for the purpose of combating, preventing and controlling juvenile delinquency. This contract was executed on September 16, 2005 and is effective from October 1, 2005 to September 30, 2006.

By its terms, this existing contract will no longer be in effect on October 1, 2006. A new contract has been prepared and executed by all parties, but will not be approved by the Plano City Council until October 9, at the earliest. This new contract, including financial obligations, will officially cover the period from October 1, 2006 to September 30, 2007.

All parties to the currently effective contract hereby agree to abide by the obligations and responsibilities of the current contract, with the exception of financial obligations, until October 10, 2006, or the date that the new contract becomes effective, whichever is earlier. The financial obligations will be covered by the new contract that will be applied retroactively to October 1, 2006.

WHEREFORE, for and in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the parties agree to abide by the obligations and responsibilities of the current contract, with the exception of financial obligations, until October 10, 2006, or the date that the new contract becomes effective, whichever is earlier.

IN WITNESS WHEREOF, the parties have executed this Agreement by signing below. The effective date of this Agreement shall be from October 1, 2006 until a new contract is approved by the City Council.

CROSSROADS FAMILY SERVICES

By: Cross Roads Family Services
Name: Jim Malatich
Title: EXECUTIVE DIRECTOR

CITY OF PLANO, TEXAS

BY: _____
Thomas H. Muehlenbeck
CITY MANAGER

Date: _____

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

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ACKNOWLEDGMENTS

STATE OF TEXAS §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the 28th day of SEPTEMBER, 2006 by JIM MALATICH, EXECUTIVE DIRECTOR of CROSSROADS FAMILY SERVICES, a NON-PROFIT corporation, on behalf of said corporation.



Stacie Phillips
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 _____, 2006 by THOMAS H. MUEHLENBECK, 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

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EXHIBIT "A"
Affidavit of No Prohibited Interest

I, the undersigned declare and affirm that no person or officer in this sole proprietorship, partnership, corporation, or board has or will have during the term of this contract a prohibited interest as that term is defined in Section 11.02 of the Plano City Charter and the City's Code of Conduct, Chapter 2, Article IV of the City's Code of Ordinances.

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.

Crossroads Family Services
Name of Contractor

By: Jim Malatich
Signature

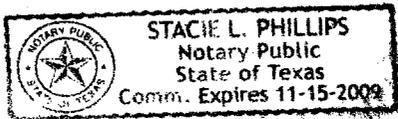
JAMES MALATICH
Print Name

EXECUTIVE DIRECTOR
Title

Date: 9/28/06

STATE OF TEXAS §
 §
COUNTY OF Collin §

SUBSCRIBED AND SWORN TO before me this 28th day of SEPTEMBER 2006.



Stacie L. Phillips
Notary Public, State of Texas

**IX.
APPLICABLE LAW**

This Contract is entered into subject to the charter and ordinances of City as they may be amended from time to time, and is subject to and is to be construed, governed and enforced under all applicable federal and state laws. CFS will make any and all reports required in accordance with federal, state or local law, including but not limited to proper reporting to the Internal Revenue Service as required in accordance with FSP's income.

**X.
ASSIGNMENT AND SUBLETTING**

CFS agrees to retain control and to give full attention to the fulfillment of this Contract, that this Contract will 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 the City. CFS 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 CFS from its full obligations to City as provided by this Contract.

**XI.
AFFIDAVIT OF NO PROHIBITED INTEREST**

CFS 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 void. Contractor has executed the Affidavit of No Prohibited Interest, attached and incorporated herein as Exhibit "A."

**XII.
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.

**XIII.
ENTIRE AGREEMENT**

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

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**XIV.
REMEDIES**

No right or remedy granted herein or reserved to the parties is exclusive of any right or remedy herein by law or equity provided or permitted, but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this Contract may be waived without consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this Contract.

IN WITNESS WHEREOF, the parties have executed this Contract by signing below. The effective date of this Contract shall be the date of City Council approval.

CROSSROADS FAMILY SERVICES

By: Crossroads Family Services
Name: Jim Malitina
Title: Executive Director

CITY OF PLANO, TEXAS

Date: _____

BY: _____
Thomas H. Muehlenbeck
CITY MANAGER

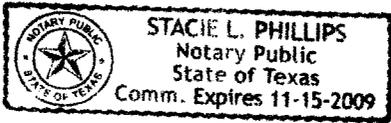
APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS §
COUNTY OF COUNTY §

This instrument was acknowledged before me on the 28th day of SEPTEMBER, 2006 by JIM MALATICH, EXECUTIVE DIRECTOR of CROSSROADS FAMILY SERVICES, a Non-Profit corporation, on behalf of said corporation.



Stacie L. Phillips
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 _____, 2006 by **THOMAS H. MUEHLENBECK**, 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

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EXHIBIT "A"
Affidavit of No Prohibited Interest

I, the undersigned declare and affirm that no person or officer in this sole proprietorship, partnership, corporation, or board has or will have during the term of this contract a prohibited interest as that term is defined in Section 11.02 of the Plano City Charter and the City's Code of Conduct, Chapter 2, Article IV of the City's Code of Ordinances.

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.

CROSSROADS Family SERVICES
Name of Contractor

By: James Malatich
Signature

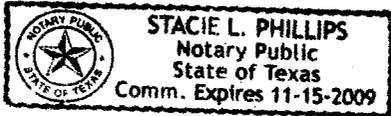
JAMES MALATICH
Print Name

Executive Director
Title

Date: 9/28/06

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

SUBSCRIBED AND SWORN TO before me this 28th day of SEPTEMBER, 2006.



Stacie L. Phillips
Notary Public, State of Texas



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular	<input type="checkbox"/> Statutory	Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date:	10/09/06		Reviewed by Legal	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
Department:	Engineering		Initials	Date	
Department Head	Alan L. Upchurch		Executive Director	9/29/06	
Dept Signature:	<i>Alan L. Upchurch</i>		City Manager	10/03/06	
Agenda Coordinator (include phone #):	Irene Pegues (7198)		Project No. 4773-2		

ACTION REQUESTED:

ORDINANCE RESOLUTION CHANGE ORDER AGREEMENT
 APPROVAL OF BID AWARD OF CONTRACT OTHER REIMBURSEMENT OF OVERSIZE

CAPTION

Approving and authorizing reimbursement to Pasquinelli Portrait Homes-McDermott LP for oversize participation for paving improvements and park land cost in the amount of \$44,445.24.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR:	2006-07	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		351,429	1,315,571	800,000	2,467,000
Encumbered/Expended Amount		-351,429	-3,149	0	-354,578
This Item		0	-44,445	0	-44,445
BALANCE		0	1,267,977	800,000	2,067,977

FUND(S): PARK FEE & STREET IMPROVEMENT CIP

COMMENTS: Funds are included in the Park Fee and Street Improvement CIP. This item, in the amount of \$44,445, will leave a current year balance of \$1,267,977 for the Legacy Trail and Oversized Participation projects.

STRATEGIC PLAN GOAL: Oversized participation and land costs relate to the City's Goals of Safe, Efficient Travel and Safe, Livable Neighborhoods.

SUMMARY OF ITEM

In accordance with the Subdivision Ordinance and a Subdivision Improvement Agreement, reimbursement to Pasquinelli Portrait Homes-McDermott LP is due for oversize participation for paving improvements and park land cost. The construction was inspected and found to be in conformance with the executed Agreement.

Staff recommends the City Council authorize payment for the oversize participation.

List of Supporting Documents: Memo dated 9/18/06 from Chief Engineer Letter dated 7/20/06 from City Engineer Exhibit A & Exhibit C Location Map	Other Departments, Boards, Commissions or Agencies n/a
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MEMORANDUM

Date: September 18, 2006
To: Melody Morgan, CIP Budget Coordinator
Robin Reeves
From: Charles Davis, Chief Engineer/Private Development 
Subject: Hidden Creek, Phases 3 & 4
Project No. 4773-2

We have now accepted the improvements in subject addition. In accordance with our Subdivision Improvement Agreement dated December 7, 2005, reimbursement for oversize paving improvements and park land cost in the amount of \$44,445.24 is due to Pasquinelli Portrait Homes – McDermott L.P.

The funding breakdown is as follows:

Oversize Paving Improvements	\$34,340.24
Park Land Cost (2.021 acres @ \$5,000)	<u>10,105.00</u>
Total City Participation	\$44,445.24

CD/eh

xc: Alan Upchurch, City Engineer
Ricky Lindley, Mapping & Information Supervisor
Charles Davis, Chief Engineer/Private Development

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July 20, 2006

Pasquinelli Portrait Homes
4949 Hedgcoxe Road, Suite 110
Plano, Texas 75024

Re: Hidden Creek Estates, Phases 3 & 4 - Project Nos. 4773-2 & 4773-3

Gentlemen:

A final inspection of the water, sanitary sewer, paving, drainage and screen wall improvements, as shown on plans prepared by Winkelmann & Associates, Inc., has been made by the City of Plano. These improvements were found to be satisfactory and in accordance with the City of Plano specifications.

Maintenance Bonds have been received from Gin-Spen, Inc., Rodman Paving, Inc. and Metro Plex Screenwall, Inc. Therefore, the improvements noted above are accepted by the City of Plano subject to the one-year maintenance requirements.

Building Permits are released by this department subject to approval by the Building Inspection Department.

Sincerely,

Alan Upchurch, P.E.
City Engineer

Is

- xc: Building Inspection - Keith Schmidt, Anthony Han, Charles Hart, Mamie Free, Cliff Bormann
- Planning - Charles Alexander, Melody Spencer
- Engineering - Warren Laney, Irene Pegues
- Public Works - Dale Pettit
- Utility Operations - David Ratcliff
- Parks - Jim Fox
- Verizon
- Southwestern Bell (2 locations)
- Winkelmann & Associates, Inc.
- Gin-Spen, Inc.
- Metro Plex Screenwall, Inc.
- Rodman Paving, Inc.

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at Evans
Mayor

ott Johnson
Mayor Pro Tem

ally Magnuson
Deputy Mayor Pro Tem

ep Stahel
Place 1

retta Ellerbe
Place 3

arry LaRosiliere
Place 5

an Callison
Place 7

e Dunlap
Place 8

omas H. Muehlenbeck
City Manager

P.O. Box 860358
Plano, Texas 75086-0358
972-941-7000
www.plano.gov

WINKELMANN & ASSOCIATES, INC
 6750 Hillcrest Plaza Drive, Suite 100
 Dallas, Texas 75230
 972-490-7090 Fax: 972-490-7090

CONSTRUCTION COST ESTIMATE

Date: 9/13/2006
 Proj # 45801.00

**EXHIBIT "A" REVISED
 REVISIONS BASED ON AS-BUILT QUANTITIES**

Project Description: Hidden Creek Phase 3 & 4
 Total McDermott Road Improvements
 By: Naim Khan

McDermott Road Improvements

Item No.	Description	Unit	Quantity	Unit Price	Amount
	McDermott Road Paving Improvements				
*	8" 5000psi concrete pavement w/#3 @ 24" ocev and integral curb (25' B-B) (854X6.5)/9	SY	617	26.80	\$ 16,535.60
*	6% Lime Stabilization (854x7.5)/9	SY	712	2.70	\$ 1,922.40
*	Street & ROW excavation (854x7.5x14/12)/27	CY	275	1.75	\$ 481.25
*	Hydrated Lime (32 #/SY)	TONS	12	99.60	\$ 1,195.20
*	Sawcut & Remove existing curb	LF	67	5.00	\$ 335.00
*	Longitudinal Butt Joint	LF	67	0.00	\$ -
*	2" PVC conduit	LF	279	8.00	\$ 2,232.00
*	Pull Box	EA	4	440.00	\$ 1,760.00
*	Remove Exist. Pvmt., fill with Native soil & Seed	SY	252	10.00	\$ 2,520.00
*	Install Curb and Dowel with Exist. Pavement	LF	25	10.00	\$ 250.00
*	Stdard Street Header	LF	6.5	30.00	\$ 195.00
*	Metal Beam Guard Fence	LF	6.5	35.00	\$ 227.50
*	Traffic Control & Barricade	LS	1	1,375.00	\$ 1,375.00
*	Remove 4" White Thermoplastic Stripe	LF	900	2.25	\$ 2,025.00
*	Remove 4" Yellow Themoplastic Stipe	LF	300	2.25	\$ 675.00
*	Arrow Removal	EA	6	95.00	\$ 570.00
*	Remove Exist. Guard Rail and Conn. To Exist.Pvmt.	LF	6.5	15.00	\$ 97.50
*	SUBTOTAL				\$ 32,396.45
*	City of Plano Engineering Reimbursement (6%)			0.06	\$ 1,943.79
	SUBTOTAL PAVEMENT				\$ 34,340.24

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WINKELMANN & ASSOCIATES, INC
 6750 Hillcrest Plaza Drive, Suite 100
 Dallas, Texas 75230
 972-490-7090 Fax: 972-490-7090

CONSTRUCTION COST ESTIMATE

EXHIBIT "C"

Date: 11/23/2005
 Proj # 45801.00

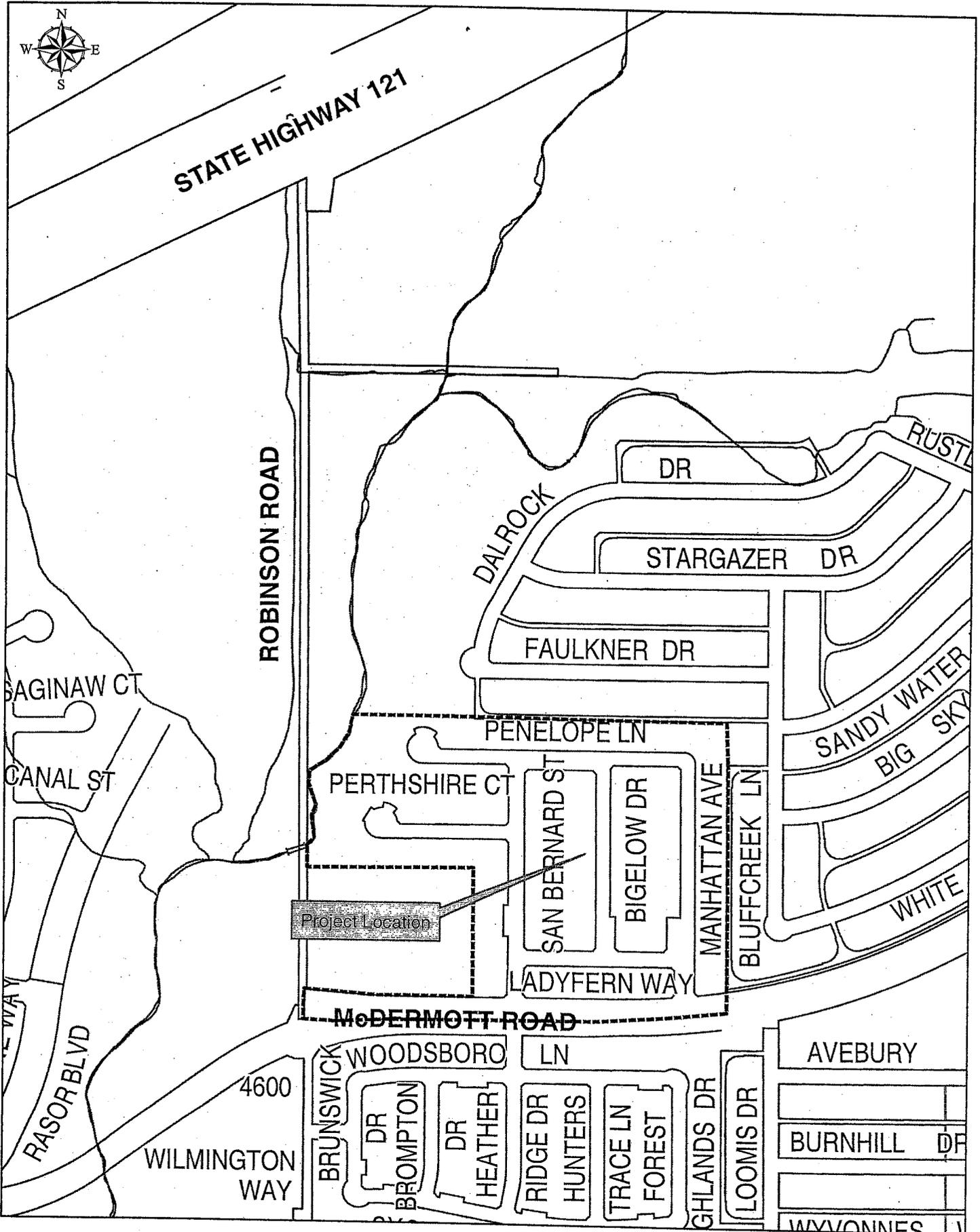
Project Description: Hidden Creek Phase 3 & 4
 Total McDermott Road Improvements
 By Nain Khar

McDermott Road Improvements

Item No.	Description	Unit	Quantity	Unit Price	Amount
	McDermott Road Paving Improvements				
	8" 5000psi concrete pavement w/#3 @ 24" oew and integral curb	SY	3620	26.80	\$ 97,016.00
	10" - 5000 PSI Reinf. Conc. Turn Land Pvm't	SY	840	50.60	\$ 42,504.00
	6% Lime Stabilization	SY	3809	2.70	\$ 10,284.30
	Street & ROW Excavation	CY	1634	1.75	\$ 2,859.50
	Hydrated Lime (32 #/SY)	TONS	73	99.60	\$ 7,270.80
	Sawcut & Remove existing curb	LF	705	5.00	\$ 3,525.00
	Landscape Ramp	EA	3	350.00	\$ 1,050.00
	Longitudinal Butt Joint	LF	705	0.00	\$ -
	Median Nose	EA	4	1,053.00	\$ 4,212.00
	Median Nose Brick Pavers w/subslab	SF	373	9.00	\$ 3,357.00
	4" Cermaic Plain White Round Traffic Button	EA	222	3.70	\$ 821.40
	2" PVC conduit	LF	279	8.00	\$ 2,232.00
	Pull Box	EA	4	440.00	\$ 1,760.00
	5' Sidewalk	SF	4145	3.00	\$ 12,435.00
	Barrier Free Ramp	EA	4	950.00	\$ 3,800.00
	Remove Exist. Pvm't., fill with Native soil & Seed	SY	252	10.00	\$ 2,520.00
	Install Curb and dowel with exist. Pavement	LF	101	10.00	\$ 1,010.00
	Stdard Street Header	LF	25	30.00	\$ 750.00
	Metal Beam Guard Fence	LF	25	35.00	\$ 875.00
	Traffic Control & Barricade	LS	1	5,500.00	\$ 5,500.00
	Remove Exist. Guard rail and conn. To exist.pvmt.	LF	25	15.00	\$ 375.00
	SUBTOTAL				\$ 204,157.00
	City of Plano Engineering Reimbursement (6%)			0.06	\$ 12,249.42
	SUBTOTAL PAVEMENT				\$ 216,406.42

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HIDDEN CREEK ESTATES, PHASE 3 & 4



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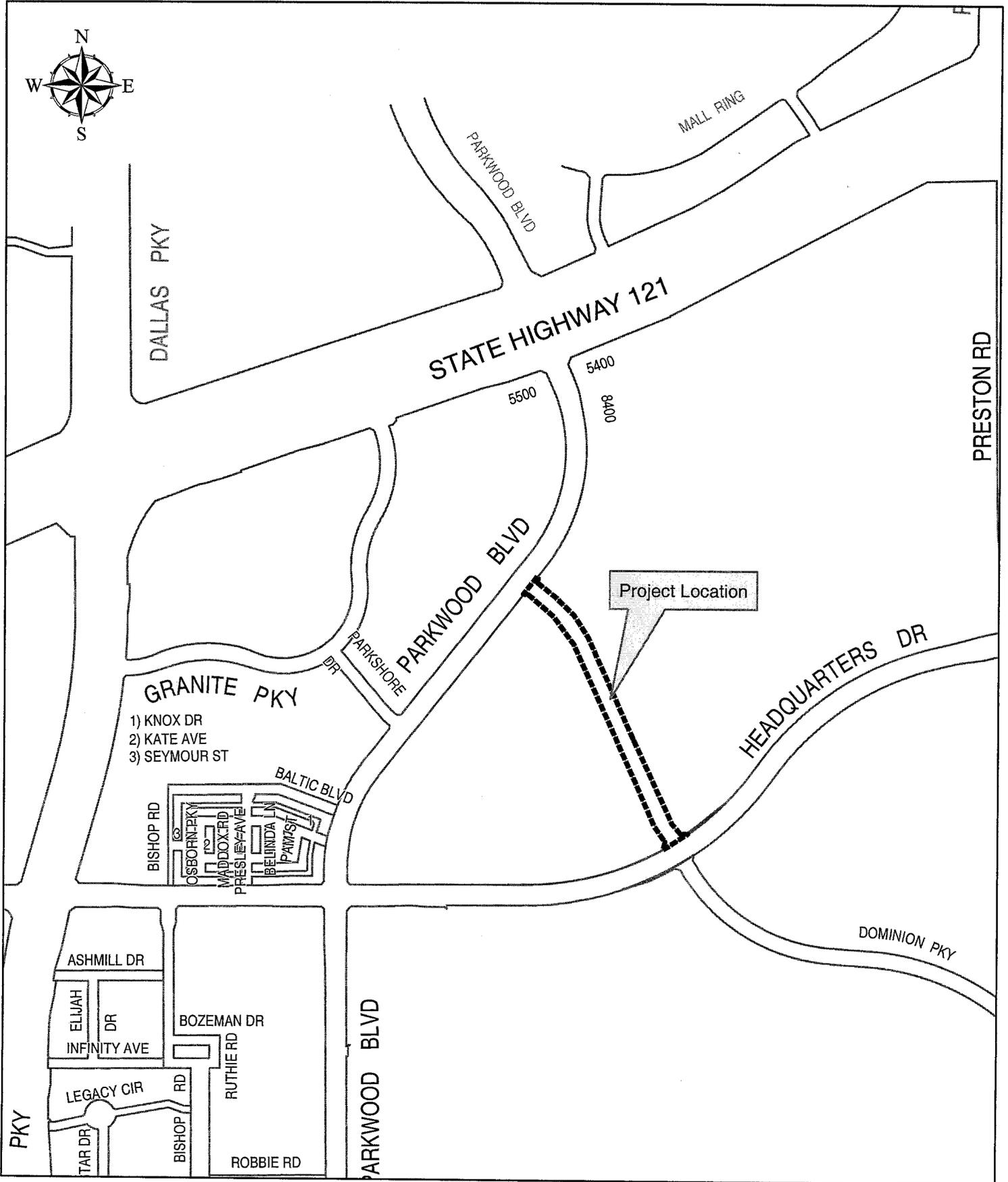
LOCATION MAP



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable	
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
Council Meeting Date:	10/09/06	Reviewed by Legal <i>WS</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
Department:	Engineering	Initials	Date		
Department Head	Alan L. Upchurch	Executive Director	<i>[Signature]</i>	10/2/06	
Dept Signature:	<i>[Signature]</i>	City Manager	<i>[Signature]</i>	10/13/06	
Agenda Coordinator (include phone #):		Irene Pegues X-7198 <i>[Signature]</i>		#5700	
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input checked="" type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input checked="" type="checkbox"/> OTHER - PUBLIC IMPROVEMENT AGREEMENT					
CAPTION					
To approve the terms and conditions of a Public Improvement Agreement by and between the City of Plano, Texas, and EDS Information Services, L.L.C., for participation in Dominion Parkway between Parkwood Boulevard and Headquarters Drive.					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP					
FISCAL YEAR:	2006-07	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	250,000	0	250,000
Encumbered/Expended Amount		0	0	0	0
This Item		0	-250,000	0	-250,000
BALANCE		0	0	0	0
FUND(S): STREET IMPROVEMENT CIP					
COMMENTS: Funds are included in the 2006-07 Street Improvement CIP. This item, in the amount of \$250,000, will utilize the available balance for the Dominion Parkway - Headquarters to Parkwood project. STRATEGIC PLAN GOAL: Reimbursement for street construction relates to the City's Goal of Safe, Efficient Travel.					
SUMMARY OF ITEM					
This Public Improvement Agreement provides for the City to reimburse EDS Information Services, L.L.C. \$250,000 for costs associated with the construction of Dominion Parkway between Parkwood Boulevard and Headquarters Drive.					
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies			
Public Improvement Agreement Location Map		n/a			

DOMINION PARKWAY



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LOCATION MAP

09/26/06

PUBLIC IMPROVEMENT AGREEMENT
(INFRASTRUCTURE IMPROVEMENTS)

THIS AGREEMENT is made and entered into as of the 10th day of **October, 2006**, by and between the **CITY OF PLANO, TEXAS**, a Home Rule Municipal Corporation (the "City") and **EDS INFORMATION SERVICES, L.L.C.**, a Delaware limited liability company ("Developer"), in the participation amount of **TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$250,000.00)**, as shown on Exhibit "A" attached hereto and made a part hereof.

WHEREAS, the Developer is the developer of a certain proposed improved right-of-way called "Dominion Parkway between Parkwood Boulevard and Headquarters Drive," located in the City of Plano, Collin County, Texas (hereafter called the "Public Improvements"); and

WHEREAS, among other reasons, the parties have entered into this Agreement for the purpose of eliminating and avoiding the harmful effects of premature construction which leaves property undeveloped and unproductive, and to ensure the completion of the Public Improvements; and

WHEREAS, the benefits of this Agreement inure solely to the City and the Developer, and not to any third parties such as subcontractors, laborers, and suppliers.

NOW, THEREFORE, for and in consideration of **ONE DOLLAR (\$1.00)** and other good and valuable consideration, including without limitation the approval by the City of the final plans for the Public Improvements, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE I. OBLIGATION TO COMPLETE
PUBLIC IMPROVEMENTS

1.01. Classes of Improvements

This Agreement calls for the completion by Developer of the Public Improvements, a certain portion of the cost of which the City will reimburse the Developer. The cost reimbursement for the Public Improvements is described in Exhibit "A". The Public Improvements are described on Exhibit "B" attached hereto and made a part hereof.

1.02. Duty to Construct

Developer shall construct or cause to be constructed the Public Improvements in accordance with the City's Standard Specifications for Public Works Construction, which is made a part hereof by reference ("Standard Specifications"), and Developer's Engineering Plans approved by the City on July 7, 2006, which are made a part hereof by reference ("Engineering Plans"). Developer shall commence construction of the Public Improvements no later than December 15, 2006, and shall complete the construction of the Public Improvements on or before October 15, 2007.

1.03 Agreed Benefit

Developer agrees that the Public Improvements to be constructed in accordance with this Agreement substantially advance a legitimate governmental interest in providing access for new development and expanding infrastructure capacity to accommodate new development. Developer also agrees that Developer's share of the cost of the Public Improvements to be constructed under this Agreement is fair and equitable and is roughly proportional to the impact that the existence of the Public Improvements will have on the City's roadways and other infrastructure.

ARTICLE II. WARRANTIES

2.01. Warranty Against Defects

Developer expressly warrants that the Public Improvements shall be constructed in substantial compliance with the Standard Specifications and Engineering Plans and free from all defects. Developer shall indemnify the City from all expenses and liability incurred by the City as a direct and proximate cause of such defects. This warranty and indemnity shall extend for a period of one (1) year after the acceptance of the dedication of the Public Improvements.

2.02. Remedy of Defects

The Developer shall remedy and repair all defects within twenty (20) days of written notice to Developer from the City that the defect exists. If the defect is of the type that will require additional time in which to remedy, the Developer shall specify in writing to the City within said twenty (20) day period the particular reasons why such repairs cannot be completed in said twenty (20) day period. If, in the City's reasonable opinion, such reasons for delay are justified, the City may grant the Developer additional time. However, in such event the Developer must have commenced the repair work within said twenty (20) day period and continue diligently to complete the repair work. If the City grants additional time, such extension shall be in writing and shall be for a specified period of time which shall be reasonable considering all circumstances.

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2.03. Failure of Developer to Remedy Defect

If the Developer fails to meet its warranty obligation, it shall be considered in default and the City, at its option, may:

- (a) Contract with another party for the repair work;
- (b) Complete the repair work with its own crews;
- (c) Contract with another party for the repair work and immediately draw down on the letter of credit or cash escrow for the amount of such repair work;
- (d) Complete the repair work with its own crews, and immediately draw down on the letter of credit or cash escrow for such costs; or
- (e) In the case where the security is a performance or maintenance bond, require that the Surety complete the repair work.

In any cases where the City decides to complete the contract with another party to complete any such work, the City shall do so in a reasonable manner and shall use its reasonable efforts to complete or contract to complete such work.

Additionally, the Developer shall be liable to the City for reimbursement of all actual costs expended by the City as a direct result of completing the repair work if such costs were not obtained by drawing down on the letter of credit or cash escrow or if, in the case of a performance or maintenance bond, the Surety fails to complete the repair work.

In a case where the security is a performance or maintenance bond, if the Surety fails to remedy the defect within thirty (30) days written notice from the City, then the City will be entitled to complete the repair work in accordance with Subsections (a) and (b) above and in such event the Surety, Principal and Developer shall be liable to the City for the actual costs to repair such defects.

ARTICLE III. PUBLIC IMPROVEMENTS

3.01. Contracting Requirements

Before awarding a construction contract for the Public Improvements, the Developer shall submit to the City the total bid for the Public Improvements plus unit price bids. If, in the City's sole opinion, the bid amounts exceed prices normally bid for such Public Improvements, the City may require the Developer to seek additional bids. It is understood that when requesting bids, the Developer must require bidders to separate their bid into unit prices. If, in the City's sole opinion, the bid is not sufficiently detailed, the City may require that the Developer have the bidder revise its bid to add such details. Before the Developer enters into a construction contract which includes

Public Improvements, all construction documents shall be submitted to the City for its approval, which approval shall not be unreasonably withheld. The construction contract documents shall provide that the City is a third party beneficiary by containing the following language:

"It is hereby agreed that this contract shall be incorporated and made a part of that certain Public Improvement Agreement between the City of Plano and EDS Information Services, L.L.C., a Delaware limited liability company ("Developer"), Contract No. 5700 (the "Public Improvement Agreement"), which Public Improvement Agreement is incorporated herein by reference. The Contractor agrees that the City of Plano shall be a third party beneficiary under this Agreement with regard to the construction of those portions of the work constituting Public Improvements as defined in said Public Improvement Agreement. With regard to the Public Improvements described in the Public Improvement Agreement, the Contractor shall provide the same services to the City of Plano that is being provided by the Contractor to the Developer under this Agreement. The Contractor agrees that the City will not be responsible for any of its fees or other monies due under this Agreement, but that it will look solely to the Developer for payment of any such monies or fees."

Once such construction documents are approved by the City, the Developer will not amend or change them without prior approval by the City, which approval shall not be unreasonably withheld.

3.02. Cost Reimbursement

If the Developer completes the Public Improvements as provided in this Agreement and they are accepted by the City, which acceptance shall not be unreasonably withheld, the City will reimburse the Developer \$250,000.00 for the costs of the Public Improvements.

Notwithstanding anything contained in this Agreement to the contrary, the City shall not reimburse the costs of the Public Improvements which together exceed thirty percent (30%) of the costs of the Public Improvements.

ARTICLE IV. SECURITY

4.01. Forms of Security

In order to guarantee completion of the Public Improvements and the faithful performance of this Agreement, the Developer no later than ten (10) days after the award of a construction contract and before the commencement of the construction of the Public Improvements shall deliver to the City the following:

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(a) A performance bond and a payment bond from the Contractor performing the work in the penal sum of one hundred (100) percent of the cost to complete the Public Improvements insuring the completion of the Public Improvements. The bonds shall be in form and substance identical to the bond forms attached hereto as Exhibit "C" and made a part hereof by reference (the "Performance Bond" and "Payment Bond", respectively; collectively called the "Bonds"), unless changes are approved in writing by the City Attorney or his/her designee, which approval shall not be unreasonably withheld. The Bonds shall be signed by a corporate Surety or Sureties authorized to do business in the State of Texas, and shall be signed by the Contractor performing the work as principal. The City shall be named as a co-obligee in the Bonds. A power of attorney shall be attached to the Bonds evidencing that the agent signing the Bonds has authority to sign the Bonds on behalf of the Surety. The Bonds shall additionally insure that the Public Improvements shall be free of defects for the period of warranty set forth in Article II of this Agreement; and

(b) An irrevocable letter of credit in the sum of one hundred (100) percent of the cost to complete the Public Improvements and in form and substance identical to the letter of credit attached hereto as Exhibit "D" and made a part hereof by reference (the "Letter of Credit") unless changes are approved in writing by the City Attorney or his/her designee, which approval shall not be unreasonably withheld. The Letter of Credit shall be issued by a local bank approved in advance by the City, which approval shall not be unreasonably withheld. The Letter of Credit shall be payable at sight to the City upon presentation of the City's written statement stating that Developer is in default or that the City is otherwise entitled to draw down on the Letter of Credit. Such certificate shall be conclusive to allow the City to draw the proceeds of the Letter of Credit. In no event shall the City be required to prove to the issuer that the Developer is actually in default or to specify specific grounds of default in order to draw proceeds of the Letter of Credit. The Letter of Credit is intended to be security for the faithful completion of the Public Improvements and to ensure against defects for the warranty period specified in Article II of this Agreement; or

(c) The cash sum of (the "Cash Escrow") in an amount equal to one hundred (100) percent of the cost to complete the Public Improvements. The Cash Escrow is intended to be security (in place of a Letter of Credit) for the faithful completion of the Public Improvements and to ensure against defects for the warranty period specified in Article II of this Agreement.

4.02. Duration of and Reductions of Letter of Credit

(a) The Letter of Credit shall be issued for a period of at least one (1) year. If the Public Improvements have not been accepted by the City within thirty (30) days of the expiration date of the Letter of Credit, and Developer has not provided a new Letter of Credit for an additional period of at least one (1) year, identical in amount (unless the Letter of Credit was previously reduced in amount pursuant to Section 4.02(c)) and in all other respects to the original Letter of Credit (unless the City Attorney or his/her designee approves in writing any changes to the new Letter of Credit), which approval is

not unreasonably withheld, then the City shall be entitled to immediately draw down the proceeds of the original Letter of Credit (or previously reduced Letter of Credit). This provision shall not be construed to require that the City accept the new Letter of Credit if Developer is in default and the City has elected to draw down from the proceeds of the original Letter of Credit (or previously reduced Letter of Credit).

(b) Within ten (10) days after the acceptance of the Public Improvements, the Developer shall deliver to the City another Letter of Credit equal in amount to ten (10) percent of the original Letter of Credit, unless the City Attorney or his/her designee approves in writing changes to this Letter of Credit, which approval is not unreasonably withheld. This Letter of Credit shall be for a period of one (1) year and shall be security to insure against defects during the warranty period specified in Article II of this Agreement. However, if this Letter of Credit is not delivered to the City at least thirty (30) days before the expiration of the original Letter of Credit (or the additional new Letter of Credit as described above), then the City shall be entitled to draw down on ten (10) percent of the proceeds of such existing Letter of Credit. Such money shall be held in escrow by the City and used as security against defects during the warranty period. In lieu of the Letter of Credit provided for in this subparagraph (b), the City Engineer may accept a Maintenance Bond as provided for in subparagraph (d) of this Section 4.02.

(c) From time to time as portions of the Public Improvements are completed in accordance with the Standard Specifications and the Engineering Plans, the Developer may make application to the City Engineer or his/her designee to reduce the amount of the original Letter of Credit or Cash Escrow. If the City Engineer or his/her designee is satisfied that such portion of the completed Public Improvements has been substantially completed in accordance with the Standard Specifications and Engineering Plans, he/she may (but is not required to) cause the amount of the Letter of Credit or Cash Escrow to be reduced by such amount that he/she in his/her reasonable discretion deems is appropriate so that the remaining amount of the Letter of Credit or Cash Escrow adequately ensures the completion of the remaining Public Improvements. If the City Engineer or his/her designee has approved the reduction and the issuing bank will not reduce the Letter of Credit without issuing a new Letter of Credit, the City will accept a new Letter of Credit for such reduced amount, if it substantially conforms with the provisions of this Article IV. The decision of the City Engineer or his/her designee to reduce the amount of the Letter of Credit or Cash Escrow shall in no way be construed as an acceptance by the City of the completed Public Improvements.

(d) When Cash Escrow is used as the security, all accrued interest shall become a part of the Cash Escrow and shall be used as security for the completion of the Public Improvements. The term "Cash Escrow" used in this Agreement includes accrued interest. After final acceptance of the Public Improvements by the City, the Cash Escrow shall be reduced to ten (10) percent of the original Cash Escrow amount. The remaining ten (10) percent Cash Escrow shall be retained for a period of one (1) year after acceptance of the Public Improvements as security to ensure against defects during the warranty period specified in Article II of this Agreement. In lieu of the

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retention of the ten (10) percent Cash Escrow or ten (10) percent Letter of Credit provided for in paragraph 4.02(b) of this Agreement, the City Engineer may accept a maintenance bond in the same amount from the Contractor actually performing the work. Such maintenance bond shall be substantially in the same form and substance as the form attached hereto as Exhibit "E", which is made a part hereof by reference, unless changes are approved in writing by the City Attorney or his/her designee. At such time as the remaining Cash Escrow is refunded to the Developer, such refund shall include accrued interest, calculated at one (1) percent less than the rate of actual earnings. The one (1) percent accrued interest on the principal amount of the Cash Escrow shall be retained by the City as an administrative expense to cover the cost of administering this Agreement. In the event that money is refunded within six (6) months of deposit, only the principal will be refunded.

ARTICLE V. DEDICATION AND ACCEPTANCE

5.01. City Inspection

During the construction of the Public Improvements the City will inspect the Public Improvements, for compliance with this Agreement, the Standard Specifications and the Engineering Plans. Upon completion of the Public Improvements, the City shall make a final inspection of the Public Improvements.

5.02. Public Improvements to be Constructed on Public Property; Good Title

The Public Improvements shall be constructed wholly within property dedicated to the public in fee simple absolute or within easements. All dedications shall be made complete prior to final acceptance by the City. At the option of the City, the City may require that fee simple title to all or part of the real property upon which the Public Improvements are located be conveyed to the City. In addition, the City may require, at its option, that Developer provide at Developer's cost evidence of title reasonably acceptable to the City Attorney or his/her designee, indicating that the City will be receiving good and indefeasible fee simple title free and clear of all liens, encumbrances and restrictions.

5.03. Final Acceptance

If the Public Improvements are in substantial compliance with this Agreement, the Standard Specifications, and the Engineering Plans, and so long as the Developer has substantially complied with Sections 5.01 and 5.02 of this Agreement, the City Engineer shall issue his/her letter of acceptance which shall evidence the City's acceptance of ownership and maintenance of the Public Improvements and the real property associated therewith. In no event shall the City be required to accept separate Public Improvements at different times. However, nothing shall preclude the City from doing so if, in the reasonable opinion of the City Engineer, it is beneficial and feasible for the City to do so.

ARTICLE VI. DEFAULT AND REMEDIES

6.01. Events of Default

The following shall be considered as events of default:

(a) The Developer has failed to commence construction of the Public Improvements by the date specified in Section 1.02 of this Agreement.

(b) The Developer has failed to substantially complete construction of the Public Improvements in accordance with the Standard Specifications and Engineering Plans by the completion date specified in Section 1.02 of this Agreement.

(c) The Developer has failed to perform work on the Public Improvements for fourteen (14) consecutive days, unless due to causes beyond Developer's control.

(d) The Developer has been declared insolvent.

(e) The filing of a voluntary or involuntary petition in bankruptcy by or against the Developer.

(f) The commencement of a foreclosure proceeding of a lien against the Property, or its conveyance in lieu of foreclosure.

(g) The Developer's failure to cure a defect within the cure period provided in Section 2.02 of this Agreement.

(h) The failure of the contractor and any subcontractor who actually performs construction work on the Public Improvements to maintain insurance as required by Section 7.02 of this Agreement.

(i) The failure of Developer to substantially comply with any other covenant or promise contained in this Agreement.

6.02. Specific Remedies

(a) In the event of default by Developer, after notice and applicable time period, the City shall be entitled to draw down on the proceeds of the Letter of Credit when a Letter of Credit has been issued as security, use the Cash Escrow when it has been deposited with the City, and to require that the Surety remedy the default when a performance or maintenance bond has been issued. Notwithstanding the foregoing, in the event of default, the damages that the City is entitled to recover from developer shall not be limited to the amount of the Letter of Credit, Cash Escrow and Performance Bond, but shall be based upon the actual costs reasonably incurred in completing the Public Improvements or to cure defects within the warranty period.

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(b) In the event the City files an action to enforce the terms of this Agreement, including without limitation, a court action or claim in bankruptcy court, the City will be entitled to its actual court costs and reasonable attorneys' fees.

6.03. Performance Bond Surety

In the case where a performance or maintenance bond is the security, the City shall give the Surety thirty (30) days written notice to commence work to complete the Public Improvements or correct a defect if within the warranty period. If the Surety has not commenced work within said thirty (30) day period, the City shall be entitled to complete the work or repair the defect by contract or by its own forces in compliance with Section 2.03 of this Agreement. In such event, the City shall be entitled to reimbursement from the Developer and Surety, jointly and severally, for the actual costs of completion.

6.04. Remedies Cumulative

The remedies of the City provided in this Agreement shall be construed to be cumulative and nonexclusive. The City shall also be entitled to exercise all other rights and remedies that are available at law and in equity. Specifically the rights to draw down on the proceeds of the Letter of Credit, or Cash Escrow or to require the Surety to complete the work or repair the defect are in addition to and not in lieu of the City's other rights and remedies.

ARTICLE VII. INDEMNIFICATION AND INSURANCE

7.01. Indemnity

The Developer and its Sureties shall indemnify, defend, and hold harmless the City, its officers, agents and employees from all suits, actions or claims of any character, name and description brought for or on account of any injuries, including death or damages received or sustained by any person or property on account of or arising out of the construction of the Public Improvements or defects existing within the warranty period; or on account of or arising out of the operations of the Developer, its contractor, agents or employees or the contractor's subcontractors, agents or employees; or on account of any negligent act or omission of the Developer, its contractor, agents or employees or the contractor's subcontractors, agents or employees; or on account of any failure to provide the necessary barricades, warning lights or signs; and shall be required to pay any judgment with costs, which may be obtained against the City, its officers, agents or employees growing out of such injury, including death or damages.

7.02. Insurance

All contractors or subcontractors performing any portion of the work to construct or complete the Public Improvements must meet the insurance requirements of 1.26.1

of the special provisions of the Standard Specifications required for heavy construction, and the policy endorsement and special condition requirements of Item 1.26.4 of the Standard Specifications.

ARTICLE VIII. MISCELLANEOUS

8.01. Assignment

This Agreement may not be assigned without the express written consent of the City. However, the City shall consent to such an assignment if all of the following conditions are satisfied:

- (a) Developer is not in default beyond any applicable cure period,
- (b) The assignment is to a new owner and developer of the Property;
- (c) Developer provides the City with written evidence reasonably satisfactory to the City Attorney or his/her designee that the new owner is the record owner of the Property;
- (d) Developer delivers to the City an original counterpart of the assignment fully executed by the Developer and new owner in form and substance identical (unless such changes are approved by the City Attorney or his/her designee) to the document attached hereto as Exhibit "F" and made a part hereof by reference (the "Assignment"). Under the Assignment, the new owner shall assume and agree to perform all obligations of the Developer under this agreement; and
- (e) The new owner delivers to the City the security required by this Agreement.

The City Manager, an Executive Director or City Engineer of the City is authorized to approve assignments on behalf of the City.

8.02. Entire Agreement

This Agreement contains the entire agreement between the City and the Developer, and cannot be varied except by written agreement executed by the parties hereto.

8.03. Time is of the Essence

Time is of the essence of this Agreement.

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8.04. Notice

Any notice to be given or to be served upon a party hereto in connection with this Agreement must be in writing and may be given by certified or registered mail and shall be deemed to have been given and received when a certified or registered letter containing such notice, properly addressed with postage prepaid, is deposited in the United States mail, it shall be deemed to have been given and delivered to and received by the party (or such party's agent or representative) to whom it is addressed. Such notice shall be given to the parties hereto at the address set forth under their respective signatures below. In case of the Surety, notice shall be given to the Surety at the address set forth in the Performance Bond. Any party hereto, including the Surety on the Performance Bond, may, at any time by giving two (2) days' written notice to the other parties, designate any other address in substitution of the foregoing address to which such notice shall be given.

8.05. Nonwaiver

No waiver of the City's rights under this Agreement shall be deemed to have been made unless expressed in writing and signed by an authorized representative of the City. No delay or omission in the exercise of any right or remedy accruing to the City upon a breach of this Agreement by the Developer or its Sureties will impair its right or remedy or be construed as a waiver for any such breach theretofore or thereafter occurring. The waiver by the City of any breach of any term, covenant or conditions shall not be deemed to be a waiver of any other or subsequent breach of this same or any other term, covenant or condition herein contained.

8.06. No Vested Rights

Nothing in this Agreement shall be implied to vest any rights in the Developer except as are provided by statute, ordinance or as expressly provided in this Agreement.

8.07. Recitals and Headings

Recitals contained at the beginning of this Agreement shall be construed as a part of this Agreement. However, headings used throughout this Agreement have been used for administrative convenience only and do not constitute matter to be considered in interpreting this Agreement.

8.08. Successors and Assigns, Covenants with the Land, and Subordination by Lienholders

This Agreement shall be binding upon the successors and assigns of the Developer and shall be covenants running with the land described herein as the Property and be binding upon all future owners of the Property. This Agreement or a memorandum thereof, may be recorded in the Land Records of the county in which the

Property is located. All existing lienholders shall be required to subordinate their liens to the covenants contained in this Agreement.

8.09. Venue

This Agreement shall be construed under and in accordance with the laws of the State of Texas and is fully performable in Collin County, Texas. Exclusive venue shall be in Collin County, Texas.

8.10. Severability

In case any one or more of the provisions contained in this Agreement shall be for any reason held invalid, illegal or unenforceable in any respect, such invalidity, illegality or un-enforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

8.11. No Waiver of Governmental Immunity

Nothing contained in this Agreement shall be construed as a waiver of the City's sovereign or governmental immunity.

8.12. Developer's Authority

The Developer represents and warrants to the City that it has full power and authority to enter into and fulfill the obligations of this Agreement.

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EXECUTED as of the date first above written.

**CITY OF PLANO, TEXAS,
a Home Rule Municipal Corporation**

By: _____

Alan L. Upchurch, P.E.
City Engineer
1520 Avenue K
P. O. Box 860358
Plano, TX 75086-0358

APPROVED AS TO FORM:



Diane C. Wetherbee, CITY ATTORNEY

**EDS INFORMATION SERVICES, L.L.C., a
Delaware Limited Liability Company**

By: _____

Patrick J. McInroe
Director, Real Estate North America
5400 Legacy Drive (H1-1F-45)
Plano, TX 75024

ACKNOWLEDGMENTS

STATE OF TEXAS

§
§
§

COUNTY OF COLLIN

This instrument was acknowledged before me on the _____ day of _____, _____, by Alan L. Upchurch, P.E., City Engineer of the CITY OF PLANO, TEXAS, a Home Rule Municipal Corporation, on behalf of said municipal corporation.

Notary Public, State of Texas

STATE OF TEXAS

§
§
§

COUNTY OF _____

This instrument was acknowledged before me on the _____ day of _____, 2006, by Patrick J. McInroe, Director, Real Estate North America, of EDS INFORMATION SERVICES, L.L.C., a Delaware limited liability company, on behalf of said limited liability company.

Notary Public, State of _____

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**DOMINION PARKWAY - NORTH ROAD
EXHIBIT "A"
COST REIMBURSEMENTS**

***GRADING**

Item	Quantities	Unit	Unit Cost	Total
Unclassified Street Excavation	1,860.30	C.Y.	\$ 4.00	\$ 7,441.20
* 26% of Excavation Quantity				\$ 7,441.20
* 26% Calculated by Increased Pavement Width from 37' to 50'				

***CONDUIT**

Item	Quantities	Unit	Unit Cost	Total
Furnishing and Installing 3" (Traffic) Schedule 40 PVC Conduit sleeves under pvmt.	200.00	L.F.	\$ 6.00	\$ 1,200.00
* 100% of conduit for street lights and traffic signals				\$ 1,200.00

***PAVEMENT**

Item	Quantities	Unit	Unit Cost	Total
Furnishing and Installing Hydrated Lime	26.73	TON	\$ 93.00	\$ 2,485.46
Furnishing and Installing 6" Lime Stabilized Subgrade	1,974.07	S.Y.	\$ 1.65	\$ 3,257.22
Furnishing and Installing 7" - 4,200 PSI Reinforced Concrete Pavement	2,044.33	S.Y.	\$ 24.07	\$ 49,206.97
Furnishing and Installing 6" Integral Concrete Curb	1,201.55	L.F.	\$ 1.00	\$ 1,201.55
* 26% of Total Pavement Quantity Minus Left Turn Lanes and Median Pavement Quantities				\$ 56,151.20
* 26% Calculated by Increased Pavement Width from 37' to 50'				

***LEFT TURN LANES/ MEDIAN OPENINGS**

Item	Quantities	Unit	Unit Cost	Total
Furnishing and Installing Hydrated Lime	59.21	TON	\$ 93.00	\$ 5,506.53
Furnishing and Installing 6" Lime Stabilized Subgrade	4,373.42	S.Y.	\$ 1.65	\$ 7,216.14
Furnishing and Installing 7" - 4,200 PSI Reinforced Concrete Pavement	3,353.20	S.Y.	\$ 24.07	\$ 80,711.52
Furnishing and Installing 10" - 5,000 PSI Reinforced Concrete Pavement	1,020.22	S.Y.	\$ 45.00	\$ 45,909.90
Furnishing and Installing 6" Integral Concrete Curb	3,036.66	L.F.	\$ 1.00	\$ 3,036.66
Furnishing and Installing Landscape Maintenance Ramp	5.00	EA.	\$ 300.00	\$ 1,500.00
Furnishing and Installing Median Nose Brick Pavers	479.83	S.Y.	\$ 9.00	\$ 4,318.47
Furnishing and Installing Monolithic Median Nose	8.00	EA.	\$ 1,000.00	\$ 8,000.00
Saw-Cut, Vacuum Water & Remove Existing Curb	791.00	L.F.	\$ 8.00	\$ 6,328.00
Furnishing and Constructing Longitudinal Butt Joint	791.00	L.F.	\$ 8.00	\$ 6,328.00
* 100% of Left Turn Lane and Median Improvements				\$ 168,855.23

***RIGHT TURN LANE**

Item	Quantities	Unit	Unit Cost	Total
Furnishing and Installing Hydrated Lime	5.31	TON	\$ 18.60	\$ 98.77
Furnishing and Installing 6" Lime Stabilized Subgrade	392.28	S.Y.	\$ 0.33	\$ 129.45
Furnishing and Installing 10" - 5,000 PSI Reinforced Concrete Pavement	392.28	S.Y.	\$ 9.00	\$ 3,530.52
Furnishing and Installing 6" Integral Concrete Curb	334.12	L.F.	\$ 0.20	\$ 66.82
*Difference in Cost Between 8" and 10" Concrete Pvmt. is 20% of Unit Cost (Unit Cost was adjusted by 20% to reflect the additional 2" of Concrete Pvmt.)				\$ 3,825.56

Subtotal	\$ 237,473.19
6% Engineering Fees	\$ 14,248.39
Grand Total	\$ 251,721.58 *

***Note: Maximum City of Plano participation shall not exceed \$250,000.00**

EXHIBIT "B"
PUBLIC IMPROVEMENTS

09/19/2006

15:40

6-247R1

Dominion Parkway PH. I North Revised

*** HARLAN JONES

BID TOTALS

<u>Biditem</u>	<u>Description</u>	<u>Quantity</u>	<u>Units</u>	<u>Unit Price</u>	<u>Bid Total</u>
110	Clearing and Grubbing	7.000	AC	5,500.00	38,500.00
120	Unclassified Street Excavation	7,155.000	CY	4.00	28,620.00
130	Silt Fence	6,930.000	LF	2.00	13,860.00
140	Construction Entrance / Exit	2.000	EA	1,500.00	3,000.00
150	Temp. Median Erosion Control	1.000	EA	2,625.00	2,625.00
160	Rec. Curb Inlet Protection	6.000	EA	150.00	900.00
170	Drop Inlet Protection	2.000	EA	150.00	300.00
180	Rock Check Dam	3.000	EA	1,200.00	3,600.00
190	Connect to Existing 21" RCP	1.000	EA	1,500.00	1,500.00
200	Connect to Existing 24" RCP	1.000	EA	1,750.00	1,750.00
210	Connect to Existing 33" RCP	1.000	EA	2,000.00	2,000.00
220	Connect to Existing 48" RCP	1.000	EA	2,500.00	2,500.00
230	14' Rectangular Curb Inlet	1.000	EA	3,000.00	3,000.00
240	18" Dia. Class III RCP	190.000	LF	35.37	6,720.30
250	21" Dia. Class III RCP	45.000	LF	41.23	1,855.35
260	24" Dia. Class III RCP	87.000	LF	55.67	4,843.29
270	33" Dia. Class III RCP	92.000	LF	72.17	6,639.64
280	27" Dia. Class III RCP	60.000	LF	60.48	3,628.80
290	36" Dia. Class III RCP	220.000	LF	75.00	16,500.00
300	48" Dia. Class III RCP	108.000	LF	120.00	12,960.00
310	5' X 2' SBC	125.000	LF	165.00	20,625.00
320	10.0' City of Plano Rec. Curb Inlet	2.000	EA	2,500.00	5,000.00
330	12.0' City of Plano Rec. Curb Inlet	2.000	EA	2,800.00	5,600.00
340	14.0' City of Plano Rec. Curb Inlet	1.000	EA	3,000.00	3,000.00
350	14.0' City of Plano Modified Rec. Curb Inlet	2.000	EA	3,200.00	6,400.00
360	5.0' X 5.0' Drop Inlet	2.000	EA	2,000.00	4,000.00
370	Modified Type C Headwall for 5X2 SBC	1.000	EA	3,750.00	3,750.00
380	Grouted Rock Rip Rap (TxDOT Type R Item 432)	140.000	SY	50.00	7,000.00
390	6.0' Wide Temporary Drainage Channel	1,000.000	LF	10.00	10,000.00
400	Trench Safety	927.000	LF	1.00	927.00
410	18" RCP Plug	1.000	EA	75.00	75.00
420	24" RCP Plug	1.000	EA	95.00	95.00
430	27" RCP Plug	1.000	EA	115.00	115.00
440	33" RCP Plug	2.000	EA	135.00	270.00
450	36" RCP Plug	1.000	EA	150.00	150.00
460	3" (Traffic) Schedule 40 PVC Conduit	200.000	LF	6.00	1,200.00
470	4" (Irrigation) Sch 40 PVC Conduit Sleeves under P	360.000	LF	5.00	1,800.00
480	6" (Irrigation) Schedule 40 PVC Conduit	360.000	LF	8.50	3,060.00
490	8E6 Sch 40 PVC Conc Encased Electrical Duct Bank	60.000	LF	210.00	12,600.00
500	Saw-Cut Vacuum Water & Remove Existing Curb	1,469.000	LF	8.00	11,752.00
510	Removing Existing Concrete Pavement	259.000	SY	10.00	2,590.00
520	Hydrated Lime	162.000	TN	93.00	15,066.00
530	6" Lime Stabilized Subgrade	11,966.000	SY	1.65	19,743.90
540	7" 4200 PSI Reinforced Concrete Pavement	11,216.000	SY	24.07	269,969.12
550	10" 5000 PSI Reinforced Concrete Pavement	1,413.000	SY	45.00	63,585.00
560	Longitudinal Butt Joint	1,448.000	LF	8.00	11,584.00
570	6" Integral Curb	7,658.000	LF	1.00	7,658.00
580	Barrier Free Ramp	4.000	EA	800.00	3,200.00
590	Landscape Maintenance Ramp	5.000	EA	300.00	1,500.00
600	Median Nose Brick Pavers	481.000	SF	9.00	4,329.00
610	Monolithic Median Nose	8.000	EA	1,000.00	8,000.00
620	Chinese Pistache (4")	6.000	EA	415.00	2,490.00
630	Live Oak (4")	6.000	EA	350.00	2,100.00

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EXHIBIT "B"
PUBLIC IMPROVEMENTS

09/19/2006
6-247R1
*** HARLAN JONES

15:40
Dominion Parkway PH. I North Revised

BID TOTALS

<u>Biditem</u>	<u>Description</u>	<u>Quantity</u>	<u>Units</u>	<u>Unit Price</u>	<u>Bid Total</u>
640	Yaupon Holly (4")	9.000	EA	215.00	1,935.00
650	Seed - Common Bermuda	121,500.000	SF	0.06	7,290.00
660	Street Light w/ Base Foundation and Conduit	1.000	LS	65,000.00	65,000.00
670	Irrigation System and Meter	1.000	LS	47,500.00	47,500.00
680	Traffic Control	1.000	LS	5,000.00	5,000.00
690	Pavement Striping / Pavement Markings	1.000	LS	6,500.00	6,500.00
700	Furnish Signage (installed by Plano Public Works)	1.000	LS	4,500.00	4,500.00

PAVING SUBTOTAL

\$802,261.40

900	Connect to Existing Water Line (8")	2.000	EA	1,500.00	3,000.00
910	Connect to Existing Water Line (12")	1.000	EA	1,750.00	1,750.00
920	12" DR-18 C900 PVC PIPE	1,782.000	LF	39.16	69,783.12
930	8" DR-18 C900 PVC PIPE	484.000	LF	35.92	17,385.28
940	6" DR-14 C900 PVC PIPE	154.000	LF	23.08	3,554.32
950	12 X 8 Reducer	1.000	EA	250.00	250.00
960	12" Gate Valve	7.000	EA	1,300.00	9,100.00
970	8" Gate Valve	12.000	EA	800.00	9,600.00
980	6" Gate Valve	7.000	EA	600.00	4,200.00
990	Relocating Existing Fire Hydrant	2.000	EA	3,000.00	6,000.00
1000	Fire Hydrant (w/Lead)	7.000	EA	3,150.00	22,050.00
1010	Concrete Encasement	30.000	LF	25.00	750.00
1020	8" Plug	9.000	EA	100.00	900.00
1030	Trench Safety	2,420.000	LF	1.00	2,420.00
1040	Testing & Sterilizing Water Line	2,420.000	LF	2.00	4,840.00
1050	12" 45 Degree Bend	4.000	EA	460.00	1,840.00
1060	12" 45 Degree Vertical Bend	8.000	EA	600.00	4,800.00
1070	12 X 8 Cross	5.000	EA	1,410.00	7,050.00
1080	12 X 6 Tee	2.000	EA	420.00	840.00
1090	8 X 6 Tee	5.000	EA	300.00	1,500.00
1100	Trench Safety Design Plan	1.000	EA	1,000.00	1,000.00

WATER SUBTOTAL

\$172,612.72

1200	10" SDR-35 PVC SEWER PIPE	170.000	LF	44.71	7,600.70
1210	Manhole 4' Dia.	1.000	EA	6,500.00	6,500.00
1220	10" Sanitary Sewer Plug	2.000	EA	100.00	200.00
1230	16" Steel Casing by Bore	135.000	LF	296.00	39,960.00
1240	Trench Safety	170.000	LF	1.00	170.00
1250	Testing (Air, Mandrel, T.V.)	170.000	LF	4.00	680.00

SANITARY SEWER

\$55,110.70

1260	8" SDR-35 PVC SEWER PIPE	1,564.000	LF	37.74	59,025.36
1270	10" SDR-35 PVC SEWER PIPE	1,849.000	LF	44.76	82,761.24
1280	15" SDR-35 PVC SEWER PIPE	184.000	LF	61.23	11,266.32
1290	Manhole 4' Dia.	4.000	EA	6,000.00	24,000.00

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EXHIBIT "B"
PUBLIC IMPROVEMENTS

09/19/2006

15:40

6-247R1

Dominion Parkway PH. I North Revised

*** HARLAN JONES

BID TOTALS

<u>Biditem</u>	<u>Description</u>	<u>Quantity</u>	<u>Units</u>	<u>Unit Price</u>	<u>Bid Total</u>
1300	Manhole 5' Dia.	4.000	EA	9,775.00	39,100.00
1310	8" Sanitary Sewer Plug	7.000	EA	40.00	280.00
1320	10" Sanitary Sewer Plug	2.000	EA	100.00	200.00
1330	Steel Casing by Bore	181.000	LF	350.00	63,350.00
1340	Concrete Encasement	10.000	LF	35.00	350.00
1350	Drop Connection to Existing Manhole	1.000	EA	10,000.00	10,000.00
1360	Removing and Replacing Barbwire Fence	1.000	LS	10,000.00	10,000.00
1370	Trench Safety	3,597.000	LF	1.00	3,597.00
1380	Testing (Air, Mandrel, T.V.)	3,597.000	LF	1.00	3,597.00
OFF-SITE SANITARY SEWER SUBTOTAL					\$307,526.92
1800	Surveying	1.000	LS	17,000.00	17,000.00
Bid Total =====>					\$1,354,511.74

**Notes:

Items in italics are Non-Additive.

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EXHIBIT "C"

PERFORMANCE BOND

STATE OF TEXAS §
§
COUNTY OF COLLIN §

KNOW ALL MEN BY THESE PRESENTS: That _____ whose
address is _____

_____ hereinafter called Principal, and
_____, a corporation
organized and existing under the laws of the State of _____, and fully licensed
to transact business in the State of Texas, as Surety, are held and firmly bound unto the
CITY OF PLANO, a municipal corporation organized and existing under the laws of the
State of Texas, hereinafter sometimes called "City", and

_____ a
_____ hereinafter sometimes called "Developer" (the
City and Developer are collectively called "Obligees"), in the penal sum of
DOLLARS

(\$ _____) in lawful money of the United States, to be paid in Collin
County, Texas, for the payment of which sum well and truly to be made, we bind
ourselves, our heirs, executors, administrators and successors jointly and severally,
firmly by these presents. This Bond shall automatically be increased by the amount of
any Change Order or Supplemental Agreement which increases the Contract price, but
in no event shall a Change Order or Supplemental Agreement which reduces the
Contract price decrease the penal sum of this Bond.

THE OBLIGATION TO PAY SAME is conditioned as follows: Whereas, the
Principal entered into a certain Contract with Developer (the "Contract") dated the ____
day of _____, 20____, which is made a part hereof by reference,
wherein the City is a third party beneficiary with regard to the completion of certain
public improvements (as defined therein); said Contract calling for the completion of the
public improvements among other things.

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform and
fulfill all of the undertakings, covenants, terms, conditions and agreements of said
Contract in accordance with the plans, specifications and Contract Documents during
the original term thereof and any extension thereof which may be granted by Obligees,
with or without notice to the Surety, and shall also well and truly perform and fulfill all the
undertakings, covenants, terms, conditions and agreements of any and all duly
authorized modifications of said Contract that may hereafter be made, notice of which
modifications to the Surety being hereby waived; and, if the Principal shall fully
indemnify and save harmless the Obligees from all costs and damages which Obligees

may suffer by reason of failure to so perform herein and shall fully reimburse and repay Obligees all outlay and expense which the Obligees may incur in making good any default or deficiency, then this obligation shall be void; otherwise, it shall remain in full force and effect.

PROVIDED FURTHER, that if any legal action be filed on this Bond, exclusive Venue shall lie in Collin County, Texas.

AND PROVIDED FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the Work to be performed thereunder or the Specifications accompanying the same shall in anywise affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract, or to the Work or to the Specifications.

This Bond is given pursuant to the provisions of V.T.C.A., Government Code Section 2253.001, et seq., and any other applicable statutes of the State of Texas.

The undersigned and designated agent is hereby designated by the Surety herein as the Resident Agent in Collin County or Dallas County to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship, as provided by Article 7.19-1 of the Insurance Code, Vernon's Annotated Civil Statutes of the State of Texas.

IN WITNESS WHEREOF, this instrument is executed in ____ copies, each one of which shall be deemed an original, this, the _____ day of _____, 20____.

PRINCIPAL: _____

BY: _____
Name

TITLE: _____

SURETY: _____

BY: _____
Name

TITLE: _____

ATTEST:

ATTEST:

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The Resident Agent of the Surety in Collin County or Dallas County, Texas, for delivery of notice and service of the process is:

NAME: _____
STREET ADDRESS: _____
CITY, STATE, ZIP: _____

NOTE: Date on Page 1 of Performance Bond must be same date as Contract. Date on Page 2 of Performance Bond must be after date of Contract. If Resident Agent is not a corporation, give a person's name.

EXHIBIT "C"

PAYMENT BOND

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

KNOW ALL MEN BY THESE PRESENTS: That _____ whose address is _____, hereinafter called Principal, and _____, a corporation organized and existing under the laws of the State of _____, and fully licensed to transact business in the State of Texas, as Surety, are held and firmly bound unto the **CITY OF PLANO**, a home-rule municipal corporation organized and existing under the laws of the State of Texas, hereinafter called "Owner", and unto all persons, firms, and corporations who may furnish materials for, or perform labor upon the building or improvements hereinafter referred to in the penal sum of _____ **DOLLARS** (\$ _____) in lawful money of the United States, to be paid in Collin County, Texas, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors jointly and severally, firmly by these presents. This Bond shall automatically be increased by the amount of any Change Order or Supplemental Agreement which increases the Contract price, but in no event shall a Change Order or Supplemental Agreement which reduces the Contract price decrease the penal sum of this Bond.

THE OBLIGATION TO PAY SAME is conditioned as follows: Whereas, the Principal entered into a certain Contract with the City of Plano, the Owner, dated on or about the _____ day of _____, A.D. 20____, which is made a part hereof by reference, for the _____.

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties and make prompt payment to all persons, firms, subcontractors, corporations and claimants supplying labor and/or material in the prosecution of the Work provided for in said Contract and any and all duly authorized modifications of said Contract that may hereafter be made, notice of which modification to the Surety is hereby expressly waived, then this obligation shall be void; otherwise it shall remain in full force and effect.

PROVIDED FURTHER, that if any legal action be filed on this Bond, exclusive Venue shall lie in Collin County, Texas.

AND PROVIDED FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to Contract, or to the Work performed thereunder, or the Plans, Specifications, Drawings, etc., accompanying the same, shall in anywise affect its obligation on this Bond, and it

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does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract, or to the Work to be performed thereunder.

This Bond is given pursuant to the provisions of V.T.C.A., Government Code Section 2253.001, et seq., and any other applicable statutes of the State of Texas.

The undersigned and designated agent is hereby designated by the Surety herein as the Resident Agent in Collin County or Dallas County to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship, as provided by V.A.T.S., Insurance Code Article 7.19-1.

IN WITNESS WHEREOF, this instrument is executed in _____ copies, each one of which shall be deemed an original, this, the _____ day of _____, 20__.

PRINCIPAL: _____

BY: _____
Name

ATTEST:

TITLE: _____

SURETY: _____

BY: _____
Name

ATTEST:

TITLE: _____

The Resident Agent of the Surety in Collin County or Dallas County, Texas, for delivery of notice and service of the process is:

NAME: _____
STREET ADDRESS: _____
CITY, STATE, ZIP: _____

NOTE: Date on Page 4 of Payment Bond must be same date as Contract. Date on Page 5 of Payment Bond must be after date of Contract. If Resident Agent is not a corporation, give a person's name.

EXHIBIT "D"

IRREVOCABLE LETTER OF CREDIT
(Letterhead of Bank)

_____, _____
City of Plano, Texas
1520 K Avenue
P.O. Box 860358
Plano, Texas 75086-0358

Gentlemen:

By order of our client, _____, a
_____, we hereby open our clean Irrevocable Letter of
Credit No. _____, in your favor for an amount not to exceed the aggregate
of U.S. \$ _____ (_____ U.S.
Dollars), effective immediately and expiring at our offices on _____,
_____, relative to our client's Contract No. _____ entitled Public Improvement
Agreement.

Funds under this Letter of Credit are available against your sight draft or drafts on us,
mentioning thereon our Credit No. _____. Each such draft must be accompanied
by your signed written statement to the effect that _____
has failed to comply with the terms and conditions of the above-mentioned Contract. Said
written statement shall be sufficient if signed by any one of the following representatives of
the city of Plano: City Manager, an Executive Director, City Engineer or Finance Director.
The above-mentioned written statement shall be sufficient and conclusive and you will not
be required to specify the nature or grounds of noncompliance with or default of the above-
mentioned Contract.

The amount of this Letter of Credit may be reduced at the sole option of the City of Plano
upon our receipt of a written statement signed by any one of the above representatives of
the City of Plano specifying the amount of the reduction.

If we receive your sight draft or drafts and statement or statements as mentioned above,
here at our _____ office, on or before the expiration date of this Letter of Credit, we
will promptly honor the same.

BY: _____
Name: _____
Title: _____

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EXHIBIT "E"

MAINTENANCE BOND

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

KNOW ALL MEN BY THESE PRESENTS: _____ of the City of _____, County of _____ and State of Texas, as Principal, and _____, authorized under the laws of the State of Texas to act as surety on bonds for principals, (called "Surety"), are held and firmly bound unto the **CITY OF PLANO**, a Home Rule Municipal Corporation (called "City"), in the penal sum of **DOLLARS \$**_____, for the payment of which, the Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents:

WHEREAS, the Principal has entered into a contract (called "Contract") with _____, a _____ (called "Developer") dated the _____ day of _____, _____, which among other things calls for the construction of certain public improvements (called "Work"), which inure to the benefit of the City, and which public improvements are listed on Exhibit "A" attached hereto and incorporated herein by reference; and

WHEREAS, under the terms of the specifications of the Work, the Principal is required to give a bond in the amount specified hereinabove to guarantee the replacement and repair of defective or faulty workmanship furnished or installed by the Principal for a period of one (1) year, from and after the date the Work is completed by Principal and accepted by the City.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal shall for a period of one (1) year, from and after the date the Work is completed by the Principal and accepted by the City, replace and repair any and all defective or faulty workmanship in the Work, then the above obligation shall be void; otherwise, the said obligation shall remain in full force and effect.

Venue for any action to enforce this Bond shall be Collin County, Texas

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this ____ day of _____, _____.

<p>_____</p> <p style="text-align: center;">Principal</p> <p>By: _____</p> <p>Title: _____</p> <p>Address: _____</p> <p>_____</p> <p>_____</p>	<p>_____</p> <p style="text-align: center;">Surety</p> <p>By: _____</p> <p>Title: _____</p> <p>Address: _____</p> <p>_____</p> <p>_____</p>
--	---

The name and address of the Resident Agent of Surety is:

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Name:

Address:

City, State, Zip

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EXHIBIT "F"

**ASSIGNMENT OF PUBLIC
IMPROVEMENT AGREEMENT**

WHEREAS, _____, a _____ ("Developer") entered into a certain Public Improvement Agreement (the "Agreement") dated _____ with the City of Plano, Texas (called "City"), which was recorded in Volume _____, Page _____ of the Land Records of Collin County, Texas [or Real Property Records of Collin County, Texas]; and

WHEREAS, the Agreement calls for the Developer's obligation to complete certain public improvements (as defined therein) in the City of Plano, Texas (the "Public Improvements"); and

WHEREAS, the real property in which the Public Improvements are located is in Collin County, Texas, and is more fully described in Exhibit "A" attached hereto and made a part hereof by reference (the "Property"); and

WHEREAS, _____, a _____ ("New Developer") is the new Developer of the Public Improvements; and

WHEREAS, the City has signed this assignment for the sole purpose of evidencing its written consent.

NOW, THEREFORE, in consideration of **TEN AND NO/100 DOLLARS (\$10.00)** and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, Developer and New Developer agree as follows:

- (1) Developer hereby assigns to the New Developer all of its right, title and interest in and to the Agreement.
- (2) New Developer hereby agrees to assume all of the Developer's obligations and to perform the Developer's responsibilities under the Agreement and to indemnify and hold harmless the Developer from the same.
- (3) This Assignment shall be binding upon and inure to the benefit of Developer, New Developer and their heirs, executors, administrators, successors and assigns and shall inure to the benefit of the City, its successors and assigns.

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EXECUTED as of the _____ day of _____, 20__.

DEVELOPER:

By: _____

Name: _____

Title: _____

Address: _____

NEW DEVELOPER:

By: _____

Name: _____

Title: _____

Address: _____

CONSENT:

CITY OF PLANO, TEXAS

BY: _____
THOMAS H. MUEHLENBECK
City Manager

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ACKNOWLEDGMENTS

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me this _____ day
of _____, 20__, by _____.

Notary Public, State of Texas

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me this _____ day
of _____, 20__, by _____.

Notary Public, State of Texas

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me this _____ day
of _____, 20__, by **THOMAS H. MUEHLENBECK**, City Manager of the
CITY OF PLANO, TEXAS, a home rule municipal corporation, for an on behalf of said
corporation.

Notary Public, State of Texas

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**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable		
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular	<input type="checkbox"/> Statutory	Reviewed by Budget	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable	
Council Meeting Date:	10/9/06		Reviewed by Legal	<i>RL</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Legal	<i>D. Wetherbee</i>	Initials	Date		
Department Head	Diane Wetherbee		Executive Director			
Dept Signature:			City Manager	<i>RL</i>	<i>9/4/06</i>	
Agenda Coordinator (include phone #): Lynne Jones - 7109						

ACTION REQUESTED: ORDINANCE RESOLUTION CHANGE ORDER AGREEMENT
 APPROVAL OF BID AWARD OF CONTRACT OTHER

CAPTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, FINDING THOMAS H. MUEHLENBECK, CYNTHIA O'BANNER, ROXANNE LUNA AND MACKLIN WRIGHT ARE ENTITLED TO DEFENSE REPRESENTATION PURSUANT TO CITY CODE OF ORDINANCES IN CONNECTION WITH THE LAWSUIT ENTITLED JAY SANDON COOPER V. CITY OF PLANO, TEXAS; THOMAS H. MUEHLENBECK, CITY MANAGER; CITY OF PLANO PLANNING AND ZONING COMMISSION; CITY OF PLANO CITY COUNCIL; CYNTHIA O'BANNER, ROXANNE LUNA, AND MACKLIN WRIGHT, CITY OF PLANO PROPERTY STANDARDS DEPARTMENT; AND PROVIDING AN EFFECTIVE DATE.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE 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 Resolution provides for defense representation for Thomas H. Muehlenbeck, City Manager and Cynthia O'Banner, Property Standards Director, and Macklin Wright, a former employee of the Property Standards Department when the alleged events set forth in the lawsuit occurred. Once Ms. Luna is served, Council will consider defense representation for her at that time.

List of Supporting Documents:
n/a

Other Departments, Boards, Commissions or Agencies
n/a

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, FINDING THOMAS H. MUEHLENBECK, CYNTHIA O'BANNER, ROXANNE LUNA AND MACKLIN WRIGHT ARE ENTITLED TO DEFENSE REPRESENTATION PURSUANT TO CITY CODE OF ORDINANCES IN CONNECTION WITH THE LAWSUIT ENTITLED JAY SANDON COOPER V. CITY OF PLANO, TEXAS; THOMAS H. MUEHLENBECK, CITY MANAGER; CITY OF PLANO PLANNING AND ZONING COMMISSION; CITY OF PLANO CITY COUNCIL; CYNTHIA O'BANNER, ROXANNE LUNA, AND MACKLIN WRIGHT, CITY OF PLANO PROPERTY STANDARDS DEPARTMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council has reviewed the matter entitled Jay Sandon Cooper v. City of Plano, Texas; Thomas H. Muehlenbeck, City Manager; City of Plano Planning and Zoning Commission; City of Plano City Council; Cynthia O'Banner, Roxanne Luna, and Macklin Wright, City of Plano Property Standards Department; and finds that defense representation is appropriate for Thomas H. Muehlenbeck, City Manager, Cynthia O'Banner, Property Standards Director, and Macklin Wright, former employee with the Property Standards Department when the events alleged in the above lawsuit occurred, pursuant to Section 2-10 of the City Code of Ordinances.

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

Section I. The City Council finds that based upon the pleadings in the above-referenced lawsuit and review by the City Attorney, the defense representation for Thomas H. Muehlenbeck, Cynthia O'Banner, and Macklin Wright is appropriate pursuant to the terms of City Code of Ordinances Section 2-10.

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

DULY PASSED AND APPROVED this the _____ day of _____, 2006.

Pat Evans, MAYOR

ATTEST:

Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

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**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular	<input type="checkbox"/> Statutory	Reviewed by Budget	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> Not Applicable
Council Meeting Date: 10/9/06		Reviewed by Legal <i>only</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Public Safety Services & Technology		Initials	Date
Department Head	Bruce Glasscock	Executive Director	<i>[Signature]</i>	<i>9.19.06</i>
Dept Signature:		City Manager	<i>[Signature]</i>	<i>9/20/06</i>
Agenda Coordinator (include phone #): Dee Dee Davis - 7747				
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input checked="" type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE HIRING OF A FIRE CHIEF 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:	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				
Section 143.013 of the Local Government Code provides that a department head must be appointed by the City's chief executive and confirmed by the City's governing body. This Resolution approves the hiring by the City Manager of Hugo Esparza as Fire Chief for the City of Plano.				
List of Supporting Documents: n/a		Other Departments, Boards, Commissions or Agencies n/a		

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RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE HIRING OF A FIRE CHIEF BY THE CITY MANAGER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 143.013 of the Local Government Code provides for the appointment and removal of a department head with regard to the City's Police and Fire Departments; and

WHEREAS, Section 143.013 further provides that unless elected, each department head must be appointed by the City's chief executive and confirmed by the City's governing body; and

WHEREAS, Hugo Esparza has been hired to fill the vacant position of Fire Chief for the City of Plano, which position is a department head; and

WHEREAS, this Resolution approves the hiring by the City Manager of Hugo Esparza as Fire Chief for 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 approves of the hiring by the City Manager of Hugo Esparza as Fire Chief for the City of Plano, such approval to be effective with the date of his employment and compliance with all prescreening requirements.

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

DULY PASSED AND APPROVED this the ____ day of _____, 2006.

Pat Evans, MAYOR

ATTEST:

Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

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(9/18/06-JG)



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date:	10/9/06	Reviewed by Legal <i>WS</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Public Works Administration - Michael Rappaport	Initials	Date	
Department Head	Jimmy Foster	Executive Director	<i>JF</i>	10/2/06
Dept Signature:	<i>J. R. Stot</i>	City Manager	<i>JF</i>	10/3/06
Agenda Coordinator (include phone #):		Margie Stephens (X4104)		

ACTION REQUESTED: ORDINANCE RESOLUTION CHANGE ORDER AGREEMENT
 APPROVAL OF BID AWARD OF CONTRACT OTHER

CAPTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, AUTHORIZING AN EXPENDITURE OF FUNDS NOT TO EXCEED TWO HUNDRED EIGHT THOUSAND, FIFTY AND NO/100 DOLLARS (\$208,050.00) TO POLY-TRIPLEX OF TEXAS, INC., THE SOLE SOURCE PROVIDER AND LICENSEE OF THE POLY-TRIPLEX LINING SYSTEM®, A CURED IN PLACE FELT EPOXY IMPREGNATED VINYL/FIBERGLASS LINER, A PATENTED PRODUCT AND SYSTEM OF POLY-TRIPLEX TECHNOLOGIES, INC.; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO TAKE SUCH ACTION AND EXECUTE SUCH DOCUMENTS AS NECESSARY TO EFFECTUATE THIS EXPENDITURE; AND PROVIDING AND EFFECTIVE DATE.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR: 2006-07	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	70,375	307,625	300,000	678,000
Encumbered/Expended Amount	-70,375	0	0	-70,375
This Item	0	-208,050	0	-208,050
BALANCE	0	99,575	300,000	399,575

FUND(s): SEWER CIP

COMMENTS: Funds are included in the 2006-07 Sewer CIP. This item, in the amount of \$208,050, will leave a current year balance of \$99,575 for the Manhole Sealing project.

STRATEGIC PLAN GOAL: Manhole repair relates to the City's Goals of Safe, Livable Neighborhoods.

SUMMARY OF ITEM

The Public Works Department recommends the use of the Poly-Triplex Liner System® to repair 44 brick manholes at various locations within the City. The cost of the completed job will not exceed \$208,050.00.

The Poly-Triplex Liner System® is a cured in place felt and vinyl/ fiberglass liner for lining sanitary sewer manholes and structures to restore structural integrity and prevent infiltration of ground water. This method of construction is considered trenchless which requires no excavation, will take considerably less time to complete, and will be less disruptive to traffic flow and residents adjacent to the manhole locations.

The project will continue until all funds are expended.

List of Supporting Documents: Location Map	Other Departments, Boards, Commissions or Agencies
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RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, AUTHORIZING AN EXPENDITURE OF FUNDS NOT TO EXCEED TWO HUNDRED AND EIGHT THOUSAND FIFTY AND NO/100 DOLLARS (\$208,050.00) TO POLY-TRIPLEX OF TEXAS, INC., THE SOLE SOURCE PROVIDER AND LICENSEE OF THE POLY-TRIPLEX LINING SYSTEM®, A CURED - IN - PLACE, FELT EPOXY IMPREGNATED VINYL/FIBERGLASS LINER, A PATENTED PRODUCT AND SYSTEM OF POLY-TRIPLEX TECHNOLOGIES, INC.; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO TAKE SUCH ACTION AND EXECUTE SUCH DOCUMENTS AS NECESSARY TO EFFECTUATE THIS EXPENDITURE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Plano, Texas, desires to rehabilitate 44 sanitary sewer manholes by installing the Poly -Triplex Lining System® and

WHEREAS, Poly -Triplex Technologies, Inc. is the patent holder and Poly-Triplex of Texas is the sole licensee and provider of the Poly-Triplex Lining System® in the State of Texas; and

WHEREAS, The Public Works Department has researched manhole rehabilitation products and has found no other vendor that can supply a cured - in - place felt epoxy impregnated vinyl/fiber glass manhole liner to structurally reinforce and line a sanitary sewer manhole; and

WHEREAS, the City Council is of the opinion that this product and application process needed to rehabilitate deteriorating sanitary sewer manholes is available from only one source, Poly-Triplex of Texas, Inc., and therefore the product and service are exempt from competitive bid as provided for in *V.T.C.A., Local Governmental Code, Section 252.022(a)(7)*; and

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

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 Poly-Triplex of Texas, Inc. is the sole source provider of the Poly-Triplex Lining System® for rehabilitating sanitary sewer manholes and, therefore, the purchase of such materials and service is exempt from competitive bid as provided for in *V.T.C.A., Local Government Code, Section 252.022(a)(7)*.

Section II. The City Manager or his designee is hereby authorized to take such action and execute such documents with Poly-Triplex of Texas, Inc., as necessary to rehabilitate deteriorating manholes, in an amount not to exceed the sum of **TWO HUNDRED AND EIGHT THOUSAND FIFTY AND NO/DOLLARS (\$208,050.00).**

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

DULY PASSED AND APPROVED this _____ day of _____, 2006.

Pat Evans, MAYOR

ATTEST:

Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

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**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular	<input type="checkbox"/> Statutory	Reviewed by Budget	<input type="checkbox"/> Yes <input type="checkbox"/> Not Applicable
Council Meeting Date: 10/09/06		Reviewed by Legal <i>WS</i>	<input type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	HEALTH		<i>[Signature]</i>	Date
Department Head	BRIAN COLLINS	Executive Director	<i>[Signature]</i>	10.02.06
Dept Signature:	<i>[Signature]</i>	City Manager	<i>[Signature]</i>	10/2/06
Agenda Coordinator (include phone #): DORIS CALLAWAY, EXT. 7494				
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input checked="" type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
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; AND PROVIDING AN EFFECTIVE DATE.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(s):				
COMMENTS:				
SUMMARY OF ITEM				
To approve the health department director's appointment of Dr. Allan R. deVilleneuve as the City's Health Authority.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		

From: Brian Collins
Sent: Monday, October 02, 2006 4:01 PM
To: Tom Muehlenbeck
Cc: Bruce Glasscock
Subject: City Health Authority

Texas Health and Safety Code, Section 121.033 states "The governing body of a municipality or the commissioner's court of a county shall appoint the director of the municipality's or county's local health department." It goes on to say "A director of a local health department who is not a physician shall appoint a physician as the health authority in the local health department's local jurisdiction, subject to the approval of the governing body or the commissioners court, as appropriate, and the board." We are also supplying the contract/agreement that pays the Health Authority \$500 per month in a two year contract. The two year contract is also in state law.

Please let me know if there are other questions.

Brian

M-2

RESOLUTION NO. _____

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; 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 City of Plano health department has appointed Dr. 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 121.024, 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's Health Authority.

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. This Resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED this the ____ day of _____, 2006.

Pat Evans, MAYOR

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ATTEST:

Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

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**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
Council Meeting Date:	10/9/06	Reviewed by Legal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Customer and Utility Services		Initials	Date
Department Head	Mark D. Israelson	Executive Director	<i>[Signature]</i>	10-2-06
Dept Signature:	<i>[Signature]</i>	City Manager	<i>[Signature]</i>	10/02/06
Agenda Coordinator (include phone #):		Nancy Rodriguez ext 7510		

ACTION REQUESTED: ORDINANCE RESOLUTION CHANGE ORDER AGREEMENT
 APPROVAL OF BID AWARD OF CONTRACT OTHER

CAPTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A PUBLIC RIGHT-OF-WAY USE AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS AND TERRA-MAX ENGINEERING, INC., A FLORIDA S CORPORATION, TO LOCATE, PLACE, ATTACH, INSTALL, OPERATE, AND MAINTAIN MONITORING WELLS IN CERTAIN SPECIFIC PORTIONS OF THE PUBLIC RIGHTS-OF-WAY IN THE CITY OF PLANO; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR, IN HIS ABSENCE, AN EXECUTIVE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR: 06/07	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): GENERAL FUND

COMMENTS: This item will have no financial impact

SUMMARY OF ITEM

This Resolution approves a Public Right-of-Way Use Agreement with Terra-Max Engineering, Inc., for work that Terra-Max Engineering, Inc., desires to do in the City's rights-of-way near 6100 W. Park Boulevard located in Plano, Collin County, Texas.

List of Supporting Documents:

Other Departments, Boards, Commissions or Agencies

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A PUBLIC RIGHT-OF-WAY USE AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS AND TERRA-MAX ENGINEERING, INC., A FLORIDA S CORPORATION, TO LOCATE, PLACE, ATTACH, INSTALL, OPERATE, AND MAINTAIN MONITORING WELLS IN CERTAIN SPECIFIC PORTIONS OF THE PUBLIC RIGHTS-OF-WAY IN THE CITY OF PLANO; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR, IN HIS ABSENCE, AN EXECUTIVE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council has been presented a proposed Public Right-of-Way Use Agreement by and between the City of Plano, Texas and Terra-Max Engineering, Inc., (hereinafter called "Agreement"), a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference; 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, in his absence, an Executive Director should 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 interests of the City of Plano and its citizens, are hereby in all things approved.

Section II. The City Manager or, in his absence, an Executive Director, 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.

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

DULY PASSED AND APPROVED on this the ____ day of _____, 2006.

Pat Evans, MAYOR

ATTEST:

Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

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PUBLIC RIGHT-OF-WAY USE AGREEMENT

This Agreement is made this the _____ day of _____, 2006, by and between the **City of Plano, Texas** ("City"), a Texas home rule municipal corporation, and **Terra-Max Engineering, Inc.**, an S Corporation, duly organized and existing under the laws of the State of Florida ("Company").

RECITALS:

WHEREAS, Company desires to locate, place, attach, install, operate and maintain, subject to the terms of this Public Right-of-Way Use Agreement, ground monitoring wells (hereinafter called "Structure") under 6100 W. Park Boulevard, located in Plano, Collin County, Texas, as shown on the attached Exhibit "A," for the purpose of monitoring plume migration; and

WHEREAS, the City will allow Company to use the Public Rights-of-Way under the terms of this Agreement.

NOW, THEREFORE, the City and Company agree as follows:

1. **Definitions.**

Capitalized terms used in this Agreement and not otherwise defined within this Agreement shall have the following meanings:

- (a) *Affiliate* shall mean any individual, partnership, association, joint stock company, limited liability company, trust, corporation, or other person or entity who owns or controls, or is owned or controlled by, or is under common ownership or control with, the entity in question.
- (b) *Company* shall mean Terra-Max Engineering, Inc., an S Corporation, duly organized and existing under the laws of the State of Florida, only and shall not include any Affiliate or third party.
- (c) *City* shall mean the area within the corporate limits of the City of Plano, Texas, and the governing and administrative body thereof.
- (d) *Effective Date* shall mean the date of execution by the City.
- (e) *Person* shall mean an individual, corporation, a limited liability company, a general or limited partnership, a sole proprietorship, a joint venture, a business trust or any other form or business entity or association.

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- (f) *Public Rights-of-Way* shall mean only those portions of the public rights-of-way and street crossings in the City identified in Exhibit "A" of this Agreement, which is attached hereto and hereby made a part of this Agreement for all purposes.
- (g) *Structure* shall mean Company's monitoring wells, under 6100 W. Park Boulevard in Plano, Collin County, Texas.

2. **Grant of Rights.**

2.1 **General Use of Public Rights-of-Way.**

Subject to the terms and conditions set forth in this Agreement, the City Charter, and the ordinances of the City, the City hereby grants Company a non-exclusive license to locate, place, attach, install, operate and maintain its Structure in the Public Rights-of-Way, as defined in Section 1 hereof. Company hereby acknowledges and agrees that the location, attachment, installation, operation, maintenance, removal, reattachment, reinstallation, relocation and/or replacement of Structure or any other structure or equipment constitutes an actual use of the Public Rights-of-Way, that the City has the right to manage and regulate the use of such Public Rights-of-Way, and that the City is entitled to recover reasonable compensation from Company on account of such use of the Public Rights-of-Way.

Both the City and Company ("Parties") hereby acknowledge and agree that this Agreement addresses only the use of the Public Rights-of-Way by Company to locate, place, attach, install, operate and maintain its Structure and does not grant Company or any Affiliate or contractor of the Company the use of the Public Rights-of-Way for any other reason. If Company, an Affiliate of Company, or any assignee, successor in interest or contractor of Company contends that Company, an Affiliate of Company, or any assignee, successor in interest or contractor of Company wishes to construct and/or install additional facilities in any of the City's public rights-of-way other than the Public Rights-of-Way defined in Section 1, Company shall first notify the City in writing and shall obtain a written permit or agreement for the use of the Public Rights-of-Way in that respect.

2.2 **Scope.** Any and all rights granted to Company under this Agreement, which shall be exercised at Company's sole cost and expense, shall be subject and subordinate to the prior and continuing right of City, its successors and assigns, to use any and all parts of the Public Rights-of-Way exclusively or concurrently with any other Person or Persons having the legal right to use such Public Rights-of-Way. In addition, any and all rights granted to Company under this Agreement shall be subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record that may affect the Public Rights-of-Way. Nothing in this Agreement shall be deemed to grant, convey, create, or vest in Company a real property interest in land, including, but not limited to, any fee, leasehold interest, or easement. Any work performed by or on behalf of Company shall be subject to the

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prior and customary review and regulation by the City. Company shall not allow any liens, including, but not limited to, mechanic's or materialman's liens, to be enforced against City's premises by reason of any such work.

2.3 Non-exclusive. This Agreement and all rights granted to Company herein are strictly non-exclusive. The City reserves the right to grant other and future agreements, consents and franchises for the use of public rights-of-way in the City, including the Public Rights-of-Way used by Company pursuant to this Agreement, to other Persons as the City deems appropriate. This Agreement does not establish any priority for the use of the Public Rights-of-Way by Company or by any present or future franchisees, users or other permit holders. In the event of any dispute as to the priority of use of the Public Rights-of-Way, the first priority shall be to the public generally, the second priority to the City in the performance of its various functions, and thereafter, as between franchisees, users and other permit holders, as determined by the City in the exercise of its powers, including the police power and other powers reserved to and conferred on it by the State of Texas.

2.4 Other Permits. This Agreement does not relieve Company of any obligation to obtain permits, licenses, and other approvals from the City necessary for the construction, repair, or maintenance of the Structure.

3. Term.

This License shall continue in force for a period of eighteen months (18) months from the Effective Date. If any law or agency rule or regulation is adopted that affects the City's ability or right to manage the Public Rights-of-Way, Company agrees to meet with the City and to negotiate with diligence and in good faith an agreement or amendment to this Agreement that reasonably resolves the City's and Company's concerns regarding such law or agency rule or regulation.

4. Fees and Payments.

4.1 Public Right-of-Way Use Fee. On the Effective Date, the City agrees to waive compensation for its use of the Public Rights-of-Way for the term of this Agreement.

4.2 Other Payments. Company shall pay the City all sums that may be due the City for property taxes, permit fees, or other taxes, charges or fees that the City may from time to time impose.

4.3 Interest. All sums due the City under this Agreement that are not paid when due shall bear interest at the rate of ten percent (10%) per annum, computed monthly.

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4.4 Company acknowledges that it understands that this Agreement relate only to the Public Rights-of-Way specifically identified in Exhibit "A." Additional portions of the public rights-of-way and/or street crossings shall require a new license.

5. **Use of Public Rights-of-Way**

5.1 **Construction and Maintenance.** In all matters relating to this Agreement, Company shall comply with the City of Plano Right-of-Way Management Ordinance, as adopted by Ordinance No. 2001-3-20 and as amended from time to time, and all other pertinent laws, rules, and regulations of the City and the State of Texas. Approval by City of this Agreement shall not constitute a warranty by City that Company's plans conform with federal, state and/or local codes and regulations applicable thereto. Company shall comply with all laws or ordinances of the City of Plano, including, but not limited to, those relating to building and excavation permits.

5.2 **Work by Others; Alterations Required if Needed to Conform with Public Improvements.** The City reserves the right, subject to further conditions described in this paragraph, to lay and permit to be laid sanitary sewer, gas, water, electric, telephone and television cable and other pipelines or cables and conduits and to do and permit to be done any underground and overhead installation that may be deemed necessary or proper by the governing body of the City in, across, along, over or under any of Company's Public Rights-of-Way and to change any curb or sidewalk or the grade of any street. In permitting such work to be done, the City shall not be liable to Company, except to the extent provided under the Texas Tort Claims Act. Nothing herein shall relieve any other person or corporation from any liability for damage to the facilities or the Structure.

5.3 **Testing.** Company shall cooperate with City in making any test or tests it requires of any installation or condition that, in its reasonable judgment, may have adverse effects on any of the facilities of the City. All costs incurred by the test(s), or any corrections thereof, shall be borne by Company.

5.4 **Location, Use or Purpose Changes.** No change in the location, use or purpose of the Public Rights-of-Way shall be made by Company without City's written approval.

6. **Miscellaneous Obligations of Company.**

6.1 **Removal of Structure.** Upon the termination or expiration of this Agreement, Company's right to use Public Rights-of-Way under this Agreement shall cease and Company shall immediately discontinue use of the Structure. Within six (6) months following such termination or expiration and in accordance with directions from the City, Company shall remove the Structure, including, but not limited to, all supporting structures, poles, transmission and distribution Structures and other appurtenances, fixtures or property from the Public Rights-of-Way. If Company has not removed all Structure facilities and equipment from the Public Rights-of-Way within six

(6) months following termination or expiration of this Agreement, the City may deem all of the Company's Structure facilities and equipment remaining in the Public Rights-of-Way abandoned and, at the City's sole but reasonable discretion, (i) take possession of and title to such property; and/or (ii) take any and all legal action necessary to compel Company to remove such property.

Within six (6) months following termination or expiration of this Agreement, Company shall also restore any property, public or private, that is disturbed or damaged by removal of the Structure. If Company has not restored all such property within this time, the City, at the City's sole but reasonable discretion, may perform or have performed any necessary restoration work, in which case Company shall, within 10 days following receipt of an itemized invoice, reimburse the City for any and all costs incurred in performing or having performed such restoration work.

7. **Indemnification and Insurance.**

7.1 **Disclaimer of Liability.** EXCEPT TO THE EXTENT PROVIDED BY THE TEXAS TORT CLAIMS ACT, THE CITY SHALL NOT AT ANY TIME BE LIABLE FOR ANY INJURY OR DAMAGE OCCURRING TO ANY PERSON OR PROPERTY FROM ANY CAUSE WHATSOEVER THAT ARISES OUT OF THE ATTACHEMENT, INSTALLATION, OPERATION, MAINTENANCE, REMOVAL, REATTACHMENT, REINSTALLATION, RELOCATION AND/OR REPLACEMENT OF THE STRUCTURE OR THE CONSTRUCTION, MAINTENANCE, REPAIR, USE, OPERATION, CONDITION OR DISMANTLING OF THE STRUCTURE.

7.2 **Indemnification.** Company shall provide to the City the indemnification set out in the City's Right-of-Way Management Ordinance, Ordinance No. 2001-3-20, as amended. Company further releases and indemnifies the City from and against any and all liability, cost and expense, including attorney's fees for loss of or damage to the City's property and for injury to or death of Persons (including, but not limited to, the property and employees of each of the parties hereto) arising or resulting from a breach of this Agreement by Company, whether or not caused or contributed to by any act or omission, negligence or otherwise, of any employee or agent of City.

7.3 **Assumption of Risk.** COMPANY HEREBY UNDERTAKES AND ASSUMES, FOR AND ON BEHALF OF COMPANY, ITS OFFICERS, AGENTS, CONTRACTORS, SUBCONTRACTORS, AGENTS AND EMPLOYEES, ALL RISK OF DANGEROUS CONDITIONS, IF ANY, ON OR ABOUT ANY CITY-OWNED OR CITY-CONTROLLED PROPERTY OR FACILITIES, INCLUDING, BUT NOT LIMITED TO, THE PUBLIC RIGHTS-OF-WAY. IN ADDITION, COMPANY HEREBY AGREES TO AND SHALL INDEMNIFY AND HOLD HARMLESS THE CITY AGAINST AND FROM ANY CLAIM ASSERTED OR LIABILITY IMPOSED UPON THE CITY FOR ANY PERSONAL INJURY OR PROPERTY DAMAGES INCURRED OR ASSERTED BY COMPANY OR ANY OF ITS EMPLOYEES, AGENTS, CONTRACTORS OR SUBCONTRACTORS, AND ARISING FROM THE ATTACHMENT, INSTALLATION,

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OPERATION, MAINTENANCE, CONDITION, REMOVAL, REATTACHMENT, REINSTALLATION, RELOCATION AND/OR REPLACEMENT OF THE STRUCTURE.

7.4 Insurance. Company shall comply with the insurance requirements set out in the City's Right-of-Way Management Ordinance, Ordinance No. 2001-3-20, as amended.

8. **Termination**. This Agreement shall terminate:

- A. at the end of the term provided for in Section 3 above;
- B. upon abandonment of the Public Rights-of-Way or discontinuance of use thereof;
- C. upon failure of Company to correct any default under this Agreement after expiration of the applicable cure period as set out in Section 9 and 10 below.

9. **Defaults**.

The occurrence at any time during the term of this Agreement of one or more of the following events shall constitute an "Event of Default" under this Agreement:

9.1 Failure to Pay Right-of-Way Fees. An Event of Default shall occur if Company fails to pay any **fees or taxes required under paragraph 4.2 above** on or before the respective due date.

9.2 Breach. An Event of Default shall occur if Company materially breaches or violates any of the terms, covenants, representations, or warranties set forth in this Agreement or fails to perform any duty or obligation required by this Agreement.

9.3 Violations of the Law. An Event of Default shall occur if Company violates any existing or future federal, state or local laws or any existing or future ordinances, rules and regulations of the City; provided, however, that no Event of Default shall be deemed to occur or exist during the pendency of any legal action which the City or Company may initiate against the other under or in connection with such law, ordinance, rule or regulation.

10. **Uncured Defaults and Remedies**.

10.1 Notice of Default and Opportunity to Cure. If an Event of Default occurs, the City shall provide Company with written notice and shall give Company the opportunity to cure such Event of Default. For an Event of Default which can be cured by the immediate payment of money to the City, Company shall have thirty (30) calendar days from the date it receives written notice from the City to cure the Event of Default. For any other Event of Default, Company shall have sixty (60) calendar days from the date it receives written notice from the City to cure the Event of Default. If any

Event of Default is not cured within the time period specified herein, such Event of Default shall, without further notice from the City, become an "Uncured Default" and the City immediately may exercise the remedies provided in Section 10.2.

10.2 Remedies for Uncured Defaults. Upon the occurrence of an Uncured Default, the City shall be entitled to exercise, at the same time or at different times, any of the following remedies, all of which shall be cumulative and without limitation to any other rights or remedies the City may have:

10.2.1 Termination of Agreement. Upon the occurrence of an Uncured Default, the City may terminate this Agreement immediately upon written notice to Company. Upon such termination, Company shall forfeit all rights granted to it under this Agreement, and, except as to Company's unperformed obligations and existing liabilities as of the date of termination, this Agreement shall automatically be deemed null and void and shall have not further force or effect. Company shall remain obligated to pay, and the City shall retain any payments due up to the date of termination. In this event, Company shall comply with the provisions of Section 6.1 of this Agreement. The City's right to terminate this Agreement under this Section does not and shall not be construed to constitute any limitation on the City's right to terminate this Agreement for other reasons as provided by and in accordance with this Agreement.

10.2.2. Legal Action Against Company. Upon the occurrence of an Uncured Default, the City may commence against Company an action at law for monetary damages or in equity for injunctive relief or specific performance of any of the provisions of this Agreement that, as a matter of equity, are specifically enforceable.

11. Assignment of Agreement.

The rights granted by this Agreement inure to the benefit of Company. Except to an Affiliate of the Company, Company shall not (i) assign, transfer, sell, or otherwise convey any of its rights, privileges, duties or interests as granted to Company by this Agreement; or (ii) lease to any Person or allow use by any Person other than Company all or any portion of its Structure unless (i) Company first notifies the City in writing; (ii) Company obtains the City's advance written consent, which consent shall not unreasonably be withheld; and (iii) such Person enters into a written agreement with the City relating to that Person's use of the Public Rights-of-Way, including terms for any compensation that the City may charge for such use. In the event Company assigns or transfers the Agreement to an Affiliate of Company, Company shall provide City with written notice thereof.

12. Notices.

12.1 All notices that shall or may be given pursuant to this Agreement shall be in writing and delivered or transmitted (a) through the United States mail, by registered or certified mail, postage prepaid; (b) by means of prepaid overnight delivery service; or

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(c) by facsimile transmission, if a hard copy of the same is followed by delivery through the U.S. mail or by overnight delivery service as just described, addressed as follows:

If to the City:

City of Plano
Attn: Customer and Utility Services
P.O. Box 860358
1520 Avenue K, Suite 120
Plano, TX 75086-0358
Fax Number (972) 461-9331

With a copy to:

City of Plano
Attn: City Attorney
P.O. Box 860358
1520 Avenue K, Suite 340
Plano, TX 75086-0358
Fax Number (972) 424-0099

If to Company:

Terra-Max Engineering, Inc.
Attn: Dan Harrison, Assessment Services Manager
1860 Crown Drive, Suite 1402
Farmers Branch, TX 75234
Fax Number: (972) 506-5407

12.2 Date of Notices; Changing Notice Address. Notices shall be deemed given three (3) days after deposit in the mail; or the next day in the case of facsimile, or overnight delivery. Either party may from time to time designate any other address for this purpose by written notice to the other party delivered in the manner set forth above.

13. **No Waiver.**

The failure of the City to insist upon the performance of any term or provision of this Agreement or to exercise any rights that the City may have, either under this Agreement or the law, shall not constitute a waiver of the City's right to insist upon appropriate performance or to assert any such right on any future occasion.

14. **Miscellaneous Provisions.**

14.1 Amendment of Agreement. This Agreement may not be amended except pursuant to a written instrument signed by both parties.

14.2 Severability of Provisions. If any one or more of the Provisions of this Agreement shall be held by court of competent jurisdiction in a final judicial action to be

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void, voidable, or unenforceable, such Provision(s) shall be deemed severable from the remaining Provision(s) of this Use Agreement and shall not affect the legality, validity, or constitutionality of the remaining portions of this Agreement.

14.3 Governing Law; Jurisdiction. This Agreement shall be governed and construed by and in accordance with the laws of the State of Texas, without reference to its conflicts of law principles. If suit is brought by a party to this Agreement, the parties agree that venue for the trial of such action shall be vested exclusively in the state courts of Texas, County of Collin, or in the United States District Court for the Eastern District of Texas.

14.4 Consent Criteria. In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Agreement, such party shall not unreasonably delay or withhold consent.

14.5 Waiver of Breach. The waiver by either party of any breach or violation of any Provision of this Agreement shall not be deemed to be a waiver or a continuing waiver of any subsequent breach or violation of the same or any other Provision of this Agreement.

14.6 Representations and Warranties. Each of the parties to this Agreement represent and warrant that at the time of signing of this Agreement it has the full right, power, legal capacity, and authority to enter into and perform the parties' respective obligations hereunder and that such obligations shall be binding upon such party without the requirement of the approval or consent of any other person or entity in connection herewith.

14.7 Entire Agreement. This Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements, or understandings (whether oral or written) between or among the parties relating to the subject matter of this Agreement which are not fully expressed herein.

14.8 No Third Party Beneficiaries. This Agreement is for the benefit of Company, any transferee or assignee in accordance with the provisions contained herein, and the City, and not for the benefit of any third party. No Provision of this Agreement shall be construed as creating any third party beneficiaries.

14.9 Force Majeure. City and Company shall not be required to perform any covenant or obligation in this Agreement, nor be liable to the other in damages, so long as the cause of such failure to perform, or delay in performance, is caused or prevented by an act of God or force majeure.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate the day and year first above written.

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LICENSOR:
CITY OF PLANO, TEXAS,
A Home Rule Municipal Corporation

By Authority of Resolution
No. _____

By: _____
Thomas H. Muehlenbeck
City Manager

APPROVED AS TO FORM:

Diane Wetherbee, CITY ATTORNEY

LICENSEE:
Terra-Max Engineering, Inc.
A Florida S Corporation

By: Dan Harrison
Title: Assessment Services Manager

ATTEST:

DATE

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ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the ____ day of _____, 2006, by **THOMAS H. MUEHLENBECK**, 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

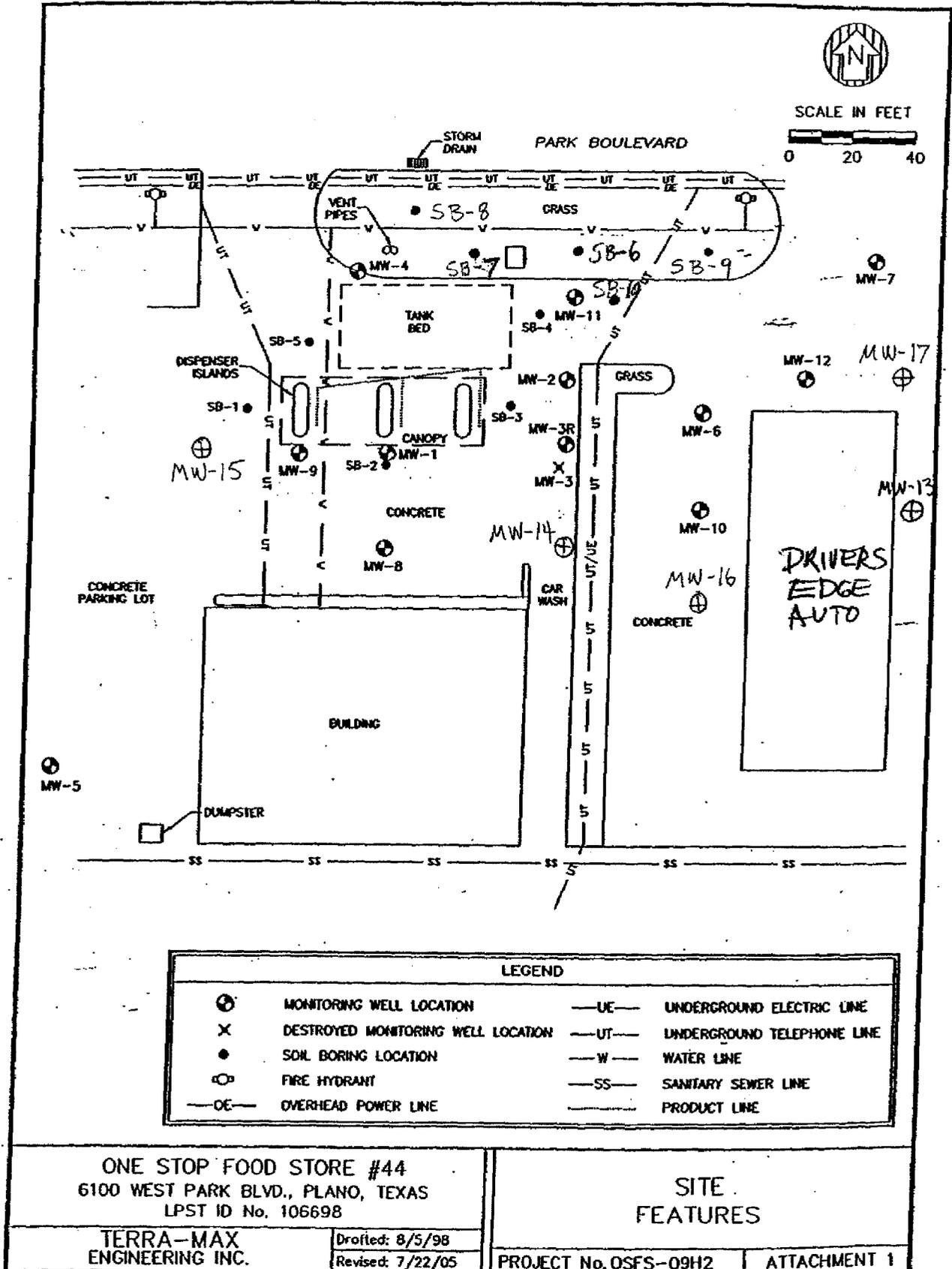
STATE OF _____ §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2006, by **Dan Harrison**, Assessment Services Manager, of **Terra-Max Engineering, Inc.**, a Florida S Corporation, on behalf of said Corporation.

Notary Public in and for
The State of _____

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EXHIBIT "A"



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**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular	<input type="checkbox"/> Statutory	Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date: 10/9/06		Reviewed by Legal <i>JS</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
Department:	Library Administration		Initials	Date	
Department Head	Joyce Baumbach	Executive Director	<i>[Signature]</i>	9727-06	
Dept Signature:	<i>Joyce Baumbach</i>	City Manager	<i>[Signature]</i>	9/27/06	
Agenda Coordinator (include phone #): Mary Ann Dunnivant (Ext 4208)					
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input checked="" type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER					
CAPTION					
Authorizing the purchase of library materials for the Plano Public Library System (PPLS) in the amount of \$300,000 from the Brodart Company through the Northeast Texas Library System (NETLS) contract; authorizing the City Manager or his designee to take such action and execute such documents as necessary to effectuate the purchase approved herein 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: 2006-2007	Prior Year (CIP Only)	Current Year	Future Years	TOTALS	
Budget	0	800,000	0	800,000	
Encumbered/Expended Amount	0	0	0	0	
This Item	0	-300,000	0	-300,000	
BALANCE	0	500,000	0	500,000	
FUND(S): GENERAL					
COMMENTS: Funding for this item is included in the FY2006-07 Budget. Remaining funds will be used for other library materials purchased.					
STRATEGIC PLAN GOAL: The purchase of library materials relates to the City's goal of "Premier City for Families" and "Service Excellence".					
SUMMARY OF ITEM					
NETLS, of which the City of Plano is a participant, is a library system which secures competitive bids for books. Because of Plano Public Library System's participation in NETLS, the purchase from the Brodart Company in the amount of \$300,000 satisfies the law relating to this bid. Therefore, PPLS staff recommends purchase of these various library materials from Brodart Company through the NETLS contract.					
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies			
1. Memo from Julie Torstad dated 9-5-06					



City of Plano
Technical Services
2501 Coit Road
Plano, TX 75075
Phone: 972.769.4327
Fax: 972.769.4121

Memorandum

Date: September 5, 2006
To: Mary Ann Dunnivant
From: Julie Torstad
Subject: Council approval for Brodart

Please request approval from City Council in the amount of \$300,000 for the purchase of various library print materials from the Brodart Company. The funds will be used to purchase books. The funds will be taken from 01-682-8441.

The purchases will be made through the Northeast Texas Library System (NETLS) contract with the Brodart Company. Plano Public Library is a member of NETLS.

Thanks.

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RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, AUTHORIZING THE PURCHASE OF LIBRARY MATERIALS FOR THE PLANO PUBLIC LIBRARY SYSTEM (PPLS) IN THE AMOUNT OF \$300,000 FROM THE BRODART COMPANY THROUGH THE NORTHEAST TEXAS LIBRARY SYSTEM (NETLS) CONTRACT; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO TAKE SUCH ACTION AND EXECUTE SUCH DOCUMENTS AS NECESSARY TO EFFECTUATE THE PURCHASE APPROVED HEREIN AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 271.102 of the Texas Local Government Code allows a local government to participate in a cooperative purchasing program with a local cooperative organization in satisfaction of state law competitive bid requirements; and

WHEREAS, the City of Plano, Texas is a member of the Northeast Texas Library System ("NETLS"), a local cooperative organization that operates a cooperative purchasing program, and, as a member, may purchase library materials from vendors of NETLS; and

WHEREAS, NETLS utilizes the competitive bid process to obtain a list of qualified vendors from which its members may purchase library materials; and

WHEREAS, the City of Plano's participation as a member of NETLS satisfies State law competitive bid requirements; and

WHEREAS, the Brodart Company is a vendor of NETLS, and has library materials which the City would like to purchase; and

WHEREAS, the City Council of the City of Plano finds that purchasing library materials from the Brodart Company complies with Section 271.102 of the Texas Local Government Code, and thus complies with the State law competitive bid requirements.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, RESOLVES THAT:

Section I. The Plano City Council hereby authorizes the City of Plano, a member of NETLS, to purchase books from the Brodart Company through the Northeast Texas Library System ("NETLS").

Section II. The Plano City Council further authorizes the City Manager or his designee to take such action and execute such documents as necessary to effectuate the purchase of the library materials in an amount not to exceed \$300,000 from the Brodart Company.

P-3

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

DULY PASSED AND APPROVED this the _____ day of _____, 2006.

Pat Evans, MAYOR

ATTEST:

Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

Diane Wetherbee, CITY ATTORNEY

P-4



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular	<input type="checkbox"/> Statutory	Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date:	10/9/06		Reviewed by Legal <i>WS</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Library Administration		Initials	Date	
Department Head	Joyce Baumbach	Executive Director	<i>[Signature]</i>	9-27-06	
Dept Signature:	<i>Joyce Baumbach</i>	City Manager	<i>[Signature]</i>	9/27/06	
Agenda Coordinator (include phone #): Mary Ann Dunnivant (Ext. 4208)					

ACTION REQUESTED:

<input type="checkbox"/> ORDINANCE	<input checked="" type="checkbox"/> RESOLUTION	<input type="checkbox"/> CHANGE ORDER	<input type="checkbox"/> AGREEMENT
<input type="checkbox"/> APPROVAL OF BID	<input type="checkbox"/> AWARD OF CONTRACT	<input type="checkbox"/> OTHER	

CAPTION

Authorizing the purchase of various library materials, including books, compact disks, books-on-CD, and DVDs for Plano Public Library System (PPLS), from Baker & Taylor under Texas State Contract 715-N1, Section IV (715-10-50), Section V (715-10-60), Section VIII (715-90-10), Section IX (715-05-10) and Section X (715-05-11); and for non-print materials only under the annual Northeast Texas Library System (NETLS) contract in the amount of \$400,000; authorizing the City Manager or his designee to take such action and execute such documents as necessary to effectuate the purchase approved herein; and providing an effective date.

FINANCIAL SUMMARY

NOT APPLICABLE
 OPERATING EXPENSE
 REVENUE
 CIP

FISCAL YEAR: 2006-2007	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	800,000	0	800,000
Encumbered/Expended Amount	0	0	0	0
This Item	0	-400,000	0	-400,000
BALANCE	0	400,000	0	400,000

FUND(S): GENERAL

COMMENTS: Funding for this item is available in the approved FY 2006-07 Budget.

STRATEGIC PLAN GOAL: Competitive bid for various library materials relates to the City's goal of "Service Excellence" and "Premier City of Families."

SUMMARY OF ITEM

This request is for the purchase of various library materials for the Plano Public Library System. The purchases will be made from Baker & Taylor under Texas State Contract 715-N1 Section IV (715-10-50), Section V (715-10-60), Section VIII (715-90-10), Section IX (715-05-10) and Section X (715-05-11) and for non-print materials only under the Northeast Texas Library System (NETLS) contract. All of these funds (\$400,000 total) will be spent for library materials, including books, compact disks, books-on-CD, and DVDs.

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
1. Memo from Julie Torstad dated 9/5/06	

Q-1



City of Plano
Technical Services
2501 Coit Road
Plano, TX 75075
Phone: 972.769.4327
Fax: 972.769.4121

Memorandum

Date: September 5, 2006
To: Mary Ann Dunnivant
From: Julie Torstad
Subject: Council approval for Baker & Taylor

Please request City Council approval to spend up to \$400,000 with Baker & Taylor for the purchase of various library materials including books, compact disks, books-on-CD, and DVDs. The funds should be taken from 01-682-8441. Some of the funds will be transferred into 01-682-8442 as necessary.

These purchases will be made under Texas State Contract 715-N1-1, Section IV (715-10-50), Section V (715-10-60), Section VIII (715-90-10), Section IX (715-05-10) and Section X (715-05-11). Non-print purchases could also be made under the annual Northeast Texas Library System (NETLS) contract. Plano Public Library is a member of NETLS.

Thanks.

Q-2

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, AUTHORIZING THE PURCHASE OF VARIOUS LIBRARY MATERIALS, INCLUDING BOOKS, COMPACT DISKS, BOOKS-ON-CD, AND DVDS FOR PLANO PUBLIC LIBRARY SYSTEM (PPLS), FROM BAKER & TAYLOR UNDER TEXAS STATE CONTRACT 715-N1, SECTION IV (715-10-50), SECTION V (715-10-60), SECTION VIII (715-90-10), SECTION IX (715-05-10) AND SECTION X (715-05-11); AND FOR NON-PRINT MATERIALS ONLY UNDER THE ANNUAL NORTHEAST TEXAS LIBRARY SYSTEM (NETLS) CONTRACT IN THE AMOUNT OF \$400,000; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO TAKE SUCH ACTION AND EXECUTE SUCH DOCUMENTS AS NECESSARY TO EFFECTUATE THE PURCHASE APPROVED HEREIN; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Plano shall make this purchase under Texas State Contract 715-N1, Section IV (715-10-50), Section V (715-10-60), Section VIII (715-90-10), Section IX (715-05-10) and Section X (715-05-11), which satisfies State law competitive bid requirements; and

WHEREAS, Northeast Texas Library System utilizes the competitive bid process to obtain a list of qualified vendors from which its members may purchase various library materials; and

WHEREAS, the Plano City Council finds that the purchase of library materials from Baker & Taylor complies with Texas State Contract 715-N1, Section IV (715-10-50), Section V (715-10-60), Section VIII (715-90-10), Section IX (715-05-10) and Section X (715-05-11), thereby satisfying State law competitive bid requirements; and

WHEREAS, the City of Plano, Texas desires to purchase library materials, including books, compact disks, books-on-CD, and DVDs, from Baker & Taylor.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, HEREBY RESOLVES THAT:

Section I. The Plano City Council hereby authorizes the City of Plano to purchase library materials from Baker & Taylor.

Section II. The Plano City Council further authorizes the City Manager or his designee to take such action and execute such documents as necessary to effectuate the purchase of library materials, including books, compact disks, books-on-CD, and DVDs, in an amount not to exceed \$400,000 from Baker & Taylor.

Q-3

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

DULY PASSED AND APPROVED THIS THE _____ DAY OF _____, 2006.

Pat Evans, MAYOR

ATTEST:

Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

Diane Wetherbee, CITY ATTORNEY

Q-4



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date:	10/9/06	Reviewed by Legal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Library Administration	Executive Director	<i>[Signature]</i>	Date
Department Head	Joyce Baumbach	City Manager	<i>[Signature]</i>	9/21/06
Dept Signature:	<i>[Signature]</i>	City Manager	<i>[Signature]</i>	9/21/06
Agenda Coordinator (include phone #):		Mary Ann Dunnivant (Ext 4208)		

ACTION REQUESTED: ORDINANCE RESOLUTION CHANGE ORDER AGREEMENT
 APPROVAL OF BID AWARD OF CONTRACT OTHER

CAPTION

Authorizing the purchase of specific library reference materials for the Plano Public Library System in the total amount of \$35,401.33 from Standard & Poor's, the sole source supplier of such specific library reference materials; authorizing the City Manager or his designee to take such action and execute such documents as necessary to effectuate the purchase approved herein; and providing an effective date.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR: 2006-07	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	800,000	0	800,000
Encumbered/Expended Amount	0	0	0	0
This Item	0	-35,401	0	-35,401
BALANCE	0	764,599	0	764,599

FUND(S): GENERAL

COMMENTS: Funding for this item is included in the FY 2006-07 Budget. Remaining funds will be used for other library materials and publications purchases.

STRATEGIC PLAN GOAL: The purchase of library materials and publications relates to the City's goal of "Premier City for Families" and "Service Excellence."

SUMMARY OF ITEM

This request is for the purchase of specific library reference materials that can be provided only by Standard & Poor's. Since these specific library reference materials may only be purchased from the publisher with exclusive distribution rights and are, therefore, considered sole source suppliers of such specific library reference materials, approval is requested for purchase of specific library reference materials from Standard & Poor's in the amount of \$35,401.33. These reference materials will be allocated to and shared by all Plano Public Library System libraries.

List of Supporting Documents: 1. Memo from Julie Torstad dated 9-6-06 2. Price List from Standard & Poor's 3. Sole Source Letter From Standard & Poor's dated 9-7-06	Other Departments, Boards, Commissions or Agencies
--	---

2-1



City of Plano
Technical Services
2501 Coit Road
Plano, TX 75075
Phone: 972.769.4327
Fax: 972.769.4121

Memorandum

Date: September 6, 2006
To: Mary Ann Dunnivant
From: Julie Torstad
Subject: Council Approval for Standard & Poor's Publications

Please request approval from City Council for the purchase of various library reference materials from Standard & Poor's in the amount of \$35,401.33. The funds should be taken from account 01.682.8441. This is a sole source purchase.

Attached is a list of the individual titles and prices.

Thanks.

Attachment

1-2

STANDARD & POORS 2006-07 PRICE LIST

Gladys Harrington Library:

Industry Surveys	\$2,234.80
Stock Reports – Bound	3,342.92
Stock Guide	204.35
Mutual Fund Profile	158.00
Outlook	322.59
Total	\$6,262.66

L. E. R. Schimelpfenig Library:

Industry Surveys	\$2,234.80
Stock Reports – Bound	3,342.92
Outlook	322.59
Statistical Service	\$1,203.80
Total	\$7,104.11

W. O. Haggard, Jr. Library:

Industry Surveys	\$2,234.80
Stock Reports – Bound	3,342.92
Outlook	204.35
Stock Guide	502.28
Trendline Current Market Pers.	322.59
Total	\$6,606.94

Maribelle M. Davis Library:

Industry Surveys	\$2,234.80
Stock Reports – Bound	3,342.92
Outlook	322.59
Stock Guide	204.35
Total	\$6,104.66

Christopher A. Parr Library:

Industry Surveys	\$2,234.80
Stock Reports – Bound	3,342.92
Outlook	322.59
Stock Guide	204.35
Total	\$6,104.66

Subtotal \$32,183.03

10% Possible Increase \$3,218.30

TOTAL \$35,401.33

A-3

STANDARD
& POOR'S

Plano Public Library System
Technical Services
2501 Coit Road
Plano, TX 75075

September 7, 2006

Dear Sir/Madam:

The services provided by Standard & Poor's are subscriptions for proprietary credit ratings and financial information developed and distributed by this firm. This information is provided on a subscription basis and the prices are standard for all customers of our service.

Sincerely,



Robert Perez
Client Relations
(212) 438-3372

R-4

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, AUTHORIZING THE PURCHASE OF SPECIFIC LIBRARY REFERENCE MATERIALS FOR THE PLANO PUBLIC LIBRARY SYSTEM IN THE TOTAL AMOUNT OF \$35,401.33 FROM STANDARD & POOR'S, THE SOLE SOURCE SUPPLIER OF SUCH SPECIFIC LIBRARY REFERENCE MATERIALS; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO TAKE SUCH ACTION AND EXECUTE SUCH DOCUMENTS AS NECESSARY TO EFFECTUATE THE PURCHASE APPROVED HEREIN; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Plano desires to purchase specific library reference materials for the City's Library System to make such specific library reference materials available to the citizens of Plano and other users of the Plano Public Library System; and

WHEREAS, Standard and Poor's, which has exclusive distribution rights for specific library reference materials that the City of Plano desires to purchase, is the sole source for the specific library reference materials; and

WHEREAS, the Plano City Council finds that these specific library reference materials are available from only one source, which thereby exempts the purchases from competitive bid, as provided in Section 252.022(a)(7)(E) of the Texas Local Government Code as follows: Standard & Poor's for specific library reference materials.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, RESOLVES THAT:

Section I. The Plano City Council, finding that the specific library reference materials published by Standard & Poor's, which has exclusive distribution rights, are available from only one source, hereby authorizes the purchase of such specific library reference materials from the sole source. As provided in Section 252.022(a)(7)(E) of the Texas Local Government Code, the purchase of said specific library reference materials is exempt from competitive bid.

Section II. The Plano City Council hereby authorizes the City Manager or his designee to take such action and execute such documents as necessary to effectuate the purchase of specific library reference materials not to exceed \$35,401.33 from Standard & Poor's, the sole source suppliers of the specific library reference materials.

2-5

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

DULY PASSED AND APPROVED this the _____ day of _____,
2006.

Pat Evans, MAYOR

ATTEST:

Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

Diane Wetherbee, CITY ATTORNEY

1-6



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular	<input type="checkbox"/> Statutory	Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date:	10/9/2006		Reviewed by Legal <i>WS</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Library Administration (681)		Initials	Date	
Department Head	Joyce Baumbach	Executive Director	<i>[Signature]</i>	9/22/06	
Dept Signature:	<i>Joyce Baumbach</i>	City Manager	<i>[Signature]</i>	9/22/06	
Agenda Coordinator (include phone #):		Mary Ann Dunnivant (Ext. 4208)			

ACTION REQUESTED: ORDINANCE RESOLUTION CHANGE ORDER AGREEMENT
 APPROVAL OF BID AWARD OF CONTRACT OTHER

CAPTION

Approving the terms and conditions of an Interlocal Cooperation Agreement For Library Services by and between the City of Plano and Collin County, Texas providing the terms and conditions for receipt of funding in the amount of \$77,729.29 from Collin County; authorizing the City Manager or his designee to take such action and execute such documents as necessary to effectuate the agreement herein; and providing an effective date.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR: 2006-2007	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	77,729	0	77,729
BALANCE	0	77,729	0	77,729

FUND(S): GENERAL

COMMENTS: Approval of this item will result in \$77,729 in revenue from Collin County Interlocal Cooperative Agreement. The total amount received will be used for the purchase of library services by and between the City of Plano and Collin County.

STRATEGIC PLAN GOAL: This item relates to the City's Goal of "Service Excellence" and "Premier City for Families."

SUMMARY OF ITEM

Approval of this Interlocal Cooperation Agreement for Library Services between the City of Plano and Collin County is requested for receipt of funding in the amount of \$77,729.29 from Collin County.

List of Supporting Documents:

- Interlocal Cooperation Agreement for Library Services is attached as Exhibit "A" to the Resolution

Other Departments, Boards, Commissions or Agencies

A-1

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN INTERLOCAL COOPERATION AGREEMENT FOR LIBRARY SERVICES BY AND BETWEEN THE CITY OF PLANO AND COLLIN COUNTY, TEXAS PROVIDING THE TERMS AND CONDITIONS FOR RECEIPT OF FUNDING IN THE AMOUNT OF \$77,729.29 FROM COLLIN COUNTY; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO TAKE SUCH ACTION AND EXECUTE SUCH DOCUMENTS AS NECESSARY TO EFFECTUATE THE AGREEMENT HEREIN; 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 Interlocal Cooperation Agreement For Library Services by and between the City of Plano, Texas, and Collin County, Texas, (see Exhibit "A") providing terms and conditions for receipt of funding from Collin County, Texas in the amount of \$77,729.29; 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.

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. This Resolution shall become effective immediately upon its passage.

S-2

RESOLUTION NO. _____

DULY PASSED AND APPROVED THIS THE _____ DAY OF _____, 2006.

Pat Evans, MAYOR

ATTEST:

Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

J-3

THE STATE OF TEXAS

COUNTY OF COLLIN

**INTERLOCAL AGREEMENT BETWEEN
THE COUNTY OF COLLIN
AND
THE CITY OF PLANO**

I.

This agreement is made and entered by and between Collin County, a political subdivision of the State of Texas, hereinafter referred to as the "**COUNTY**" and the City of Plano, a municipality of Collin County, Texas, hereinafter referred to as "**MUNICIPALITY.**"

II.

The **COUNTY** and the **MUNICIPALITY** agree as follows:

The **COUNTY** is a duly organized political subdivision of the State of Texas engaged in the administration of County Government and related services for the benefit of the citizens and residents of Collin County.

The library, as an entity established by the **MUNICIPALITY**, is a City Council created entity established for administering and providing library services for the general public in Collin County, Texas.

The undersigned officers or agents of the **COUNTY** and the **MUNICIPALITY** are properly authorized officials and agents and each has the necessary authority to execute this contract on behalf of said agent's principal and that any necessary resolutions or orders extending said authority have been duly passed and are now in full force and effect.

The **COUNTY** agrees to fund the **MUNICIPALITY** in the amount of \$77,729.29 for the 2007 fiscal year (October 2006 through September 2007) of the **COUNTY**, under the conditions and terms set out herein.

In exchange for said funds provided by the **COUNTY**, the library as an entity of the **MUNICIPALITY**, will provide the following services to the citizens of Collin County for the year of 2006;

The library, as an entity of the **MUNICIPALITY**, shall continue to provide full library services for residents of Collin County, Texas, without distinction between those who reside within or without an incorporated area of the county.

S-4

The library, as an entity of the **MUNICIPALITY**, shall perform such other functions and duties as may be required of it by law of by lawful authority.

All benefits and services provided by the **MUNICIPALITY** and the administration of its program or programs shall be done in conformity with all State and Federal Laws and without regard to race, religion, gender or ethnic background of the persons being served, and without regard to the immigration status of the person being served.

All funds provided to the **MUNICIPALITY** by the **COUNTY** shall be used for library services to the public.

The library, as an entity of the **MUNICIPALITY**, shall diligently prepare and keep accurate and current records of its board meetings, official actions and expenditures and shall permit inspection and copying of said records, as authorized by law, by authorized agents of the Commissioners Court, District Attorney and County Auditor of Collin County, Texas from 8:00 A.M. to 5:00 P.M. Monday through Friday of each week (except on officially recognized holidays).

Further, the library, as an entity of the **MUNICIPALITY**, agrees to submit to audits by the County Auditor in accordance with the directions of said official.

The library, as an entity of the **MUNICIPALITY**, shall comply with the Texas Open Records Act and the Texas Open Meetings Act, provided that matters and records deemed confidential by law shall not be compromised.

For the aforementioned services provided by the library, as an entity of the **MUNICIPALITY**, the **COUNTY** agrees to pay **MUNICIPALITY** for the full performance of this agreement; the sum of \$77,729.29 with equal payments to be made on a quarterly basis. The **MUNICIPALITY** understands and agrees that payment by the **COUNTY** to the **MUNICIPALITY** shall be made in accordance with the normal and customary processes and business procedures of the **COUNTY**, and in conformance with applicable state law.

Neither of the parties to this agreement waive or shall be deemed hereby to waive any immunity or defense that would otherwise be available to it against claims arising from the exercise of governmental powers and functions. The **MUNICIPALITY** is not given authority by this contract to place the **COUNTY** under any manner of legal obligation to any third party, person, entity or agency, and is not hereby made an agent of the **COUNTY** for the purpose of incurring liability. The **MUNICIPALITY** does not have under this agreement authority or legal capacity to admit or confess error or liability on behalf of the **COUNTY**.

The effective date of this agreement shall be the day that it is signed by both parties.

This agreement and any of its terms and provisions, as well as the rights and duties of the parties hereto, shall be governed by the laws of the State of Texas.

A-5

In the event that any portion of this agreement shall be found to be contrary to law, it is the intent of the parties hereto that the remaining portions shall remain valid and in full force and effect to the extent possible.

EXECUTED in duplicate originals this, the ____ day of _____, 2006.

COUNTY

BY: _____
Name: Ron Harris
Title: The County Judge of Collin County, Texas
Dated: _____

MUNICIPALITY

BY: _____
Name: Thomas H. Muehlenbeck
Title: City Manager, City of Plano
Dated: _____

Plano City Council Meeting

Dated: _____

ATTEST:

By: _____
City Secretary

APPROVED AS TO FORM:



City Attorney

APPROVED AS TO CONTENT:

Joyce Baumbach, Director of Libraries
Plano Public Library System

S-6



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
Council Meeting Date:	10/9/06	Reviewed by Legal <i>WS</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
Department:	Library Administration	Initials	Date		
Department Head	Joyce Baumbach	Executive Director	<i>[Signature]</i>	9-19-06	
Dept Signature:	<i>Joyce Baumbach</i>	City Manager	<i>[Signature]</i>	9/19/06	
Agenda Coordinator (include phone #): Mary Ann Dunnivant, Ext. 4208					
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input checked="" type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER					
CAPTION					
Authorizing the purchase of specialized online database library services for Plano Public Library System from Amigos Library Services through Plano Public Library System's membership with OCLC, the sole source supplier of comprehensive Interlibrary loan and bibliographic record purchases; authorizing the City Manager or his designee to take such action and execute such documents as necessary to effectuate the purchase approved herein; 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:	2006-07	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	54,514	0	54,514
Encumbered/Expended Amount		0	0	0	0
This Item		0	-35,500	0	-35,500
BALANCE		0	19,014	0	19,014
FUND(S): GENERAL					
COMMENTS: Funding for this item is included in the FY 2006-07 Budget. This item authorizes the purchase of specialized online database library materials for the Plano Public Library System. STRATEGIC PLAN GOAL: Specialized Online Database Library Materials relates to the City's goal of "Service Excellence."					
SUMMARY OF ITEM					
This request is in the amount of \$35,500 for the purchase of specialized online database library services for Plano Public Library System that can be provided in their entirety from Amigos Library Services through OCLC; the sole supplier of comprehensive Interlibrary loan and bibliographic record purchases.					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		
1. Memo from Julie Torstad dated 9.7.06 2. Sole source letter dated 9.7.06					



City of Plano
Technical Services
2501 Coit Road
Plano, TX 75075
Phone: 972.769.4327
Fax: 972.769.4121

Memorandum

Date: September 7, 2006
To: Mary Ann Dunnivant
From: Julie Torstad
Subject: Council Approval for Amigos Expenditures

Please request Council approval for the purchase of bibliographic records, cataloging access, and interlibrary loan activities in an amount not to exceed \$35,500 for Amigos Library Services. The majority of the funds will be taken out of 01.682.6319 (\$27,000). The remaining \$8,500 will be taken from each of the libraries as follows:

01.683.6312	\$1,500
01.684.6312	\$1,500
01.685.6312	\$1,500
01.686.6312	\$1,000
01.687.6312	\$1,500
01.688.6312	\$1,500

As a member of Amigos (a non-profit resource sharing organization), Plano buys all of their bibliographic records for our automated library system from OCLC through Amigos. Various groups are set up around the country like Amigos for the purpose of holding membership and using OCLC's 35 million bibliographic record database. Amigos is the only agency for libraries in Texas, Arkansas, Oklahoma, New Mexico, and Arizona that offers access to OCLC.

We have been purchasing from Amigos in this manner since 1985. Copies of the original membership agreement should be on file in Purchasing.

The bibliographic records are purchased throughout the year on a daily basis and then tagged with our Plano code. This database is then used by other libraries around the country to borrow titles from us and we also use it to borrow titles from various libraries for our interlibrary loan activities.

Thanks.

t-2

AMIGOS AS A SOLE-SOURCE PROVIDER

Amigos Library Services, Inc. is a non-profit resource sharing organization serving member libraries in the Southwest. Amigos is the only agency located in the State of Texas that offers the shared use of OCLC's 65 million bibliographic record database combined with technical support and training for ongoing use of the OCLC system. Amigos serves member libraries throughout the Southwest, primarily in the states of Texas, Arkansas, Oklahoma, New Mexico and Arizona. Libraries utilize the OCLC database for cataloging, catalog card production, pre-order searching, interlibrary loan, and union catalog activity. Amigos member libraries receive training, documentation, and technical assistance from professionally qualified staff as a benefit of their membership.

Libraries do have the option to purchase access to the OCLC system directly from OCLC but such purchases don't include the technical support and training that Amigos supplies. Purchasing through Amigos means that ongoing support is available from a nearby and trusted source at member rates. It also ensures participation in cost-effective regional resource-sharing programs.

Membership in Amigos also provides access to services unrelated to OCLC, such as materials delivery, preservation, imaging, and disaster recovery support for member libraries. Additional services include significantly discounted group pricing on subscriptions to reference databases, full text resources, electronic books, supplies, and document delivery services. Members will find their overall savings on these services to be greater through Amigos than if purchased directly from the service provider.

Amigos Library Services, Inc.



Charles Cason, III

Director of Business and Accounting Services

Title

September 7, 2006

Date

ADM0014
5/12/06

t-3

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, AUTHORIZING THE PURCHASE OF SPECIALIZED ONLINE DATABASE LIBRARY SERVICES FOR PLANO PUBLIC LIBRARY SYSTEM FROM AMIGOS LIBRARY SERVICES THROUGH PLANO PUBLIC LIBRARY SYSTEM'S MEMBERSHIP WITH OCLC, THE SOLE SOURCE SUPPLIER OF COMPREHENSIVE INTERLIBRARY LOAN AND BIBLIOGRAPHIC RECORD PURCHASES; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO TAKE SUCH ACTION AND EXECUTE SUCH DOCUMENTS AS NECESSARY TO EFFECTUATE THE PURCHASE APPROVED HEREIN; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Plano, Texas desires to purchase specific specialized database library services to be available to the citizens of Plano and other users of the Plano Public Library System; and

WHEREAS, Amigos Library Services is the sole supplier of OCLC's specialized online database library services these purchases are exempt from competitive bid as provided for in Section 252.022(a)(7)(E) of the Texas Local Government Code; and

WHEREAS, the City Council of the City of Plano is of the opinion that these specialized online database library services to be purchased by the City of Plano are available from only one source which is Amigos Library Services and therefore, is exempt from competitive bid; and

WHEREAS, upon full review and consideration of the proposed purchases and all matters attendant and related thereto, the City Council is of the opinion that Amigos Library Services is a sole source supplier of OCLC's specialized online database library services and these purchases should be approved, and that the City Manager or his designee should be authorized to take such action and execute such documents as necessary to effectuate the purchases.

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 Amigos Library Services is an organization with exclusive rights to the specialized online

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database library services to be purchased by the City of Plano and is therefore the sole source for such services. Consequently, the purchase of such services is exempt from competitive bid as provided for in Section 252.022(a)(7)(E) of the Texas Local Government Code.

Section II. The City Manager or his designee is hereby authorized to take such action and execute such documents as necessary to effectuate the purchase of these specialized online database library services not to exceed \$35,500 from Amigos Library Services, a sole source supplier for the needed online databases and InterLibrary loan services.

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

DULY PASSED AND APPROVED this the _____ day of _____, 2006.

Pat Evans, MAYOR

ATTEST:

Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

Diane Wetherbee, CITY ATTORNEY

t-5



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
Council Meeting Date:	10/09/06	Reviewed by Legal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Engineering		Initials	Date
Department Head	Alan Olchurch	Executive Director	<i>[Signature]</i>	9/29/06
Dept Signature:	<i>[Signature]</i>	City Manager	<i>[Signature]</i>	9/29/06
Agenda Coordinator (include phone #):		I. Pegues 7198	<i>[Signature]</i>	
ACTION REQUESTED: <input checked="" type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				

CAPTION

An Ordinance of the City of Plano, Texas, amending Section 12-102(e) of Article V, Stopping, Standing, and Parking of Chapter 12, Motor Vehicles and Traffic of the Plano Code of Ordinances to include no stopping, standing, or parking prohibition along the west side of Gillespie Drive from National Drive south to 100' south of the south drive for Taylor Elementary School between the hours of 7:30 a.m. to 8:15 a.m. and 2:45 p.m. to 3:30 p.m. on school days; declaring the parking of motor vehicles in said section of Gillespie Drive within the defined time limits as unlawful and a misdemeanor; and providing a severability clause, a penalty clause, and an effective date.

FINANCIAL SUMMARY

<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0

FUND(S):

COMMENTS:

SUMMARY OF ITEM

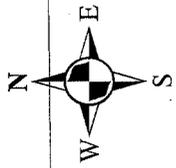
The principal for Taylor Elementary School has requested that parking be restricted along this section of Gillespie Drive to facilitate the safe pick-up/drop-off of students. After review of site conditions and school operations, the Transportation Engineering Division recommends the proposed parking restriction to enhance traffic and student safety.

List of Supporting Documents: Map	Other Departments, Boards, Commissions or Agencies
--------------------------------------	--

U-1

CITY OF FRISCO

U-2



CONSIDERATION OF A
PARKING RESTRICTION
ON GILLESPIE DRIVE



CONSIDERATION OF A
PARKING RESTRICTION ON
GILLESPIE DRIVE

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PLANO, TEXAS, AMENDING SECTION 12-102(E) OF ARTICLE V, STOPPING, STANDING, AND PARKING OF CHAPTER 12, MOTOR VEHICLES AND TRAFFIC OF THE PLANO CODE OF ORDINANCES TO INCLUDE NO STOPPING, STANDING, OR PARKING PROHIBITION ALONG THE WEST SIDE OF GILLESPIE DRIVE FROM NATIONAL DRIVE SOUTH TO 100' SOUTH OF THE SOUTH DRIVE FOR TAYLOR ELEMENTARY SCHOOL BETWEEN THE HOURS OF 7:30 A.M. TO 8:15 A.M. AND 2:45 P.M. TO 3:30 P.M. ON SCHOOL DAYS; DECLARING THE PARKING OF MOTOR VEHICLES IN SAID SECTION OF GILLESPIE DRIVE WITHIN THE DEFINED TIME LIMITS AS UNLAWFUL AND A MISDEMEANOR; AND PROVIDING A SEVERABILITY CLAUSE, A PENALTY CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS, traffic congestion in the area of Gillespie Drive by Taylor Elementary School occurs prior to and after school hours, thereby causing safety concerns for students traveling to and from school; and

WHEREAS, after review and study of traffic patterns for the area in question, the Transportation Division recommends prohibiting stopping, standing or parking of motor vehicles in a section along the west side of Gillespie Drive from National Drive south to 100' south of the south drive to Taylor Elementary School between the hours of 7:30 a.m. to 8:15 a.m. and 2:45 p.m. to 3:30 p.m. on school days to decrease traffic congestion and increase traffic flow; and

WHEREAS, Gillespie Drive is located within the incorporated limits of the City of Plano, Collin County, Texas, and thus subject to City Council control under Section 3.07(q) of the City of Plano Charter; and

WHEREAS, the City Council of the City of Plano finds the prohibition of motor vehicle stopping, standing or parking along the west side of Gillespie Drive from National Drive south to 100' south of the south drive to Taylor Elementary School between the hours of 7:30 a.m. to 8:15 a.m. and 2:45 p.m. to 3:30 p.m. on school days is necessary for the safety of students traveling to and from Taylor Elementary School.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, ORDAINS THAT:

Section I. The City Council hereby deems it unlawful for any person to stop, stand or park a motor vehicle along the west side of Gillespie Drive from National Drive south to 100' south of the south drive to Taylor Elementary School between the hours of 7:30 a.m. to 8:15 a.m. and 2:45 p.m. to 3:30 p.m. on school days, except when necessary to avoid conflict with other traffic or in compliance with law or directions of a police officer.

Section II. The City Council hereby amends Section 12-102(e) of Article V, *Stopping, Standing, and Parking* of Chapter 12, *Motor Vehicles and Traffic* of the Plano Code of Ordinances to amend the Subsection *Gillespie Drive* to read in its entirety as follows:

"*Gillespie Drive*, along the west side of Gillespie Drive from National Drive south to 100' south of the southernmost driveway to Taylor Elementary School."

Section III. The City Council authorizes and directs the Traffic Engineer of Plano to place traffic control signs on Gillespie Drive to notify all persons of the prohibited parking area during specified times.

Section IV. The City Council intends that this Ordinance, and every provision hereof, is severable, and the invalidity or unconstitutionality of any section, clause, provision or portion of this Ordinance will not affect the validity or constitutionality of any other portion of this Ordinance.

Section V. Any person, firm, or corporation violating any of the provisions of this Ordinance is guilty of a misdemeanor and, upon conviction in the Municipal Court, is subject to a fine not to exceed **TWO HUNDRED AND NO/100 DOLLARS (\$200.00)** for each offense. Each and every violation constitutes a separate offense.

Section VI. This Ordinance becomes effective from and after its passage and publication as required by law.

DULY PASSED AND APPROVED this _____ day of _____, 2006.

Pat Evans, MAYOR

ATTEST:

Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

U-4



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular	<input type="checkbox"/> Statutory	Reviewed by Budget	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> Not Applicable
Council Meeting Date: 10/9/06		Reviewed by Legal	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> Not Applicable	
Department:	Finance		Initials	Date
Department Head	John McGrane		Executive Director	
Dept Signature:	<i>[Signature]</i>		City Manager	<i>[Signature]</i> 9/29/06
Agenda Coordinator (include phone #): Brianna Alvarado x7479				
ACTION REQUESTED: <input checked="" type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
Public Hearing and Consideration Of An Ordinance Of The City Of Plano, Texas, Designating A Certain Area Within The City Of Plano As Reinvestment Zone No. 100 For A Tax Abatement Consisting Of A 4.351 Acre Tract Of Land Located At 1500 Plano Parkway In The City Of Plano, Texas; Establishing The Boundaries Of Such Zone; Ordaining Other Matters Relating Thereto; And Providing An Effective Date.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(s):				
COMMENTS: The fiscal impact of this item is contingent upon the value of real property located in the reinvestment zone and the value of business personal property brought onto the property. The Business Personal Property is estimated to have an approximate taxable value of not less than \$15,000,000 and the Real Property is estimated to have an approximate taxable value of not less than \$8,000,000. The company's location is 1500 Plano Parkway. The business relocation will result in approximately 25 full-time jobs upon occupancy. The proposed Real Property and Business Personal Property tax abatement will begin January 1, 2007 and continue through the year 2016.				
SUMMARY OF ITEM				
This is related to DCI Plano Venture LP, request for tax abatement. This ordinance creates the geographical zone on which Council will hold a Public Hearing on the same Agenda and date. Notice of Public Hearing to be published on October 1, 2006, prior to Public Hearing on this Council date of October 9, 2006.				
List of Supporting Documents: Ordinance and Public Hearing Notice		Other Departments, Boards, Commissions or Agencies Joint Committee on Tax Abatement, CCCC, Collin County Community College		

1-1

INTEROFFICE MEMORANDUM

TO: Thomas H. Muehlenbeck
City Manager

DATE: September 25, 2006

FROM: John F. McGrane 
Director of Finance

CC: Cindy Pierce, EAA
Di Zucco, ACS

SUBJECT: Tax Abatement for Plano Venture, LP a Delaware limited partnership, Dataside Plano, LLC., a Texas Limited Liability Company, and Capital One Services Inc., a Texas Corporation.
Reinvestment and Zone No. 100

The Tax Abatement Agreement with DCI Plano Venture, LP a Delaware limited partnership, Dataside Plano, LLC., a Texas Limited Liability Company and Capital One Services Inc., a Texas Corporation, and is for a period of ten (10) years at fifty percent (50%) of the Real Property and Business Personal Property.

Dataside Plano will complete \$8,000,000 of improvements total in the ten year period, to make it a first class Data Center to host Capital One. Capital One will utilize this site as a primary location of two of its operations; auto financing and a Hibernia Bank relocating from New Orleans. It will also serve as a backup location for a third operation whose primary location is in Virginia.

The fiscal impact of this item is contingent upon the value of real property located in the reinvestment zone and the value of business personal property brought onto the property. The Business Personal Property is estimated to have an approximate taxable value of not less than \$15,000,000 and the Real Property is estimated to have an approximate taxable value of not less than \$8,000,000. The company's location is 1500 Plano Parkway. The business relocation will result in approximately 25 full-time jobs upon occupancy. The proposed Real Property and Business Personal Property tax abatement will begin January 1, 2007 and continue through the year 2016.

1-2

NOTICE OF PUBLIC HEARING

The City Council of the City of Plano will hold a Public Hearing in the Council Chamber of the Municipal Building, 1520 Avenue K, at 7:00 p.m. on Monday October 9, 2006, to consider the creation of Reinvestment Zone No. 100 in accordance with V.T.C.A., Tax Code §312.201, as amended for the purpose of considering tax abatement. Said Reinvestment Zone No. 100 being a 4.351 acre tract of land located at 1500 Plano Parkway, Plano, TX 75075 and situated in the **James Beverly Survey, Abstract No. 120** and being all of Lot 2R in Block 1 of the Mervyn's Distribution Center Addition, an addition to the City of Plano, Texas according to the plat there of recorded in Cabinet "R" at Page 056 of the Plat Records of Collin County, Texas, and with said premises being more particularly described by metes and bounds on file in the Finance Department.

1-3

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PLANO, TEXAS, DESIGNATING A CERTAIN AREA WITHIN THE CITY OF PLANO AS REINVESTMENT ZONE NO. 100 FOR A TAX ABATEMENT CONSISTING OF A 4.351 ACRE TRACT OF LAND LOCATED AT 1500 PLANO PARKWAY IN THE CITY OF PLANO, TEXAS; ESTABLISHING THE BOUNDARIES OF SUCH ZONE; ORDAINING OTHER MATTERS RELATING THERETO; AND PROVIDING AN EFFECTIVE DATE.

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

WHEREAS, a public hearing before the City Council was set for 7:00 p.m. on the 9th day of October, 2006, such date being at least seven (7) days after the date of publication of the notice of such public hearing; and

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

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

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

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

1-4

Ordinance
Datside (100)

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

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

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

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

- a) That a public hearing on the adoption of the reinvestment zone has been properly called, held and conducted and that notices of such hearings have been published as required by law and mailed to all taxing units overlapping the territory inside the proposed reinvestment zone; and
- b) That the boundaries of the reinvestment zone should be the area as described in the metes and bounds description attached hereto as Exhibit "A"; and

- c) That creation of the reinvestment zone for commercial/industrial tax abatement with boundaries as described in Exhibit "A" will result in benefits to the City and to the land included in the zone and the improvements sought are feasible and practical; and
- d) That the reinvestment zone as defined in Exhibit "A" meets the criteria for the creation of a reinvestment zone as set forth in Section 312.202 of the Act in that it is "reasonably likely as a result of the designation to contribute to the retention or expansion of primary employment or to attract major investment in the zone that would be a benefit to the property and that would contribute to the economic development of the City"; and
- e) That the reinvestment zone as defined in Exhibit "A" meets the criteria for the creation of a reinvestment zone as set forth in the City of Plano Revised Policy Statement for Tax Abatement.

Section IV. Pursuant to Section 312.201 of the Act, the City hereby creates a reinvestment zone for commercial/industrial tax abatement encompassing only the area described by metes and bounds in Exhibit "A" attached hereto and such reinvestment zone is hereby designated and shall hereafter be designated as Reinvestment Zone No. 100, City of Plano, Texas.

Section V. The zone shall be effective as of January 1, 2007.

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

- a) Be located wholly within the zone as established herein.
- b) Have a minimum expenditure on personal property improvements equal to or greater than **Fifteen Million and No/100 Dollars (\$15,000,000.00)** and have a minimum expenditure on real property improvements equal to or greater than **Eight Million and No/100 Dollars (\$8,000,000.00).**

1-6

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

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

- a) Duration of Exemption - ten (10) consecutive tax years beginning with and including the January 1, 2007 assessment date.
- b) Share of taxes abated - percentage of taxes on total value of appraised Personal Property and Improvements at the rate of: 50% for the years, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015 and 2016.

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

- a) Listing the kind, number and location of all proposed improvements of the property;
- b) Access to and inspection of property by municipal employees to ensure that the improvements or repairs are made according to the specification and conditions of the agreements;
- c) Limiting the use of the property consistent with the general purpose of encouraging development or redevelopment of the zone during the period that property tax exemptions are in effect; and

- d) Recapturing property tax revenue lost as a result of the agreement if the owner of the property fails to make the improvements or repairs as provided by the agreement.

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

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

DULY PASSED AND APPROVED this 9th day of October, 2006.

Pat Evans, MAYOR

ATTEST:

Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

EXHIBIT "A"
LEGAL DESCRIPTION
REINVESTMENT ZONE NO. 100
Real Property
Metes and Bounds

BEING all that certain lot, tract or parcel of land situated in the City of Plano out of the James Beverly Survey, Abstract No. 120, and being all of Lot 2R in Block 1 of the Mervyn's Distribution Center Addition, an addition to the City of Plano, Texas, according to the plat thereof recorded in Cabinet "R" at Page 056 of the Plat Records of Collin County, Texas, and being more particularly described as follows;

COMMENCING at a 1" iron rod set for the Northeast corner of said Lot 1R in Block 1 of the Mervyn's Distribution Center Addition, said point being the intersection of the South right of way line of East Plano Parkway (110 foot right of way at this point) with the West right of way line of Stewart Avenue (60 foot right of way);

THENCE West (Basis of Bearings per plat recorded in Cabinet "H" at Slide 418 of the Plat records of Collin County, Texas) along the South right of way line of said East Plano Parkway for a distance of 1409.34 feet to an "x" set in concrete for the POINT OF BEGINNING for this tract, said point being the northeast corner of said Lot 2R;

THENCE departing the South right of way of said East Plano Parkway and along the common lines of said Lot 1R and Lot 2R, the following courses and distances:

South 00° 03' 03" West, for a distance of 530.58 feet to an 'X' set in concrete for the southeast corner of said Lot 2R;

West, for a distance of 357.02 feet to a 1" iron rod set for the southwest corner of said Lot 2R;

North, for a distance of 530.57 feet to an "x" set in concrete for the northwest corner of said Lot 2R in the aforesaid South right of way line of East Plano Parkway;

THENCE East along the South right of way line of said East Plano Parkway, same being the North line of Lot 2R in Block 1 of the Mervyn's Distribution Center Addition for a distance of 357.49 feet to the POINT OF BEGINNING AND CONTAINING 4.3514 ACRES OF LAND, more or less.



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular	<input type="checkbox"/> Statutory	Reviewed by Budget	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> Not Applicable
Council Meeting Date:	10/9/06		Reviewed by Legal	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> Not Applicable
Department:	Finance		Initials	Date
Department Head	John McGrane		Executive Director	
Dept Signature:	<i>John McGrane</i>		City Manager	<i>JM</i> 9/29/06
Agenda Coordinator (include phone #):	Brianna Alvarado x7479			

ACTION REQUESTED: ORDINANCE RESOLUTION CHANGE ORDER AGREEMENT
 APPROVAL OF BID AWARD OF CONTRACT OTHER

CAPTION

A Resolution Of The City Council Of The City Of Plano, Texas, Approving The Terms And Conditions Of An Agreement By And Between The City Of Plano, Texas, The County Of Collin, Texas, The Collin County Community College District, DCI Plano Venture, LP, A Delaware Limited Partnership, Dataside Plano LLC, A Texas Liability Company, And Capital One Services Inc., A Texas Corporation, And Providing For A Business Personal Property And Real Property Tax Abatement, And Authorizing Its Execution By The City Manager, Or In His Absence An Executive Director; And Providing An Effective Date.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE 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: The fiscal impact of this item is contingent upon the value of real property located in the reinvestment zone and the value of business personal property brought onto the property. The Business Personal Property is estimated to have an approximate taxable value of not less than \$15,000,000 and the Real Property is estimated to have an approximate taxable value of not less than \$8,000,000. The company's location is 1500 Plano Parkway. The business relocation will result in approximately 25 full-time jobs upon occupancy. The proposed Real Property and Business Personal Property tax abatement will begin January 1, 2007 and continue through the year 2016.

SUMMARY OF ITEM

A request by DCI Plano Venture LP for a Tax Abatement. Reinvestment Zone No. 100.

List of Supporting Documents:
Resolution and Tax Abatement

Other Departments, Boards, Commissions or Agencies
Joint Committee on Tax Abatement, CCCCDC, Collin
County Community College

2-1

RESOLUTION NO. _____ (R)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS, THE COUNTY OF COLLIN, TEXAS, THE COLLIN COUNTY COMMUNITY COLLEGE DISTRICT, DCI PLANO VENTURE, LP, A DELAWARE LIMITED PARTNERSHIP, DATASIDE PLANO LLC, A TEXAS LIABILITY COMPANY, AND CAPITAL ONE SERVICES INC., A TEXAS CORPORATION, AND PROVIDING FOR A BUSINESS PERSONAL PROPERTY AND REAL PROPERTY TAX ABATEMENT, AND AUTHORIZING ITS EXECUTION BY THE CITY MANAGER, OR IN HIS ABSENCE AN EXECUTIVE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council has been presented a proposed Tax Abatement Agreement by and between the City of Plano, Texas, the County of Collin, the Collin County Community College District, DCI Plano Venture, LP, a Delaware limited partnership, Dataside Plano, LLC, a Texas limited liability company, and Capital One Services Inc, a Texas Corporation, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and

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

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

Section I. The terms and conditions of the Agreement having been reviewed by the City Council of the City of Plano 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 in his absence an Executive Director, is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf

of the City of Plano, substantially according to the terms and conditions set forth in the Agreement.

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

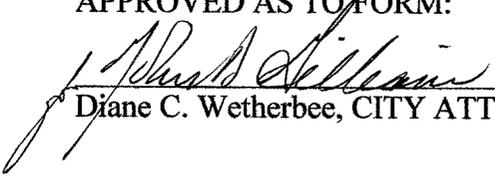
DULY PASSED AND APPROVED this 9th day of October, 2006.

Pat Evans, MAYOR

ATTEST:

Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:



Diane C. Wetherbee, CITY ATTORNEY

1. The real property subject to this Agreement is described by metes and bounds in **EXHIBIT "A"** (the "Real Property") attached hereto and made a part hereof. At the time of this Agreement, DCI Plano Venture, LP is the Owner of the Real Property. This Agreement shall be terminated should the Real Property not be leased by Lessees, their successors or affiliates, or should such lease be terminated during the term of this Agreement.

2. The tangible personal property subject to this Agreement shall be personal property, excluding inventory and supplies, used within **Reinvestment Zone No. 100**, which shall be hereinafter referred to as the "Personalty." The Personalty is presently estimated to have an approximate taxable value of **Fifteen Million Dollars (\$15,000,000)** and is or will be owned by the Lessees or their affiliates. Lessees shall timely render their personal property value each year to the Central Appraisal District

3. Lessees, as owners of the Personalty, may not relocate, for purposes of maintaining taxable situs of tangible personal property, the Personalty on the Real Property in other Reinvestment Zones in the City.

JOBS

4. The Lessees estimate the proposed development of the Real Property as shown in **EXHIBIT "B"** (the "Development") will result in approximately 25 jobs at the Development in Plano when the new office building is completed.

IMPROVEMENTS

5. The Owner shall complete construction of improvements and/or repairs to the Real Property (hereinafter referred to as Improvements) consisting primarily of a new building consisting of not less than 40,000 gross square feet of office space with an initial expenditure of not less than **Four Million Dollars (\$4,000,000)** on or before December 31, 2006; an additional **Two Million Dollars (\$2,000,000)** on or before December 31, 2007; and an additional **Two Million Dollars (\$2,000,000)** on or before December 31, 2012; provided that Owner shall have such additional time to complete the Improvements as may be required in the event of "force majeure" if Owner is diligently and faithfully pursuing the completion of the Improvements, or if in the reasonable opinion of the City, the Owner has made substantial progress toward completion of the initial phase of the Improvements. For this purpose, "force majeure" shall mean any contingency or cause beyond the reasonable control of Owner including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, governmental or de facto governmental action (unless caused by acts or omissions of Owner), fire, shortages of material and/or labor, explosion or flood, and labor disturbances. The date of completion of the Improvements shall be defined as the date a Certificate of Occupancy is issued by the City of Plano.

6. The Owner agrees and covenants that it will diligently and faithfully in a good and workmanlike manner pursue the substantial completion of the Improvements as a good and valuable consideration of this Agreement. Owner further covenants and agrees that all construction of the

Improvements will be in accordance with all applicable federal, state and local laws and regulations or valid waiver thereof. In further consideration, Owner shall from the date a Certificate of Occupancy is issued until the expiration or termination of this Agreement, operate and maintain the Real Property (or cause the same to be operated and maintained) for the following described purposes: production/manufacturing/office space where the Lessees or its affiliates will initially employ approximately 25 employees, referred to herein as the "Purposes."

DEFAULT

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

(a) The Improvements are not completed in accordance with this Agreement;

(b) Owner or Lessees allow their real or personal property taxes owed the City or Taxing Units on the Real Property, Improvements, or Personalty to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of any such ad valorem taxes;

(c) Lessees fail to occupy the Improvements for the Purposes set forth in paragraph 6 above on or before December 31, 2006; or

(d) The value of the Improvements to Real Property and the value of Personalty placed on the improved Real Property on December 31, 2006, and maintained on the Real Property during the term of this Agreement is less than the minimum amounts set forth in paragraphs 2 and 5 above; or

(e) Lessees fail to employ at least 75% of their employee commitment as provided in paragraph 4 above; or

(f) Owner or Lessees fail to provide annual certification as required in paragraph 10 below.

8. In the event that the Owner or Lessees default under this Agreement then the City or Taxing Units shall give the Owner and Lessees written notice of such default and if the Owner or Lessees have not cured such default, or obtained a waiver thereof from the appropriate authority, within thirty (30) days of said written notice, this Agreement may be terminated by the City and Taxing Units. Notice shall be in writing as provided below. Upon the occurrence of an event of default other than under Paragraph 7(b) above and after Owner or Lessees fail to cure same in accordance herewith, this Agreement shall immediately terminate and all taxes due after the event of default shall be paid in full without the benefit of any abatement. The parties acknowledge that actual damages in the event of default and termination would be speculative and difficult to determine.

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9. Upon the occurrence of an event of default under Paragraph 7(b) above and after Owner or Lessees fail to cure same in accordance herewith, this Agreement shall immediately terminate and all taxes, including previously abated taxes which would have been paid to the City and Taxing Units without the benefit of this Agreement, shall become due and owing to the City and Taxing Units, together with interest charged from the date of this Agreement at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 33.01, but without the addition of penalty other than that mandated by V.T.C.A., § 33.01 or 33.07.

ANNUAL CERTIFICATION

10. On or before the 1st day of November of each calendar year during the term of this Agreement, the Owner, or its successors or assigns, and Lessees must provide annual certification (substantially in the form attached as **EXHIBIT "C"** hereto) to the Governing Body of the City certifying compliance with each applicable term of the Agreement.

ASSIGNMENT

11. The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto. This Agreement cannot be assigned by Owner unless written permission is first granted by the City and Taxing Units, which permission shall be at the reasonable discretion of the City and Taxing Units, except under the following conditions:

(a) Assignment to an affiliate of either Lessee is permissible;

(b) A transfer or assignment of the Real Property and Improvements, or an assignment of this Agreement, by Owner to successors or assigns is permissible wherein the successors or assigns agree to be bound by the terms of this Agreement and Lessees shall continue to conduct business on the subject premises, and shall remain the primary tenant.

However, Owner and Lessees agree to give written notice to the City and Taxing Units of any assignment or transfer of interest allowed pursuant to subparagraphs (a) and (b) hereof.

ABATEMENT PROVISIONS

12. Subject to the terms and conditions of this Agreement, and subject to the rights of holders of any outstanding bonds of the City and Taxing Units, a portion of ad valorem real and personal property taxes from the Real Property Improvements, and Personalty otherwise owed to the City and taxing Units shall be abated as follows:

(a) The tax abatements as to the Real Property Improvements, and Personalty, as provided for herein, shall be for a period of ten (10) tax years, from January 1, 2007, through December 31, 2016.

(b) In accordance with all applicable federal, state, and local laws and regulations, the abatement shall be based on amounts equal to fifty (50%) of the value of the improved value of the

Real Property and Improvements and 50% of the Personalty for each tax year from January 1, 2007, through December 31, 2016.

(c) The Owner and Lessee shall have the right to protest and/or contest any assessment of the Real Property Improvements or Personalty, and the abatement shall be applied to the amount of taxes finally determined to be due as a result of any such protest and/or contest.

NOTICE

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

For City by notice to:

City of Plano
Attention: Mr. Thomas H. Muehlenbeck
City Manager
P.O. Box 860358
Plano, Texas 75086-0358

With copy to:

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

For Taxing Units by notice to:

County of Collin, Texas
Attention: The Honorable Ron Harris
County Judge
Collin County Commissioners' Court
210 S. McDonald, Ste. 626
McKinney, Texas 75069

Collin County Community College District
Attention: Dr. Cary A. Israel
President of Board of Trustees
4800 Preston Park Blvd.
Plano, Texas 75093

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For Owner by notice to:

Agreement
DCI Plano Venture, LP, and
Datside Plano, LLC (100)

DCI Plano Venture, LP
Attention: Spencer Mullee
1950 Stemmons Freeway, Suite 5001
Dallas, Texas 75207

For Lessees by notice to:

Dataside Plano, LLC
Attention: Mr. James E.J. deVenny
1950 N. Stemmons Freeway, Suite 5001
Dallas, Texas 75207

Capital One Services, Inc
Attention: Mr. Brady Green
4871 Cox Road
Glen Allen, Virginia 23060

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

MISCELLANEOUS PROVISIONS

14. The Owner and Lessees further agree that the City and Taxing Units, their agents and employees, shall have reasonable right (upon reasonable prior notice to Owner and Lessees) to access the Real Property to inspect the Improvements and Personalty in order to insure that the construction of the Improvements and locations of the Personalty are in accordance with this Agreement and all applicable federal, state, and local laws and regulations. After completion of the Improvements, and City and Taxing Units shall have the continuing right (upon reasonable prior notice to Owner and Lessees) to inspect the Real Property and Personalty to insure that the Real Property and Personalty is thereafter maintained, operated and occupied in accordance with this Agreement.

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

16. The City and the Taxing Units each represent and warrant that the Real Property Improvements and Personalty do not include any property that is owned by a member of their respective councils or boards, agencies, commissions, or other governmental bodies approving, or having responsibility for the approval of this Agreement.

17. This Agreement was authorized by Resolution of the City Council at its Council meeting on the ____ day of _____, 2006, authorizing the City Manager to execute the Agreement on behalf of the City.

18. This Agreement was authorized by the minutes of the Commissioners' Court of Collin County, Texas, at its meeting on the ____ day of _____, 2006, whereupon it was duly determined that the County Judge would execute the Agreement on behalf of Collin County.

19. This Agreement was authorized by the Board Minutes of the Board of Trustees of Collin County Community College District at its Board Meeting on the ____ day of _____, 2006, whereupon it was duly determined that the Chairman would execute the Agreement on behalf of Collin County Community College District.

20. This Agreement was entered into by Owner pursuant to authority granted by its general partner, whereby the general partner of the limited partnership was authorized to execute this Agreement on behalf of Owner.

21. This Agreement was entered into by Lessee Dataside pursuant to authority granted by its Authorized Manager whereby the manager of the limited liability company was authorized to execute the agreement on behalf of Dataside and by Lessee Capital One whereby the President of the corporation was authorized to execute this Agreement on behalf of Capital One.

22. This instrument shall constitute a valid and binding agreement between the City, Owner, and Lessees when executed in accordance herewith, regardless of whether any other **TAXING UNIT** executes this Agreement. This shall constitute a valid and binding Agreement between such **TAXING UNITS**, Owner and Lessee when executed on behalf of said parties, for the abatement of such **TAXING UNIT's** taxes in accordance therewith.

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

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This Agreement is performable in Collin County, Texas. Signed this ____ day of _____, 2006.

ATTEST:

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

Elaine Bealke, CITY SECRETARY

Thomas H. Muehlenbeck, CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ATTEST:

COMMISSIONERS' COURT OF COLLIN COUNTY

ATTEST:

COUNTY JUDGE

COLLIN COUNTY COMMUNITY COLLEGE DISTRICT

ATTEST:

CHAIRMAN

DCI PLANO VENTURE, LP, a Delaware limited partnership

BY: Plano GP, LLC, an Oregon limited liability company, Its General Partner

By: _____

Dan Schryer
Managing Member

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ATTEST:

DATASIDE PLANO LLC, a Texas limited liability company

By: _____

James EJ deVenny III
President/CEO

ATTEST:

CAPITAL ONE SERVICES, INC., a Delaware Corporation

By: _____

Shawn Buddi
President

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EXHIBIT "A"
LEGAL DESCRIPTION
REINVESTMENT ZONE NO. 100
Real Property
Metes and Bounds

BEING all that certain lot, tract or parcel of land situated in the City of Plano out of the James Beverly Survey, Abstract No. 120, and being all of Lot 2R in Block 1 of the Mervyn's Distribution Center Addition, an addition to the City of Plano, Texas, according to the plat thereof recorded in Cabinet "R" at Page 056 of the Plat Records of Collin County, Texas, and being more particularly described as follows;

COMMENCING at a 1" iron rod set for the Northeast corner of said Lot 1R in Block 1 of the Mervyn's Distribution Center Addition, said point being the intersection of the South right of way line of East Plano Parkway (110 foot right of way at this point) with the West right of way line of Stewart Avenue (60 foot right of way);

THENCE West (Basis of Bearings per plat recorded in Cabinet "H" at Slide 418 of the Plat records of Collin County, Texas) along the South right of way line of said East Plano Parkway for a distance of 1409.34 feet to an "x" set in concrete for the POINT OF BEGINNING for this tract, said point being the northeast corner of said Lot 2R;

THENCE departing the South right of way of said East Plano Parkway and along the common lines of said Lot 1R and Lot 2R, the following courses and distances:

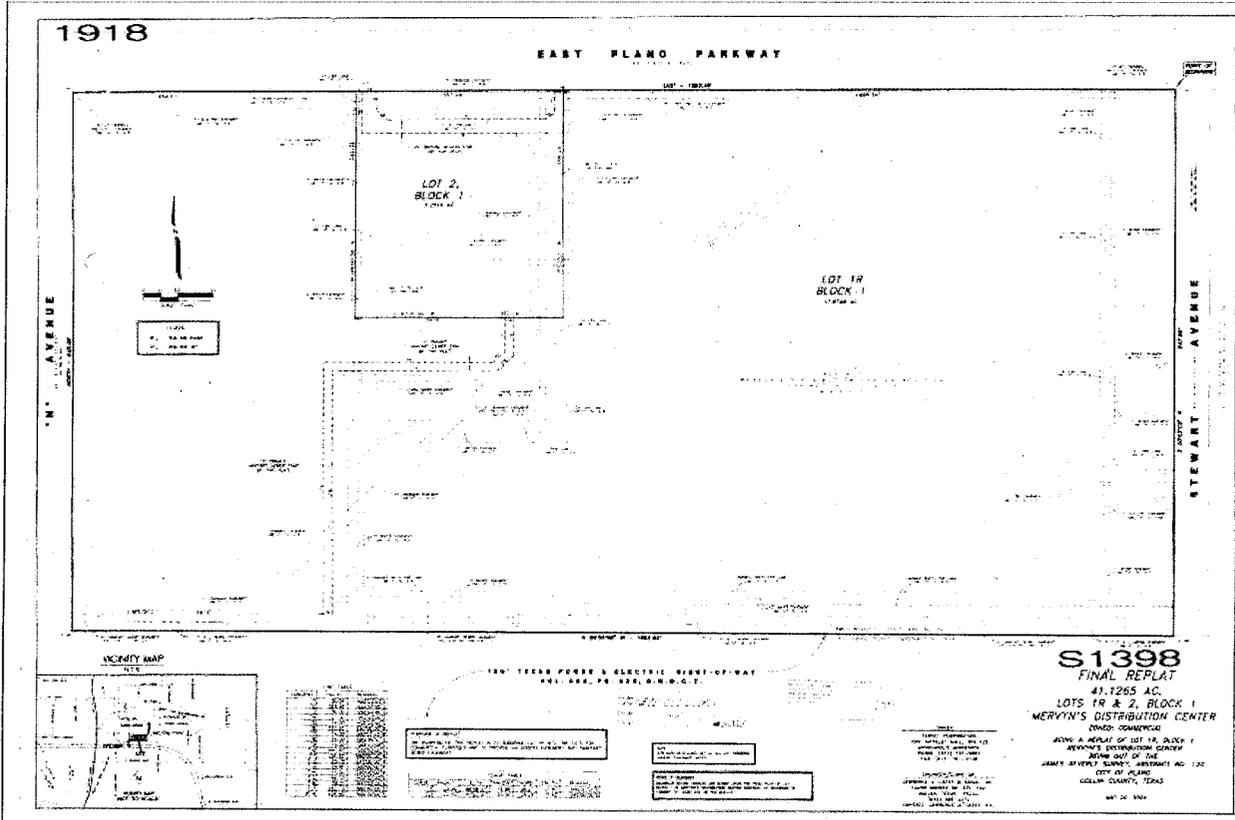
South 00° 03' 03" West, for a distance of 530.58 feet to an 'X' set in concrete for the southeast corner of said Lot 2R;

West, for a distance of 357.02 feet to a 1" iron rod set for the southwest corner of said Lot 2R;

North, for a distance of 530.57 feet to an "x" set in concrete for the northwest corner of said Lot 2R in the aforesaid South right of way line of East Plano Parkway;

THENCE East along the South right of way line of said East Plano Parkway, same being the North line of Lot 2R in Block 1 of the Mervyn's Distribution Center Addition for a distance of 357.49 feet to the POINT OF BEGINNING AND CONTAINING 4.3514 ACRES OF LAND, more or less.

EXHIBIT "B"
THE DEVELOPMENT
REINVESTMENT ZONE NO. 100



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Agreement
DCI Plano Venture, LP, and
Dataside Plano, LLC (100)

**EXHIBIT "C"
CERTIFICATION FORM
REINVESTMENT ZONE NO. 100**

This letter certifies that DCI Plano Venture, L.P, Dataside Plano LLC and Capital One Services Inc are in compliance with each applicable term as set forth in the Agreement to Resolution No. _____ (R) as of _____, 2006. The term of this agreement is January 1, 2007, through December 31, 2016. This form is due on November 1 of each year this tax abatement is in force.

DCI PLANO VENTURE, LP, a Delaware limited partnership

BY: Plano GP, LLC, an Oregon limited liability company, Its General Partner

ATTEST:

By:

Dan Shryer
Managing Member

ATTEST:

DATASIDE PLANO LLC, a Texas limited liability company

By:

James EJ deVenny III
President/CEO

ATTEST:

CAPITAL ONE SERVICES, INC., a Delaware Corporation

By:

Shawn Buddi
President

Date

NOTE: This certification form should be mailed to:

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

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**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular	<input type="checkbox"/> Statutory	Reviewed by Budget	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
Council Meeting Date:	10/09/06		Reviewed by Legal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Customer and Utility Services			Initials	Date
Department Head	Mark Israelson	Executive Director	<i>[Signature]</i>		10/4/06
Dept Signature:	<i>[Signature]</i>	City Manager	<i>[Signature]</i>		10/04/06
Agenda Coordinator (include phone #): Nancy Rodriguez X7510					

ACTION REQUESTED: ORDINANCE RESOLUTION CHANGE ORDER AGREEMENT
 APPROVAL OF BID AWARD OF CONTRACT OTHER

CAPTION

An Ordinance of the City of Plano amending Chapter 19 "Streets and Sidewalks," Article IV "Right-of-Way Management Regulations" at Section 19-72(b)(3) "General Rights-of-Way Use and Construction" by adding a new subparagraph to prohibit the use of nonwashable substances in the public right-of-way to mark the location of existing underground utilities; providing a severability clause; a repealer clause, a savings clause, and an effective date.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE 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 ordinance revision would require that all markings of existing underground utilities be made with a washable substance that would disappear thirty (30) days after being applied. We have had many complaints from citizens and businesses that such markings remain many months after any construction activity, creating negative visual impacts.

List of Supporting Documents:
N/A

Other Departments, Boards, Commissions or Agencies
N/A

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PLANO AMENDING CHAPTER 19 "STREETS AND SIDEWALKS," ARTICLE IV "RIGHT-OF-WAY MANAGEMENT REGULATIONS" AT SECTION 19-72(b)(3) "GENERAL RIGHTS-OF-WAY USE AND CONSTRUCTION" BY ADDING A NEW SUBPARAGRAPH TO PROHIBIT THE USE OF NONWASHABLE SUBSTANCES IN THE PUBLIC RIGHT-OF-WAY TO MARK THE LOCATION OF EXISTING UNDERGROUND UTILITIES; PROVIDING A SEVERABILITY CLAUSE; A REPEALER CLAUSE, A SAVINGS CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS, Ordinance No. 2001-3-20 provides principles and procedures for the placement of structures and facilities, construction, excavation, encroachments, and work activities within or upon any public right-of-way and protects the integrity of the road and city utility system; and

WHEREAS, Ordinance No. 2001-3-20 as amended by Ordinance No. 2001-5-4 provides penalties for violation of the terms and provisions of Article IV; and

WHEREAS, the City Council finds it necessary to amend Section 19-72(b)(3) by adding a new subparagraph b. to prohibit the use of nonwashable substances in the public right-of-way to mark the location of existing underground utilities.

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

Section I: Chapter 19, "Streets and Sidewalks", Article IV "Right-of-Way Management Regulations," Section 19-72(b)(3) "General Rights-of-Way Use and Construction," is amended by adding the following new subparagraph b. to read as follows:

"Sec. 19-72. General rights-of-way use and construction.

...

b. A person shall only use a water based paint in the public right-of-way to mark the location of existing underground utilities. A person commits an offense, if a marking he makes in the public right-of-way to mark the location of existing underground utilities remains visible longer than sixty (60) days after being applied."

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

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

Section IV. The repeal of any ordinance or part of ordinances affected 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 ordinances at the time of passage of this ordinance.

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

DULY PASSED AND APPROVED this the ____ day of _____, 2006.

Pat Evans, MAYOR

ATTEST:

Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

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