

CITY COUNCIL

1520 AVENUE K



DATE: 10/11/2010
CALL TO ORDER: 7:00 p.m.
INVOCATION:
PLEDGE OF ALLEGIANCE: Boy Scout Troop 285
St. Mark Catholic Church

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>OATHS OF OFFICE</u></p> <p><u>Animal Shelter Advisory Committee</u> Jamey Cantrell, Dr. Karen Dubrow, Pylar Pinkston, Aubrie Wolff</p> <p><u>Board of Adjustment</u> William E. Gibson, Jacquelline Hager, Peter Krause, Henry C. Pauly, Michael Pirek, Edward J. Stankunas</p> <p><u>Building Standards Commission</u> James Mack Craft, Jr., Gary Johnston, Jim C. Kesterson, Mo Khoshkar, Chris G. Polito</p> <p><u>Civil Service Commission</u> Patrick W. Gallagher</p> <p><u>Community Relations Commission</u> Ira Barash, Jean Dormier, Andrew T. Pham</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
	<p><u>Cultural Affairs Commission</u> Mary Haywood, Greg Huckaby, Marilyn Mahoney, Allen B. Safir, OD</p> <p><u>Heritage Commission</u> Michael Bassett, B.C. "Bud" Hopkins, Anne Quaintance-Howard</p> <p><u>Library Advisory Board</u> Debra Conway Benton, Carl Eugene Ford, Pearl Garza Fracchia, Denver Tracy</p> <p><u>Parks and Recreation Planning Board</u> Son Giep, David L. Loughridge, Joan Strobel-McLean, Chris L. White</p> <p><u>Planning and Zoning Commission</u> Michael Coleman, Tracey S. Dry</p> <p><u>Plano Housing Authority</u> Jeanine Boehl, Paul J. Gephart, Jr.</p> <p><u>Retirement Security Plan Committee</u> Myra Conklin, Stephen E. Doud, Robert Smouse</p> <p><u>Self Sufficiency Committee</u> Janet Denney, Casey Mueller, Emmanuel I. Umoh</p> <p><u>Senior Citizens Advisory Board</u> Stuart Blend, Don Mack, John J. Pfister, Doris H. Reynolds, Steven L. Russell</p> <p><u>Tax Increment Financing Reinvestment Zone No. 1 Board</u> Michael Booth, Howard S. Garfield, Holly Parmelee</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
	<p><u>COMMENTS OF PUBLIC INTEREST</u> <u>This portion of the meeting is to allow up to five (5) minutes per speaker with thirty (30) total minutes on items of interest or concern and not on items that are on the current agenda. The Council may not discuss these items, but may respond with factual or policy information. The Council may choose to place the item on a future agenda.</u></p> <p><u>CONSENT AGENDA</u> <u>The Consent Agenda will be acted upon in one motion and contains items which are routine and typically noncontroversial. Items may be removed from this agenda for individual discussion by a Council Member, the City Manager or any citizen. Citizens are limited to two (2) items and discussion time of three (3) minutes each.</u></p> <p><u>Approval of Minutes</u> (a) September 27, 2010</p> <p><u>Approval of Expenditures</u></p> <p><u>Purchase from an Existing Contract</u></p> <p>(b) To approve the purchase of Energy Management System Maintenance with an estimated annual amount of \$62,595 the first year with an increase of approximately \$1,300 each year thereafter from Johnson Controls, Inc. through an existing contract/agreement with Texas Multiple Award Schedule (TXMAS) and authorizing the City Manager to execute all necessary documents. (TXMAS-5-03FAC020)</p> <p>(c) To approve the purchase of one (1) Cues CCTV Sewer Inspection Trailer to be utilized by Utility Operations in the amount of \$75,000 from CUES through an existing contract/agreement with TASB/Buyboard, and authorizing the City Manager to execute all necessary documents. (TASB/Buyboard contract #270-07)</p> <p>(d) To approve a contract for the purchase of a maintenance agreement between Motorola and the City of Plano in the amount of \$300,000 through an existing contract with the Houston-Galveston Area Council, and authorizing the City Manager to execute all necessary documents. (HGAC Contract No. RA-01-08).</p> <p>(e) To approve a contract for the purchase of an annual maintenance agreement between Scientel Wireless, LLC and the City of Plano in the amount of \$500,000 through an existing contract with the Houston-Galveston Area Council, and authorizing the City Manager to execute all necessary documents. (HGAC Contract No. CW10-09)</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
(f)	To approve of the purchase of library materials for Plano Public Library System (PPLS) in the amount of \$125,000 from Brodart through an existing contract/agreement with Texas State Contract 715-N1 print Materials and Multimedia; and authorizing the City Manager to execute all necessary documents.	
(g)	To approve the purchase of library materials for Plano Public Library System (PPLS) in the amount of \$250,000 from Ingram Library Services through an existing contract/agreement with Texas State Contract 715-N1 print Materials and Multimedia; and authorizing the City Manager to execute all necessary documents.	
(h)	To approve the purchase of library materials for Plano Public Library System (PPLS) in the amount of \$275,000 from Midwest Tapes through an existing contract/agreement with Texas State Contract 715-N1 print Materials and Multimedia; and authorizing the City Manager to execute all necessary documents.	
(i)	To approve the purchase of library materials for Plano Public Library System (PPLS) in the amount of \$350,000 from Baker & Taylor through an existing contract/agreement with Texas State Contract 715-N1 Print Materials and Multimedia; and authorizing the City Manager to execute all necessary documents.	
	<p>Approval of Contract: (Purchase of products/services exempt from State of Texas Competitive Bid Laws)</p>	
(j)	To approve a contract by and between the City of Plano and Plano Economic Development Board, Inc. in the amount of \$855,758 to initiate, promote, monitor and perform activities related to economic development; and authorizing the City Manager to execute any and all documents in connection herewith.	
	<p>Approval of Change Order</p>	
(k)	To Loblolly Consulting, LLC, increasing the contract by \$38,000 for the purchase of additional services related to the Customer and Utility Services Department's Business Process Mapping and Documentation Project, Change Order No. 1. (Contract No. DIR-SDD-893)	
	<p><u>Adoption of Resolutions</u></p>	
(l)	To approve the terms and conditions of funding agreements between the City of Plano, Texas and various arts organizations; authorizing their execution by the City Manager; and providing an effective date.	
(m)	To approve the terms and conditions of funding agreements between the City of Plano, Texas, and various special event organizers; authorizing their execution by the City Manager or his designee; and providing an effective date.	
(n)	To approve the terms and conditions of an agreement by and between the City of Plano and Maurice Barnett Geriatric Wellness Center, Inc., for administration of the senior transportation program; and authorizing its execution by the City Manager; and providing an effective date.	

ITEM NO.	EXPLANATION	ACTION TAKEN
(o)	To approve the terms and conditions of a grant awarded by the Edward Byrne Memorial Justice Assistance (JAG) State Formula Program through the Criminal Justice Division of the Office of the Governor of Texas to the City of Plano, Texas for Firearms and Ballistic Forensic Analysis; authorizing the execution of any and all documents in connection therewith by the City Manager; and providing an effective date.	
(p)	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 for the City of Lucas' use of the Radio Communications System owned by the Cities of Allen and Plano; authorizing execution of the agreement by the City Manager; and providing an effective date.	
(q)	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 its execution by the City Manager; and providing an effective date.	
(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 for the City of Parker's use of the Radio Communications System owned by the Cities of Allen and Plano; authorizing its execution by the City Manager; and providing an effective date.	
(s)	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 its execution by the City Manager; and providing an effective date.	
(t)	To approve the terms and conditions of an Interlocal Agreement by and between the City of Plano, Texas and the Plano Independent School District for the Plano Independent School District's use of the Radio Communications System owned by the Cities of Allen and Plano; authorizing its execution by the City Manager; and providing an effective date.	
(u)	To approve the terms and conditions of an Agreement by and between the City of Plano, Texas and the Texas Health Center for Diagnostics and Surgery for the use of the Radio Communications System owned by the Cities of Allen and Plano; authorizing its execution by the City Manager; and providing an effective date.	
(v)	To approve the hiring of an Assistant City Attorney by the City Attorney; and providing an effective date.	
(w)	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 \$75,857 from Collin County; approving its execution by the City Manager; and providing an effective date.	

ITEM NO.	EXPLANATION	ACTION TAKEN
(x)	<p><u>Adoption of Ordinances</u></p> <p>To repeal Ordinance No. 80-8-17 codified as Section 2-1 Official Logo of Article I in General, of Chapter 2 Administration of the Code of Ordinances of the City of Plano, Texas and adopting a new Section 2-1 to set forth guidelines for the use of the City of Plano logo; providing a severability clause, a repealer clause, a savings clause, a publication clause and an effective date.</p>	
(y)	<p>To amend Section 11-349, Police Protection, of Article VIII, Special Events, of Chapter 11, Licenses and Business Regulations of the Code of Ordinances of the City of Plano, Texas to provide for the recovery of all police protection costs incurred while providing security at special events; and providing a severability clause, a savings 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)	Arts of Collin County Quarterly Report	
(2)	City Manager Search Process	
(3)	To approve an Engineering Services Contract by and between the City of Plano and Graham Associates, Inc. in the amount of \$239,970 for Independence Parkway Corridor and authorizing the City Manager to execute all necessary documents.	
(4)	Public hearing and consideration of an Ordinance as requested in Zoning Case 2010-05 to amend an Ordinance of the City of Plano, Texas, amending Section 1.600 (Definitions) of Article 1 (General Regulations), Subsection 2.502 (Schedule of Permitted Uses) of Section 2.500 (Permitted Uses) of Article 2 (Zoning Districts and Uses), and Subsection 3.1107 (Schedule of Off-Street Parking) of Section 3.1100 (Off-Street Parking and Loading) of Article 3 (Supplementary Regulations), and related sections of the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, to related sections of the Zoning Ordinance regarding data centers; and providing a publication clause, a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date.	

ITEM NO.	EXPLANATION	ACTION TAKEN
	<p><u>Municipal Center is wheelchair accessible. A sloped curb entry is available at the main entrance facing Municipal Avenue, with specially marked parking spaces nearby. Access and special parking are also available on the north side of the building. Training Room A/Building Inspections Training Room are located on the first floor. Requests for sign interpreters or special services must be received forty-eight (48) hours prior to the meeting time by calling the City Secretary at 972-941-7120.</u></p>	

**PLANO CITY COUNCIL
PRELIMINARY OPEN MEETING
September 27, 2010**

COUNCIL MEMBERS

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

STAFF

Thomas H. Muehlenbeck, City Manager
Frank Turner, Deputy City Manager
Bruce Glasscock, Deputy City Manager
LaShon Ross, Deputy City Manager
Mark Israelson, Assistant City Manager
Diane C. Wetherbee, City Attorney
Diane Zucco, City Secretary

Mayor Dyer called the meeting to order at 5:09 p.m., Monday, September 27, 2010, in Training Room A of the Municipal Center, 1520 K Avenue. All Council Members were present. Council Member Callison arrived at 5:16 p.m. Mayor Dyer then stated that the Council would retire into Executive Session in compliance with Chapter 551, Government Code, Vernon's Texas Codes, Annotated, in order to consult with an attorney and receive Legal Advice; to receive information regarding Economic Development, Section 551.087; and Personnel, Section 551.074; for which a certified agenda will be kept in the office of the City Secretary for a period of two years as required.

Mayor Dyer reconvened the meeting back into the Preliminary Open Meeting at 6:26 p.m.

Consideration and Action Resulting From Executive Session: Personnel Appointments

Board of Adjustment

Upon a motion made by Mayor Pro Tem Dunlap and seconded by Deputy Mayor Pro Tem Miner, the Council voted 8-0 to appoint William Edward Gibson and Jacqueline Scott Hager as alternates for two-year terms and appoint Joe Wolens Milkes as Chair.

Building Standards Commission

Upon a motion made by Mayor Pro Tem Dunlap and seconded by Council Member Harris, the Council voted 8-0 to appoint Chris G. Polito as an alternate for a two-year term and appoint Arthur Stone as Chair.

Heritage Commission

Upon a motion made by Mayor Pro Tem Dunlap and seconded by Council Member Smith, the Council voted 8-0 to appoint Michael Victor Bassett to a two-year term and to appoint Anne Quaintance-Howard as Chair.

Planning and Zoning Commission

The Council deferred appointments.

Personnel Appointments

Animal Shelter Advisory Committee

The Council deferred the appointment of Chair.

Community Relations Commission

Upon a motion made by Council Member Callison and seconded by Council Member Smith, the Council voted 8-0 to appoint Ira Sheldon Barash, Jean Dormier and Andrew T. Pham to two-year terms and to defer the appointment of Chair.

Cultural Affairs Commission

Upon a motion made by Mayor Pro Tem Dunlap and seconded by Council Member Callison, the Council voted 8-0 to appoint Gregory Robert Huckaby and Mary Elizabeth Haywood to two-year terms and to reappoint Andrea Stroh as Chair.

Library Advisory Board

Upon a motion made by Council Member LaRosiliere and seconded by Council Member Harris, the Council voted 8-0 to reappoint Deborah Conway Benton as Chair.

Parks and Recreation Planning Board

Upon a motion made by Council Member Harris and seconded by Council Member Davidson, the Council voted 8-0 to appoint Son Giep and Joan Ann Strobel-McLean to two-year terms and to defer appointment of Chair.

Photographic Traffic Signal Advisory Committee

The Council deferred the appointment of Chair and Vice-Chair.

Retirement Security Plan Committee

Upon a motion made by Mayor Pro Tem Dunlap and seconded by Council Member Callison, the Council voted 8-0 to accept the recommendations of City Manager Muehlenbeck and appoint Myra Kay Conklin and Robert Hadley Smouse to two-year terms and to appoint Casey Srader as Chair.

Self Sufficiency Committee

Upon a motion made by Council Member Davidson and seconded by Council Member Smith, the Council voted 8-0 to appoint Janet Vada Denney, Casey Mueller and Emmanuel I Umoh as members. The Council deferred the appointment of an additional member and the Chair as well as determination of term lengths.

Senior Citizens Advisory Board

Upon a motion made by Council Member Callison and seconded by Council Member Davidson, the Council voted 8-0 to appoint Stuart Blend, Doris H. Reynolds, and Steven L. Russell to two-year terms and further to defer appointment of Chair.

12th Street Station Workshop Report

Deputy City Manager Turner spoke to the workshop held on September 8, 2010 to begin dialogue regarding how development might occur within walking distance of a proposed 12th Street Station at the intersection of the Cottonbelt and DART Red lines. Steve Stamos of the Urban Land Institute, North Texas Council, presented a summary of the workshop and spoke to Plano's vision and strategy for the area. He advised that stakeholders would support both redevelopment and new development while respecting the City's history and prefer residential rental properties and retail/restaurant establishments with greater lot coverage, shared parking, multi-story buildings and pedestrian connectivity.

Mr. Stamos further advised that support is strong even if the station is not forthcoming. He reviewed observations of the Urban Land Institute including Plano's success in transit-oriented development and its impact on the community. He spoke to the future being determined by private sector investments and increased success with a transit station. Mr. Stamos spoke to recommended next steps including the City remaining committed to the 12th Street Station as the best alternative, seeking input from all stakeholders and providing them updated information, conducting a web-based survey to determine preferences, and remain involved in real estate related activities.

Mr. Stamos responded to Mayor Pro Tem Dunlap, advising that the proposed Cottonbelt would move through Wylie along an area owned by DART, includes a grade separation at the intersection of the lines, particulars are in place with the exception of the station, area to the east is an old rail yard. Mr. Dunlap spoke to interest on the part of the City of Greenville and future transportation from the area to DFW Airport, Arlington, etc. Mr. Turner advised that the services of the ULI were donated, advised that staff would come back with additional information and to engaging property owners and businesses and would include another station at Shiloh Road.

Comprehensive Monthly Financial Report

Finance Director Tacke advised that for the month of August 2010, Water/Sewer and Sustainability Fund Revenues are up slightly. She advised that actual figures indicate the General Fund is down \$1 million as compared to last year due to reductions in ad valorem taxes and franchise fees. Ms. Tacke spoke the level of sales tax being up as compared to the prior year and lower General Fund expenses due to decreases in personnel services. Ms. Tacke advised that the unemployment rate declined slightly to 7.4%, provided a recap of the real estate market, and expenditures of the Water/Sewer Fund including contractual payments.

Council items for discussion/action on future agendas

Council Member Smith requested an update on zero based budgeting.

Consent and Regular Agendas

Council Member Smith advised that she would be stepping down on Regular Agenda Item "1," a resolution to approve a real estate contract between Emajeane Haggard Hall and the City for property at the intersection of Park Boulevard and Alma Drive due to a possible conflict of interest.

Council Member Davidson requested that Consent Agenda Item "F," a second modification of a contract between the City and Columbia Medical Center of Plano for Wellness and Safety Program be removed for individual consideration due to a possible conflict of interest.

Nothing further was discussed. Mayor Dyer adjourned the Preliminary Meeting at 6:55 p.m.

Phil Dyer, Mayor

ATTEST:

Diane Zucco, City Secretary

PLANO CITY COUNCIL
September 27, 2010

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Diane C. Wetherbee, City Attorney
Diane Zucco, City Secretary

Mayor Dyer convened the Council into the Regular Session on Monday, September 27, 2010, at 7:05 p.m. in the Council Chamber of the Plano Municipal Center, 1520 K Avenue. All Council Members were present.

The invocation was led by Reverend Alice Coder of First United Methodist Church and the Pledge of Allegiance was led by Brownie Troop 3039 of St. Mark Catholic School.

Comments of Public Interest

No one appeared to speak.

Consent Agenda

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

Upon the request of resident Dollie Thomas and Robert Haynes, Consent Agenda Item "J" was removed for individual consideration.

Council Member Smith advised that due to a possible conflict of interest, she would step down from the bench on Regular Agenda Item "1."

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

Approval of Minutes (Consent Agenda Item “A”)

September 13, 2010

Approval of Expenditures

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

CSP No. 2010-202-B for the construction of Carpenter Park Recreation Center Expansion & Renovation to EMJ Corporation in the amount of \$4,246,413 and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “B”)

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

To approve a contract by and between the City of Plano and Affion Public, in the amount of \$22,000 for Executive Search Services to conduct a nationwide, executive search for the City's next City Manager and authorizing the City Manager to execute all necessary documents. (RFP No. 2010-238-B) (Consent Agenda Item “C”)

To approve a contract by and between the City of Plano and Southern Specialized Risk Options, LLC, in the amount of \$79,250 for Bi-Annual City Facility Inspection Services and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “D”)

To approve an Engineering Services contract by and between the City of Plano and Freese and Nichols, Inc. in the amount of \$71,969 for the Iswm Based Program Implementation project and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “E”)

Approval of Contract Modification

To approve the Second Modification of the Administrative Services Agreement by and between the City of Plano and the International City Management Association Retirement Corporation (Plan No. 305870) reducing the investment services fees and changing the renewal term to a fixed three (3) year period plus two (2) additional one-year terms, and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “G”)

Approval of Change Order

To Weir Bros. Inc. increasing the contract by \$35,956 for Razor Road from Ohio Drive to SH 121. Change Order No. 6. Original Bid No. 2009-81-B. (Consent Agenda Item “H”)

To McMahan Contracting, L.P., increasing the contract by \$46,372 for Preston at Legacy Intersection Improvements, Change Order No. 3. Original Bid No. 2009-34-B. (Consent Agenda Item “I”)

Adoption of Resolutions

Resolution No. 2010-9-14(R): 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 approving the agreement between the City of Plano and Allan R. deVilleneuve, M.D. for professional services; and providing an effective date. (Consent Agenda Item “K”)

Resolution No. 2010-9-15(R): To approve the terms and conditions of a third amendment to the development agreement between the City of Plano, Texas, and Pinnacle AMS Development Company, LLC (now Southern/Pinnacle AMS Development Company, LLC), for development of Eastside Station – Plano; authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item “L”)

Adoption of Ordinances

Ordinance No. 2010-9-16: To repeal Ordinance No. 2010-7-10; establishing the number of certain classifications within the Police and Fire Departments for fiscal year 2010-11; establishing the authorized number and effective dates of such positions for each classification effective September 27, 2010; establishing a salary plan for the Police and Fire Departments effective September 27, 2010; and providing a repealer clause, a severability clause and an effective date. (Consent Agenda Item “M”)

END OF CONSENT

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

Approval of Contract Modification: To approve the Second Modification of the contract by and between the City of Plano and Columbia Medical Center of Plano Subsidiary, L.P. d/b/a Medical Center of Plano (Contract No. 2008-102-C) RFP for Wellness and Safety Program to reduce the contract amount from \$165,225 as provided in the First Modification to \$162,800 and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “F”)

Upon a motion made by Council Member Harris and seconded by Council Member LaRosiliere, the Council voted 7-0 to approve the Second Modification to the contract between the City of Plano and Columbia Medical Center of Plano for Wellness and Safety Program to reduce the contract amount from \$165,225 to \$162,800.

Council Member Davidson resumed her seat at the bench.

Resolution No. 2010-9-17(R): To approve the terms and conditions of agreements between the City of Plano, Texas, and various heritage preservation organizations which render services that are beneficial to the public and serve a valid public purpose in the total amount of \$591,517; authorizing the City Manager to execute such agreements with these organizations for the provision of support of heritage preservation, and providing an effective date. (Consent Agenda Item “J”)

Resolution No. 2010-9-17(R) (cont'd)

Resident Dollie Thomas requested the Council reconsider the contract, citing new provisions included that may have an impact on heritage museums and spoke to the recent hiring of a director. Robert Haynes requested the Council consider the impact of provisions on disbursements, and spoke to public support for programs and the mission of the Plano African American Museum. Director of Planning Jarrell spoke to funding recommendations by the Heritage Commission and changes in language to tighten up provisions on carry forwards and outstanding issues.

Council Members LaRosiliere and Davidson spoke to the appropriateness of new provisions, but stated concern regarding their immediate impact and to proceeding in a going-forward manner. Ms. Jarrell spoke to consideration of the contract for the upcoming fiscal year. Mr. LaRosiliere spoke to the outstanding audit with the Plano African American Museum (PAAM) and the retroactive nature of new provisions and City Attorney Wetherbee advised regarding possible removal of a “reachback” provision for FY 2010-11. Mayor Dyer spoke regarding staged funding included in the agreement’s language and to approval of disbursement of 50% of funds by October 31, 2010, and holding the next payments until resolution of the audit to occur before December 31, 2010. Mr. LaRosiliere spoke to establishing a mechanism so that decisions regarding possible breach of agreements may be made at an earlier time and to organizations providing information in a timely manner. Mayor Pro Tem Dunlap spoke to consideration prior to Heritage Commission recommendations.

Deputy City Manager Glasscock spoke to preparation of a letter to PAAM from the Internal Audit Committee and Council consideration if no resolution is determined at the Staff level. The Council discussed resolution of the audit before December 31, 2010 before additional funding is disbursed, PAAM appealing to Council and payback of any City monies with funding other than that received in grants.

Upon a motion made by Council Member LaRosiliere and seconded by Mayor Pro Tem Dunlap, the Council voted 8-0 to approve the terms and conditions of agreements between the City of Plano, Texas, and various heritage preservation organizations in the total amount of \$591,517; with a supplemental condition requiring resolution of an outstanding audit with the Plano African American Museum by December 31, 2010, in order for that organization to receive additional funding; and further to adopt Resolution No. 2010-9-17(R).

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

Resolution No. 2010-9-18(R): To approve the terms and conditions of a Real Estate Contract and Lease by and between Emajeon Haggard Hall and the City of Plano for the purchase and lease of approximately 58.91 acres of land located at the intersection of Park Boulevard and Alma Drive, Plano, Collin County, Texas; authorizing the City Manager to execute such contract; and providing an effective date. (Regular Agenda Item “1”)

Resolution No. 2010-9-18(R) (cont'd)

Director of Parks and Recreation Fortenberry spoke to the property located at the intersection of Park Boulevard and Alma Drive and its unique characteristics. Park Services Manager Fox reviewed the background of the property, its agricultural history and the bond referendums approved by voters in 2001, 2005 and 2009 affirming acquisition of the land. He reviewed the use of park services by citizens, recommended standards of the National Recreation and Park Association and advised that the parcel has been on the Parks Master Plan since 2000. Mr. Fox spoke to serving the southwest portion of the City through a community park, acquisition of a property for the Chisholm Trail and future development to include public input. He spoke to contract terms and a lease back to the seller so that no operations/maintenance costs are incurred until a future date. Mr. Fox responded to the Council, advising that there is money allocated for the trail extension and Ms. Fortenberry advised that the debt has been sold for the down payment.

Mayor Dyer opened the floor for comments. Resident Kevin Butler spoke in support of the acquisition. No one else spoke regarding the item. Deputy Mayor Pro Tem Miner spoke to the vision of the City, sense of place in its parks and the need for green space.

Upon a motion made by Deputy Mayor Pro Tem Miner and seconded by Mayor Pro Tem Dunlap, the Council voted 7-0 to approve the terms and conditions of a Real Estate Contract and Lease between Emajeane Haggard Hall and the City of Plano for 58.91 acres located at the intersection of Park Boulevard and Alma Drive and further to adopt Resolution No. 2010-9-18(R).

Council Member Smith resumed her seat at the bench.

Public Hearing and adoption of Ordinance No. 2010-9-19 as requested in Zoning Case 2010-14 to amend Subsection 2.820 (CC – Corridor Commercial) of Section 2.800 (District Charts) of Article 2 (Zoning Districts) and related sections of the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, pertaining to residential setback requirements of the Corridor Commercial zoning district; and providing a publication clause, a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date. Applicant: City of Plano (Regular Agenda Item “2”)

Director of Planning Jarrell advised that in 2007, the Council amended the Corridor Commercial zoning district to remove regulations that increase the front, side, and/or rear yard setbacks for nonresidential development adjacent to residential districts and to the need to remove related language. She spoke to challenges in development and to application of general and residency adjacency standards in addressing concerns. Ms. Jarrell advised that the Planning and Zoning Commission recommended approval as follows:

Amend Subsection 2.820 (C - Corridor Commercial) 3. (Area, Yard and Bulk Requirements) of Section 2.800 (District Charts) of Article 2 (Zoning Districts and Uses) as follows:

Maximum Height: 20 story, not to exceed 325 feet in height ~~except as noted in Setbacks from Residential Districts below~~

Ordinance No. 2010-9-19 (cont'd)

~~**Setbacks from Residential Districts:** In addition to the above yard requirements, the following additional setbacks shall apply: (as measured from nearest residential district boundary line)~~

~~A minimum setback of three times the height up to a maximum height of eight stories or 140 feet, whichever is more restrictive, for a minimum distance of 1,000 feet.~~

~~Beyond 1,000 feet, the setback shall be increased at one times the height above eight stories or 140 feet, whichever is more restrictive, up to 20 stories or 325 feet in height, whichever is more restrictive.~~

Upon a motion made by Council Member LaRosiliere and seconded by Council Member Callison, the Council voted 8-0 to amend Subsection 2.820 of Section 2.800 of Article 2 and related sections of the Comprehensive Zoning Ordinance pertaining to residential setback requirements of the Corridor Commercial zoning district; as requested in Zoning Case 2010-14 and as recommended by the Planning and Zoning Commission.

Nothing further was discussed and Mayor Dyer adjourned the meeting at 8:15 p.m.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, City Secretary



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular <input type="checkbox"/> Statutory
Council Meeting Date:	10/11/2010
Department:	Purchasing
Department Head	Mike Ryan
Agenda Coordinator (include phone #): Dianna Wike X5512	

CAPTION

Approval of the purchase of Energy Management System Maintenance with an estimated annual amount of \$62,595 the first year with an increase of approximately \$1,300 each year thereafter from Johnson Controls , Inc. through an existing contract/agreement with Texas Multiple Award Schedule (TXMAS) and authorizing the City Manager to execute all necessary documents. (TXMAS-5-03FAC020)

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR: 2010-11, 11-12, 12-13 & into 2013-14	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	177,156	0	177,156
Encumbered/Expended Amount	0	0	0	0
This Item	0	-62,595	-181,732	-244,327
BALANCE	0	114,561	-181,732	-67,171

FUND(S): GENERAL FUND

COMMENTS: Funds for this item are included in the 2010-11 Facilities Maintenance Budget. This item spans fiscal years starting in 2010-11 for \$62,595 in the first year with an approximate increase of \$1,300 per year for each future year, 2011-12, 2012-13 and into 2013-14. The current year remaining funds will be used for other maintenance agreements.

STRATEGIC PLAN GOAL: Maintenance contracts relate to the City's Goal of Financially Strong City with Service Excellence.

SUMMARY OF ITEM

Staff recommends approval of the purchase of Energy Management System Maintenance from Johnson Controls, Inc. in the estimated annual amount of \$62,595 the first year with an increase of approximately \$1,300 each year thereafter, conditioned upon timely execution of any necessary contract documents. Jonson Controls is the manufacturer of the Energy Management Systems. The City is authorized to purchase from the State Contract list pursuant to Section 271 Subchapter D of the Local Government Code and by doing so satisfies any State Law requiring Local governments to seek competitive sealed bids for items. (TXMAS-5-03FAC020)

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
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**CITY OF PLANO
COUNCIL AGENDA ITEM**

Memorandum

Memorandum	



September 28, 2010

Phil Dyer
Mayor

Lee Dunlap
Mayor Pro Tem

Pat Miner
Deputy Mayor Pro Tem

Ben Harris
Place 2

André Davidson
Place 3

Lissa Smith
Place 4

Harry LaRosiliere
Place 5

Jean Callison
Place 7

Thomas H. Muehlenbeck
City Manager

Dianna Wike
Buyer Supervisor

RE: Johnson Controls Energy Management System Maintenance Contract

Dianna,

I am recommending approval of the attached proposal from Johnson Controls utilizing their TXMAS contract for maintenance of the Johnson Controls' Energy Management Systems at 19 City facilities.

Johnson Controls is the manufacturer of the Energy Management Systems at these facilities, and preventative maintenance is required to ensure the energy efficient temperature control of the HVAC systems at 19 City facilities. This is also to maintain the computer software, including future modifications that are required. The quote is for \$62,595 first year, and an estimated additional amount each year thereafter of \$1,300. Funding is provided in 01-352-6313.

Please let me know if you have any questions.

Thanks,

Richard Medlen
Facilities Maintenance Superintendent



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		10/11/10		
Department:		Purchasing/Fleet		
Department Head		Mike Ryan/Reid Choate		
Agenda Coordinator (include phone #): Earl Whitaker x7074				
CAPTION				
To approve the purchase of one (1) Cues CCTV Sewer Inspection Trailer to be utilized by Utility Operations in the amount of \$75,000 from CUES through an existing contract/agreement with TASB/Buyboard, and authorizing the City Manager to execute all necessary documents. (TASB/Buyboard contract #270-07)				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2009-10	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	100,000	0	100,000
Encumbered/Expended Amount	0	0	0	0
This Item	0	-75,000	0	-75,000
BALANCE	0	25,000	0	25,000
FUND(S): EQUIPMENT REPLACEMENT FUND				
COMMENTS: Funds are included in the FY 2009-10 adopted budget to purchase one (1) Cues CCTV trailer. Remaining balance will be used for other equipment purchases. STRATEGIC PLAN GOAL: Providing Equipment Replacement Trailers for Fleet Services relates to the City's Goal of a "Financially Strong City with Service Excellence."				
SUMMARY OF ITEM				
Staff recommends the purchase of one (1) Cues CCTV Sewer Inspection Trailer in the amount of \$75,000 from CUES through an existing contract/agreement with TASB/Buyboard. The City is authorized to purchase from a Local Cooperative Organization pursuant to Section 271 subchapter F of the Local Government Code and by doing so satisfies any State Law requiring local governments to seek competitive bids for items. (TASB/Buyboard contract #270-07 / City of Plano Internal Contract No. 2010-250-I)				
List of Supporting Documents: Award Memo			Other Departments, Boards, Commissions or Agencies n/a	



MEMORANDUM

Date: June 30, 2010
To: Earl Whitaker
From: Reid Choate, Fleet Manager
Subject: Sewer Inspection Trailer Replacement

It is the recommendation of Fleet Services to purchase One (1), Cues CCTV Sewer Inspection Trailer in the amount of \$75,000.00 from Texas Underground Inc., through the TASB/Buyboard contract.

This trailer is for a scheduled replacement of unit 98100 in Cost Center 762 Utility Ops, in the approved FY09-10 Equipment Replacement Fund.

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



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY					
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory					
Council Meeting Date:		10/11/2010			
Department:		Technology Services			
Department Head		David Stephens			
Agenda Coordinator (include phone #): Amy Powell X7342					
CAPTION					
To approve a contract for the purchase of a maintenance agreement between Motorola and the City of Plano in the amount of \$300,000, through an existing contract with the Houston-Galveston Area Council, and authorizing the City Manager to execute all necessary documents. (HGAC Contract No. RA-01-08).					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	2010-11	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	800,000	0	800,000
Encumbered/Expended Amount		0		0	
This Item		0	-300,000	0	-300,000
BALANCE		0	500,000	0	500,000
FUND(S): TECHNOLOGY SERVICES FUND (066.394)					
<p>COMMENTS: Funds for technical support services, maintenance, and monitoring of wireless mesh network devices are included in the 2010-11 Technology Services Budget. This item, in the amount of \$300,000, covers the period of November 1, 2010 through October 31, 2011. The remaining balance will be used throughout the year for other maintenance agreements.</p> <p>STRATEGIC PLAN GOAL: Maintenance and service contracts relate to the City's Goal of "Financially Strong City with Service Excellence".</p>					
SUMMARY OF ITEM					
<p>Technology Services recommends Council approve this expenditure, in the amount of \$300,000, for a maintenance agreement with Motorola. This maintenance agreement will allow for technical support services, maintenance and monitoring of Wireless Mesh Network Devices for the period of November 1, 2010 to October 31, 2011. As part of this maintenance contract, Motorola will monitor the network on a 24/7 basis and will maintain the integrity and continuity for this critical infrastructure. The City is authorized to purchase from the State Contract List pursuant to Section 271 Subchapter D of the Local Government Code, and by doing so, satisfies any State Law requiring local government to seek competitive bids for items. (HGAC Contract No. RA-01-08)</p>					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		
Contract and Staff Memo					

Interoffice Memo

Date: September 22, 2010

To: David Stephens, Director Technology Services

Cc:

From: Chester M. Helt, Infrastructure Manager

RE: Motorola Maintenance – November 1, 2010– October 31, 2011

We are recommending that the attached maintenance contract for our annual mesh maintenance be approved. This agreement will cover the maintenance for the software required to operate the mesh devices from the month of November 2010 through October 31, 2010. Once this agreement is approved we will have depot repair, technical support, and software maintenance for the mission critical mesh wireless infrastructure. This network will be used by many of our departments (including public safety) to provide critical services for our citizens. As a part of the contract Motorola will monitor the network on 24/7 basis and will maintain the integrity and continuity for this critical infrastructure.

We recommend purchasing this maintenance for a total price of \$300,00.00 from Motorola through their HGAC contract RA-01- 08.

**CONTRACT BY AND BETWEEN
CITY OF PLANO AND MOTOROLA, INC.
FOR SERVICES FOR WIRELESS MESH NETWORK DEVICES**

THIS CONTRACT is made and entered into by and between **MOTOROLA, INC.** whose address is 1301 E. Algonquin Road, Schaumburg, Illinois, hereinafter referred to as "Contractor," and the **CITY OF PLANO, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon execution of this Contract by the Plano City Manager or his duly authorized designee.

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

**I.
SCOPE OF SERVICES**

Contractor shall provide technical support services, maintenance and monitoring of Wireless Mesh Network Devices. These services shall be provided in accordance with this Contract and with the Houston-Galveston Area Council Contract No. RA-01-08, a copy of which is incorporated herein by reference in its entirety as if it were recited here verbatim and which is on file and available for inspection in the City of Plano Technology Services Department. This Contract consists of:

- (a) This Contract;
- (b) The Houston-Galveston Area Council Contract No. RA-01-08 on file with the City of Plano Technology Services Department;
- (c) Motorola's Statement of Work (Exhibit "A");
- (d) Affidavit of No Prohibited Interest (Exhibit "B").

In the event there is a conflict in interpretation or terms, the documents shall control in the order listed above. These documents shall be referred to collectively as "Contract Documents."

**II.
PAYMENT**

Payments hereunder shall be made to Contractor following City's acceptance of the work and within thirty (30) days of receiving Contractor's invoice for the products and services delivered. Total compensation under this contract shall not exceed the sum of **THREE HUNDRED THOUSAND AND 00/100 DOLLARS (\$300,000.00)**.

**III.
TERM**

Contractor recognizes that this Contract shall commence upon the effective date herein and continue in full force and effect until termination in accordance with its provisions. Contractor and City herein recognize that the continuation of any contract after the close of any given fiscal year of the City of Plano, which fiscal year ends on

September 30th of each year, shall be subject to Plano City Council approval. In the event that the Plano City Council does not approve the appropriation of funds for this Contract, the Contract shall terminate at the end of the fiscal year for which funds were appropriated and the parties shall have no further obligations hereunder.

**IV.
DESCRIPTION OF SERVICES**

Contractor will provide the services described in the Contract Documents and Exhibit "A" attached hereto. At City's request, Contractor may also provide additional services under this Contract at Contractor's then-applicable rates for such services or goods under the Houston-Galveston Area Council Contract No. RA-01-08 or any additional contract addendums as executed by the Plano City Manager or his duly authorized designee.

**V.
CITY CONTACT**

If requested by Contractor, City will provide Contractor with designated points of contact (list of names and phone numbers) that will be available twenty-four (24) hours per day, seven (7) days per week, and an escalation procedure to enable City's personnel to maintain contact, as needed, with Contractor.

**VI.
PROTECTION AGAINST ACCIDENT TO EMPLOYEES AND THE PUBLIC**

Contractor shall at all times exercise reasonable precautions for the safety of employees and others on or near the work and shall comply with all applicable provisions of Federal, State, and Municipal safety laws.

**VII.
TIME AND PLACE OF SERVICE**

Service will be provided at the location specified in the Contract Documents. When Contractor performs service at City's location, City will provide Contractor, at no charge, a non-hazardous work environment with adequate shelter, heat, light, and power and with full and free access to the Equipment. City will provide all information pertaining to the hardware and software elements of any system with which the Equipment is interfacing so that Contractor may perform its Services. Unless otherwise stated in this Contract, the hours of Service will be 8:30 a.m. to 4:30 p.m., local time, excluding weekends and holidays.

**VIII.
COMPLIANCE WITH APPLICABLE LAWS**

Contractor shall at all times observe and comply with all directly applicable Federal, State and local laws, ordinances and regulations including all amendments and revisions thereto, which affect the work. If Contractor observes that the work is at variance therewith, Contractor shall promptly notify City in writing.

**IX.
INDEMNIFICATION AND HOLD HARMLESS**

THE CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE, INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS (INCLUDING PATENT, COPYRIGHT AND TRADEMARK INFRINGEMENT) OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONTRACTOR'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE CONTRACTOR IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS. THE CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

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

IN ADDITION TO CONTRACTOR'S INTELLECTUAL PROPERTY INFRINGEMENT INDEMNIFICATION AND DEFENSE REQUIREMENTS HEREIN, IF AN INFRINGEMENT CLAIM OCCURS, OR IN CONTRACTOR 'S OPINION IS LIKELY TO OCCUR, CONTRACTOR SHALL, AT ITS EXPENSE: (A) PROCURE FOR THE CITY THE RIGHT TO CONTINUE USING THE PRODUCT; (B) REPLACE OR MODIFY THE PRODUCT SO THAT IT BECOMES NON-INFRINGEMENT WHILE PROVIDING FUNCTIONALLY EQUIVALENT PERFORMANCE; OR (C) ACCEPT THE RETURN OF THE PRODUCT AND GRANT THE CITY A REIMBURSEMENT FOR THE PRODUCT. CONTRACTOR WILL PROCEED UNDER SUBSECTION (C) ABOVE ONLY IF SUBSECTIONS (A) AND (B) PROVE TO BE COMMERCIALY UNREASONABLE.

THE INTELLECTUAL PROPERTY INFRINGEMENT INDEMNIFICATION HEREIN APPLIES TO ALL PRODUCTS PROVIDED, SUPPLIED OR SOLD UNDER THIS AGREEMENT BY CONTRACTOR TO CITY WHETHER MANUFACTURED BY CONTRACTOR OR A THIRD PARTY. CONTRACTOR REPRESENTS THAT, TO THE BEST OF ITS KNOWLEDGE, THE CITY'S USE OF PRODUCTS THAT ARE PROVIDED SUPPLIED, OR SOLD BY CONTRACTOR TO CITY AS PART OF THIS AGREEMENT DOES NOT CONSTITUTE AN

INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS AND THE CITY HAS THE LEGAL RIGHT TO USE SAID PRODUCTS. THE CITY ENTERS INTO THIS AGREEMENT RELYING ON THIS REPRESENTATION.

THE INDEMNIFICATION HEREIN SURVIVES THE TERMINATION OF THE CONTRACT AND/OR DISSOLUTION OF THIS AGREEMENT INCLUDING ANY INFRINGEMENT CURE PROVIDED BY THE CONTRACTOR PURSUANT TO PARAGRAPH 3 IN THE HEREIN INDEMNIFICATION SECTION.

**X.
VENUE**

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

**XI.
ASSIGNMENT AND SUBLETTING**

Contractor agrees to retain control and to give full attention to the fulfillment of this Contract and that this Contract shall not be assigned without the prior written consent of City, except for assignments to a Contractor affiliate. An assignment of this Contract with the consent of the City or to an affiliate of Contractor is conditioned on the assignee agreeing to be bound by the terms of this Contract. Contractor may subcontract any portion of its performance under this Contract. Contractor further agrees that the subletting of any portion or feature of the work, or materials required in the performance of this Contract, shall not relieve Contractor from its full obligations to City as provided by this Contract. In the event any additional or different subcontractors are required or requested by City, or in the event City rejects the use of a particular subcontractor, such rejection must be submitted in writing and be based on just and reasonable cause. Any resultant change in contract price and/or schedule shall be mutually agreed upon.

**XII.
INDEPENDENT CONTRACTOR**

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

**XIII.
FORCE MAJEURE**

Neither party is liable for delays or lack of performance resulting from any causes beyond the reasonable control of a party including acts of God or the public enemy, war,

riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the party), fires, explosions or floods, strikes, slowdowns or work stoppages any of which event(s) directly impact the Company's operations in the City.

**XIV.
AFFIDAVIT OF NO PROHIBITED INTEREST**

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

**XV.
TERMINATION FOR CAUSE**

If either party defaults in the performance of this Contract, the other party will give to the non-performing party a written and detailed notice of the default. If City is the defaulting party, it will have thirty (30) days to provide a written plan to cure the default that is acceptable to Contractor and begin implementing the cure plan immediately after plan approval. If the non-performing party fails to provide or implement a cure plan, then the injured party, in addition to any other rights available to it under law, may immediately terminate this Contract effective upon giving a written notice of termination to the defaulting party.

Any termination of this Contract will not relieve either party of obligations previously incurred pursuant to this Contract, including payments which may be due and owing at the time of termination. All sums owed and not in dispute by City will become due and payable immediately upon termination of this Contract. Upon the effective date of termination, Contractor will have no further obligation to provide Services.

**XVI.
SEVERABILITY**

The provisions of this Contract are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Contract is for any reason held to be contrary to the law or contrary to any rule or regulation having the force and effect of the law, such decisions shall not affect the remaining portions of the Contract. However, upon the occurrence of such event, either party may terminate this Contract by giving the other party thirty (30) days written notice.

**XVII.
TERMINATION FOR CONVENIENCE**

City may, at its option, with or without cause, and without penalty or prejudice to any other remedy it may be entitled to at law, or in equity or otherwise under this Contract, terminate further work under this Contract, in whole or in part by giving at least sixty (60) days prior written notice thereof to Contractor with the understanding that all services being terminated shall cease upon the expiration of the 60-day period.

If Contractor provides Services after the termination or expiration of this Contract, the terms and conditions in effect at the time of the termination or expiration will apply to those Services.

**XVIII.
PROPRIETARY INFORMATION; CONFIDENTIALITY;
INTELLECTUAL PROPERTY RIGHTS**

To the extent permitted by law, any information or data in the form of specifications, drawings, reprints, technical information or otherwise furnished to City under this Contract will remain Contractor's property, will be deemed proprietary, will be kept confidential, and will be promptly returned at Contractor's request. City may not disclose, without Contractor's written permission or as required by law, any such information, or data to any person, or use such information or data itself for any purpose other than performing its obligations under this Contract. The obligations set forth in this Section will survive the expiration or termination of this Contract.

**XIX.
MAILING OF NOTICES**

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

City of Plano
Technology Services
P.O. Box 860358
Plano, Texas 75086-0358
Attn: David Stephens

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

Motorola, Inc.
Park West C-2
1507 LBJ Freeway
Farmers Branch, Texas 75234
Attn: John Martin, Service Manager

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.

**XX.
ENTIRE AGREEMENT**

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

City agrees to reference this Contract and Houston-Galveston Area Council Contract No. RA-01-08 on any purchase order issued in furtherance of this Contract,

Service Contract

Page 6

however, an omission of the reference to this Contract shall not affect its applicability. In no event shall either party be bound by any terms contained in a City purchase order, acknowledgement, or other writings unless: (i) such purchase order, acknowledgement, or other writings specifically refer to this Contract; (ii) clearly indicate the intention of both parties to override and modify this Contract; and (iii) such purchase order, acknowledgement, or other writings are signed by authorized representatives of both parties.

**XXI.
AUTHORITY TO SIGN**

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

**XXII.
SUCCESSORS AND ASSIGNS**

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

**XXIII.
HEADINGS**

The headings of this Contract are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

IN WITNESS WHEREOF, the parties have executed this Contract by signing below.

MOTOROLA, INC.

Date: _____

By: _____
Name: _____
Title: _____

CITY OF PLANO, TEXAS

Date: _____

By: _____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM

Diane C. Wetherbee, CITY ATTORNEY



SERVICE AGREEMENT

Attn: National Service Support/4th fl
 1301 East Algonquin Road
 Schaumburg, IL 60196
 (800) 247-2346

Contract Number: S00001012950
 Contract Modifier: RN02-AUG-10 05:18:13
 Supercedes Agreement(s):

Date: 09/20/2010

Company Name: Plano, City Of
 Attn:
 Billing Address: P O Box 860279
 City, State, Zip: Plano, TX 75086-0279
 Customer Contact: Chester Helt
 Phone: (972)941-7626
 Fax:

Required P.O.: Yes
 Customer #: 1011267912
 Bill to Tag #: 0006
 Contract Start Date: 11/01/2010
 Contract End Date: 10/31/2011
 Anniversary Day: Oct 31st
 Payment Cycle: MONTHLY
 Tax Exempt: Exempt From All Taxes
 PO #: TBD

Qty	Model/Option	Description	Monthly Ext	Extended
		***** Recurring Services *****		
1	SVC01SVC0084A	RNS TECH/SW SUPPORT		
1268	SVC073AE	RNS MESH MWR		
176	SVC073AE	RNS MESH MWR		
1	SVC072AE	RNS MESH IAP		
1	SVC077AE	RNS MESH MISC		
1	SVC02SVC0013C	SP - INFRASTRUCTURE REPAIR SITE(S)		

SPECIAL INSTRUCTIONS - ATTACH STATEMENT OF WORK FOR PERFORMANCE DESCRIPTIONS

Subtotal - Recurring Services	\$ 25,000.00	\$ 300,000.00
Subtotal - One-Time Event Services	\$.00	\$.00
Total	\$25,000.00	\$300,000.00
Taxes	- -	
Grand Total	\$ 25,000.00	\$ 300,000.00
THIS SERVICE AMOUNT IS SUBJECT TO STATE AND LOCAL TAXING JURISDICTIONS WHERE APPLICABLE, TO BE VERIFIED BY MOTOROLA.		

Plano MESH Service from Nov 1, 2010 through Oct 31, 2011. HGAC Contract RA-01-08

Subcontractor(s)	City	State
MOTOROLA SYSTEM SUPPORT CENTER	ELGIN	IL
MOTOROLA SYSTEM SUPPORT-TECHNICAL SUPPORT DO068	SCHAUMBURG	IL

I received Statements of Work that describe the services provided on this Agreement. Motorola's Service Terms and Conditions, a copy of which is attached to this Service Agreement, is incorporated herein by this reference.

AUTHORIZED CUSTOMER SIGNATURE	TITLE	DATE
<i>John Martin</i>	Service Manager	9/21/2010
MOTOROLA REPRESENTATIVE (SIGNATURE)	TITLE	DATE
John Martin	972-277 4608	
MOTOROLA REPRESENTATIVE (PRINT NAME)	PHONE	FAX

Service Terms and Conditions

Motorola, Inc. ("Motorola") and the customer named in this Agreement ("Customer") hereby agree as follows:

Section 1 APPLICABILITY

These Service Terms and Conditions apply to service contracts whereby Motorola will provide to Customer either (1) maintenance, support, or other services under a Motorola Service Agreement, or (2) installation services under a Motorola Installation Agreement.

Section 2 DEFINITIONS AND INTERPRETATION

2.1. "Agreement" means these Service Terms and Conditions; the cover page for the Service Agreement or the Installation Agreement, as applicable; and any other attachments, all of which are incorporated herein by this reference. In interpreting this Agreement and resolving any ambiguities, these Service Terms and Conditions take precedence over any cover page, and the cover page takes precedence over any attachments, unless the cover page or attachment states otherwise.

2.2. "Equipment" means the equipment that is specified in the attachments or is subsequently added to this Agreement.

2.3. "Services" means those installation, maintenance, support, training, and other services described in this Agreement.

Section 3 ACCEPTANCE

Customer accepts these Service Terms and Conditions and agrees to pay the prices set forth in the Agreement. This Agreement becomes binding only when accepted in writing by Motorola. The term of this Agreement begins on the "Start Date" indicated in this Agreement.

Section 4 SCOPE OF SERVICES

4.1. Motorola will provide the Services described in this Agreement or in a more detailed statement of work or other document attached to this Agreement. At Customer's request, Motorola may also provide additional services at Motorola's then-applicable rates for the services.

4.2. If Motorola is providing Services for Equipment, Motorola parts or parts of equal quality will be used; the Equipment will be serviced at levels set forth in the manufacturer's product manuals; and routine service procedures that are prescribed by Motorola will be followed.

4.3. If Customer purchases from Motorola additional equipment that becomes part of the same system as the initial Equipment, the additional equipment may be added to this Agreement and will be billed at the applicable rates after the warranty for that additional equipment expires.

4.4. All Equipment must be in good working order on the Start Date or when additional equipment is added to the Agreement. Upon reasonable request by Motorola, Customer will provide a complete serial and model number list of the Equipment. Customer must promptly notify Motorola in writing when any Equipment is lost, damaged, stolen or taken out of service. Customer's obligation to pay Service fees for this Equipment will terminate at the end of the month in which Motorola receives the written notice.

4.5. Customer must specifically identify any Equipment that is labeled intrinsically safe for use in hazardous environments.

4.6. If Equipment cannot, in Motorola's reasonable opinion, be properly or economically serviced for any reason, Motorola may modify the scope of Services related to that Equipment; remove that Equipment from the Agreement; or increase the price to Service that Equipment.

4.7. Customer must promptly notify Motorola of any Equipment failure. Motorola will respond to Customer's notification in a manner consistent with the level of Service purchased as indicated in this Agreement.

Section 5 EXCLUDED SERVICES

5.1. Service excludes the repair or replacement of Equipment that has become defective or damaged from use in other than the normal, customary, intended, and authorized manner; use not in compliance with applicable industry standards; excessive wear and tear; or accident, liquids, power surges, neglect, acts of God or other force majeure events.

5.2. Unless specifically included in this Agreement, Service excludes items that are consumed in the normal operation of the Equipment, such as batteries or magnetic tapes.; upgrading or reprogramming Equipment; accessories, belt clips, battery chargers, custom or special products, modified units, or software; and repair or maintenance of any transmission line, antenna, microwave equipment, tower or tower lighting, duplexer, combiner, or multicoupler. Motorola has no obligations for any transmission medium, such as telephone lines, computer networks, the internet or the worldwide web, or for Equipment malfunction caused by the transmission medium.

Section 6 TIME AND PLACE OF SERVICE

Service will be provided at the location specified in this Agreement. When Motorola performs service at Customer's location, Customer will provide Motorola, at no charge, a non-hazardous work environment with adequate shelter, heat, light, and power and with full and free access to the Equipment. Waivers of liability from Motorola or its subcontractors will not be imposed as a site access requirement. Customer will provide all information pertaining to the hardware and software elements of any system with which the Equipment is interfacing so that Motorola may perform its Services. Unless otherwise stated in this Agreement, the hours of Service will be 8:30 a.m. to 4:30 p.m., local time, excluding weekends and holidays. Unless otherwise stated in this Agreement, the price for the Services exclude any charges or expenses associated with helicopter or other unusual access requirements; if these charges or expenses are reasonably incurred by Motorola in rendering the Services, Customer agrees to reimburse Motorola for those charges and expenses.

Section 7 CUSTOMER CONTACT

Customer will provide Motorola with designated points of contact (list of names and phone numbers) that will be available twenty-four (24) hours per day, seven (7) days per week, and an escalation procedure to enable Customer's personnel to maintain contact, as needed, with Motorola.

Section 8 PAYMENT

Unless alternative payment terms are stated in this Agreement, Motorola will invoice Customer in advance for each payment period. All other charges will be billed monthly, and Customer must pay each invoice in U.S. dollars within twenty (20) days of the invoice date. Customer will reimburse Motorola for all property taxes, sales and use taxes, excise taxes, and other taxes or assessments that are levied as a result of Services rendered under this Agreement (except income, profit, and franchise taxes of Motorola) by any governmental entity.

Section 9 WARRANTY

Motorola warrants that its Services under this Agreement will be free of defects in materials and workmanship for a period of ninety (90) days from the date the performance of the Services are completed. In the event of a breach of this warranty, Customer's sole remedy is to require Motorola to re-perform the non-conforming Service or to refund, on a pro-rata basis, the fees paid for the non-conforming Service. MOTOROLA DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Section 10 DEFAULT/TERMINATION

10.1. If either party defaults in the performance of this Agreement, the other party will give to the non-performing party a written and detailed notice of the default. The non-performing party will have thirty (30) days thereafter to provide a written plan to cure the default that is acceptable to the other party and begin implementing the cure plan immediately after plan approval. If the non-performing party fails to provide or implement the cure plan, then the injured party, in addition to any other rights available to it under law, may immediately terminate this Agreement effective upon giving a written notice of termination to the defaulting party.

10.2. Any termination of this Agreement will not relieve either party of obligations previously incurred pursuant to this Agreement, including payments which may be due and owing at the time of termination. All sums owed by Customer to Motorola will become due and payable immediately upon termination of this Agreement. Upon the effective date of termination, Motorola will have no further obligation to provide Services.

Section 11 LIMITATION OF LIABILITY

Except for personal injury or death, Motorola's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the price of twelve (12) months of Service provided under this Agreement. ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT MOTOROLA WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT OR THE PERFORMANCE OF SERVICES BY MOTOROLA PURSUANT TO THIS AGREEMENT. No action for contract breach or otherwise relating to the transactions contemplated by this Agreement may be brought more than one (1) year after the accrual of the cause of action, except for money due upon an open account. This limitation of liability will survive the expiration or termination of this Agreement and applies notwithstanding any contrary provision.

Section 12 EXCLUSIVE TERMS AND CONDITIONS

12.1. This Agreement supersedes all prior and concurrent agreements and understandings between the parties, whether written or oral, related to the Services, and there are no agreements or representations concerning the subject matter of this Agreement except for those expressed herein. The Agreement may not be amended or modified except by a written agreement signed by authorized representatives of both parties.

12.2. Customer agrees to reference this Agreement on any purchase order issued in furtherance of this Agreement, however, an omission of the reference to this Agreement will not affect its applicability. In no event will either party be bound by any terms contained in a Customer purchase order, acknowledgement, or other writings unless: the purchase order, acknowledgement, or other writing specifically refers to this Agreement; clearly indicate the intention of both parties to override and modify

this Agreement; and the purchase order, acknowledgement, or other writing is signed by authorized representatives of both parties.

Section 13 PROPRIETARY INFORMATION; CONFIDENTIALITY; INTELLECTUAL PROPERTY RIGHTS

13.1. Any information or data in the form of specifications, drawings, reprints, technical information or otherwise furnished to Customer under this Agreement will remain Motorola's property, will be deemed proprietary, will be kept confidential, and will be promptly returned at Motorola's request. Customer may not disclose, without Motorola's written permission or as required by law, any confidential information or data to any person, or use confidential information or data for any purpose other than performing its obligations under this Agreement. The obligations set forth in this Section survive the expiration or termination of this Agreement.

13.2. Unless otherwise agreed in writing, no commercial or technical information disclosed in any manner or at any time by Customer to Motorola will be deemed secret or confidential. Motorola will have no obligation to provide Customer with access to its confidential and proprietary information, including cost and pricing data.

13.3. This Agreement does not grant directly or by implication, estoppel, or otherwise, any ownership right or license under any Motorola patent, copyright, trade secret, or other intellectual property, including any intellectual property created as a result of or related to the Equipment sold or Services performed under this Agreement.

Section 14 FCC LICENSES AND OTHER AUTHORIZATIONS

Customer is solely responsible for obtaining licenses or other authorizations required by the Federal Communications Commission or any other federal, state, or local government agency and for complying with all rules and regulations required by governmental agencies. Neither Motorola nor any of its employees is an agent or representative of Customer in any governmental matters.

Section 15 COVENANT NOT TO EMPLOY

This section is hereby deleted for the Plano MESH depot contract for the period of Nov 1, 2010 through Oct 31, 2011.

Section 16 MATERIALS, TOOLS AND EQUIPMENT

All tools, equipment, dies, gauges, models, drawings or other materials paid for or furnished by Motorola for the purpose of this Agreement will be and remain the sole property of Motorola. Customer will safeguard all such property while it is in Customer's custody or control, be liable for any loss or damage to this property, and return it to Motorola upon request. This property will be held by Customer for Motorola's use without charge and may be removed from Customer's premises by Motorola at any time without restriction.

Section 17 GENERAL TERMS

17.1. If any court renders any portion of this Agreement unenforceable, the remaining terms will continue in full force and effect.

17.2. This Agreement and the rights and duties of the parties will be interpreted in accordance with the laws of the State in which the Services are performed.

17.3. Failure to exercise any right will not operate as a waiver of that right, power, or privilege.

17.4. Neither party is liable for delays or lack of performance resulting from any causes that are beyond that party's reasonable control, such as strikes, material shortages, or acts of God.

17.5. Motorola may subcontract any of the work, but subcontracting will not relieve Motorola of its duties under this Agreement.

17.6. Except as provided herein, neither Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, which consent will not be unreasonably withheld. Any attempted assignment, delegation, or transfer without the necessary consent will be void. Notwithstanding the foregoing, Motorola may assign this Agreement to any of its affiliates or its right to receive payment without the prior consent of Customer. In addition, in the event Motorola separates one or more of its businesses (each a "Separated Business"), whether by way of a sale, establishment of a joint venture, spin-off or otherwise (each a "Separation Event"), Motorola may, without the prior written consent of the other Party and at no additional cost to Motorola, assign this Agreement such that it will continue to benefit the Separated Business and its affiliates (and Motorola and its affiliates, to the extent applicable) following the Separation Event.

17.7. THIS AGREEMENT WILL RENEW, FOR AN ADDITIONAL ONE (1) YEAR TERM, ON EVERY ANNIVERSARY OF THE START DATE UNLESS EITHER THE COVER PAGE SPECIFICALLY STATES A TERMINATION DATE OR ONE PARTY NOTIFIES THE OTHER IN WRITING OF ITS INTENTION TO DISCONTINUE THE AGREEMENT NOT LESS THAN THIRTY (30) DAYS OF THAT ANNIVERSARY DATE. At the anniversary date, Motorola may adjust the price of the Services to reflect its current rates.

17.8. If Motorola provides Services after the termination or expiration of this Agreement, the terms and conditions in effect at the time of the termination or expiration will apply to those Services and Customer agrees to pay for those services on a time and materials basis at Motorola's then effective hourly rates.



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		10/11/2010		
Department:		Technology Services		
Department Head		David Stephens		
Agenda Coordinator (include phone #): Amy Powell X7342				
CAPTION				
To approve a contract for the purchase of an annual maintenance agreement between Scientel Wireless, LLC and the City of Plano in the amount of \$500,000, through an existing contract with the Houston-Galveston Area Council, and authorizing the City Manager to execute all necessary documents. (HGAC Contract No. CW10-09)				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2010-11	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	800,000	0	800,000
Encumbered/Expended Amount	0		0	
This Item	0	-500,000	0	-500,000
BALANCE	0	300,000	0	300,000
FUND(S): TECHNOLOGY SERVICES FUND (66.394)				
COMMENTS: Funds are included in the 2010-11 Wireless Support budget for maintenance contracts that support the hardware required to operate the City's mesh devices. This item, in the amount \$500,000, covers the maintenance period of November 1, 2010 through October 31, 2011. The remaining balance will be used throughout the year for other maintenance agreements.				
STRATEGIC PLAN GOAL: Hardware maintenance contracts relate to the City's Goal of "Financially Strong City with Service Excellence".				
SUMMARY OF ITEM				
Technology Services recommends Council approve this expenditure, in the amount of \$500,000, for annual hardware maintenance with Scientel Wireless, LLC. This contract will allow for hardware maintenance and onsite support, two-hour call response and a four-hour site response to include manpower, equipment and expertise to support and maintain the mission critical mesh wireless infrastructure. The City is authorized to purchase from the State Contract List pursuant to Section 271 Subchapter D of the Local Government Code, and by doing so, satisfies any State Law requiring local government to seek competitive bids for items. (HGAC Contract No. CW10-09)				
List of Supporting Documents: Contract and Staff Memo			Other Departments, Boards, Commissions or Agencies	

Interoffice Memo

Date: 9/21/10

To: David Stephens, Director Technology Services

Cc:

From: Chester M. Helt, Infrastructure Manager

RE: Scientel Wireless, LLC Maintenance – November 1, 2010 – October 31, 2011

We are recommending that the attached maintenance contract for our annual mesh hardware maintenance be approved. This contract with Scientel will cover the maintenance for the hardware required to operate the mesh devices from November 1, 2010 through October 31, 2011. Once this contract is approved we will have hardware maintenance and onsite support, 2 hour call response and a 4 hour site response including manpower, equipment, and expertise to support and maintain the mission critical mesh wireless infrastructure. This network will be used by many of our departments (including public safety) to provide critical services for our citizens. As a part of the contract Scientel will monitor the network on 7/24 basis and will maintain the integrity and continuity for this critical infrastructure.

We recommend purchasing this maintenance for a total price of \$ 500,000.00 from Scientel Wireless LLC through their HGAC contract CW10-09.

**CONTRACT BY AND BETWEEN
CITY OF PLANO AND SCIENTEL WIRELESS, LLC
FOR WIRELESS INFRASTRUCTURE**

THIS CONTRACT is made and entered into by and between **SCIENTEL WIRELESS, LLC.**, whose address is 1007 Oak Creek Drive, Lombard, Illinois, hereinafter referred to as "Contractor," and the **CITY OF PLANO, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon execution of this Contract by the Plano City Manager or his duly authorized designee.

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

**I.
SCOPE OF SERVICES**

Contractor shall provide hardware maintenance and onsite support to maintain the mesh wireless infrastructure. These services shall be provided in accordance with this Contract and with The Houston-Galveston Area Council Contract No. HGAC CW 10-09, a copy of which is incorporated herein by reference in its entirety as if it were recited here verbatim and which is on file and available for inspection in the City of Plano Technology Services Department. This Contract consists of:

- (a) This Contract;
- (b) The Houston-Galveston Area Council Contract No. HGAC CW 10-09, on file with the City of Plano Technology Services Department;
- (c) Scientel's Statement of Work (Exhibit "A");
- (d) Insurance Requirements and Certificate of Insurance (Exhibit "B");and
- (e) Affidavit of No Prohibited Interest (Exhibit "C").

In the event there is a conflict in interpretation or terms, the documents shall control in the order listed above. These documents shall be referred to collectively as "Contract Documents."

**II.
PAYMENT**

Payments hereunder shall be made to Contractor following City's acceptance of the work and within thirty (30) days of receiving Contractor's invoice for the products and services delivered. Total compensation under this contract shall not exceed the sum of **FIVE HUNDRED THOUSAND AND 00/100 DOLLARS (\$500,000.00)**.

III. TERM

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

IV. DESCRIPTION OF SERVICES

Contractor will provide the services described in the Contract Documents and Exhibit "A" attached hereto. At City's request, Contractor may also provide additional services under this Contract at Contractor's then-applicable rates for such services or goods under The Houston-Galveston Area Council Contract No. HGAC CW 10-09, or any additional contract addendums as executed by the Plano City Manager or his duly authorized designee.

V. CITY CONTACT

If requested by Contractor, City will provide Contractor with designated points of contact (list of names and phone numbers) that will be available twenty-four (24) hours per day, seven (7) days per week, and an escalation procedure to enable City's personnel to maintain contact, as needed, with Contractor.

VI. PROTECTION AGAINST ACCIDENT TO EMPLOYEES AND THE PUBLIC

Contractor shall at all times exercise reasonable precautions for the safety of employees and others on or near the work and shall comply with all applicable provisions of Federal, State, and Municipal safety laws.

VII. TIME AND PLACE OF SERVICE

Service will be provided at the location specified in the Contract Documents. When Contractor performs service at City's location, City will provide Contractor, at no charge, a non-hazardous work environment with adequate shelter, heat, light, and power and with full and free access to the Equipment. City will provide all information pertaining to the hardware and software elements of any system with which the Equipment is interfacing so that Contractor may perform its Services. Unless otherwise stated in this Contract, the hours of Service will be 8:30 a.m. to 4:30 p.m., local time, excluding weekends and holidays.

**VIII.
COMPLIANCE WITH APPLICABLE LAWS**

Contractor shall at all times observe and comply with all directly applicable Federal, State and local laws, ordinances and regulations including all amendments and revisions thereto, which affect the work. If Contractor observes that the work is at variance therewith, Contractor shall promptly notify City in writing.

**IX.
INDEMNIFICATION AND HOLD HARMLESS**

THE CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE, INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS (INCLUDING PATENT, COPYRIGHT AND TRADEMARK INFRINGEMENT) OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONTRACTOR'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE CONTRACTOR IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS. THE CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

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

IN ADDITION TO CONTRACTOR'S INTELLECTUAL PROPERTY INFRINGEMENT INDEMNIFICATION AND DEFENSE REQUIREMENTS HEREIN, IF AN INFRINGEMENT CLAIM OCCURS, OR IN CONTRACTOR 'S OPINION IS LIKELY TO OCCUR, CONTRACTOR SHALL, AT ITS EXPENSE: (A) PROCURE FOR THE CITY THE RIGHT TO CONTINUE USING THE PRODUCT; (B) REPLACE OR MODIFY THE PRODUCT SO THAT IT BECOMES NON-INFRINGEMENT WHILE PROVIDING FUNCTIONALLY EQUIVALENT PERFORMANCE; OR (C) ACCEPT THE RETURN OF THE PRODUCT AND GRANT THE CITY A REIMBURSEMENT FOR THE PRODUCT. CONTRACTOR WILL

PROCEED UNDER SUBSECTION (C) ABOVE ONLY IF SUBSECTIONS (A) AND (B) PROVE TO BE COMMERCIALY UNREASONABLE.

THE INTELLECTUAL PROPERTY INFRINGEMENT INDEMNIFICATION HEREIN APPLIES TO ALL PRODUCTS PROVIDED, SUPPLIED OR SOLD UNDER THIS AGREEMENT BY CONTRACTOR TO CITY WHETHER MANUFACTURED BY CONTRACTOR OR A THIRD PARTY. CONTRACTOR REPRESENTS THAT, TO THE BEST OF ITS KNOWLEDGE, THE CITY'S USE OF PRODUCTS THAT ARE PROVIDED SUPPLIED, OR SOLD BY CONTRACTOR TO CITY AS PART OF THIS AGREEMENT DOES NOT CONSTITUTE AN INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS AND THE CITY HAS THE LEGAL RIGHT TO USE SAID PRODUCTS. THE CITY ENTERS INTO THIS AGREEMENT RELYING ON THIS REPRESENTATION.

THE INDEMNIFICATION HEREIN SURVIVES THE TERMINATION OF THE CONTRACT AND/OR DISSOLUTION OF THIS AGREEMENT INCLUDING ANY INFRINGEMENT CURE PROVIDED BY THE CONTRACTOR PURSUANT TO PARAGRAPH 3 IN THE HEREIN INDEMNIFICATION SECTION.

X. VENUE

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

XI. ASSIGNMENT AND SUBLETTING

Contractor agrees to retain control and to give full attention to the fulfillment of this Contract and that this Contract shall not be assigned without the prior written consent of City, except for assignments to a Contractor affiliate. An assignment of this Contract with the consent of the City or to an affiliate of Contractor is conditioned on the assignee agreeing to be bound by the terms of this Contract. Contractor may subcontract any portion of its performance under this Contract. Contractor further agrees that the subletting of any portion or feature of the work, or materials required in the performance of this Contract, shall not relieve Contractor from its full obligations to City as provided by this Contract. In the event any additional or different subcontractors are required or requested by City, or in the event City rejects the use of a particular subcontractor, such rejection must be submitted in writing and be based on just and reasonable cause. Any resultant change in contract price and/or schedule shall be mutually agreed upon.

XII. INDEPENDENT CONTRACTOR

Contractor covenants and agrees that Contractor is an independent contractor and not an officer, agent, servant or employee of City; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between City and Contractor, its officers, agents, employees,

contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Contractor.

**XIII.
INSURANCE AND CERTIFICATES OF INSURANCE**

Contractor shall procure and maintain for the duration of the Contract insurance coverage as set forth in Exhibit "B" including the City as a named insured.

**XIV.
FORCE MAJEURE**

Neither party is liable for delays or lack of performance resulting from any causes beyond the reasonable control of a party including acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the party), fires, explosions or floods, strikes, slowdowns or work stoppages any of which event(s) directly impact the Company's operations in the City.

**XV.
AFFIDAVIT OF NO PROHIBITED INTEREST**

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

**XVI.
TERMINATION FOR CAUSE**

If either party defaults in the performance of this Contract, the other party will give to the non-performing party a written and detailed notice of the default. If City is the defaulting party, it will have thirty (30) days to provide a written plan to cure the default that is acceptable to Contractor and begin implementing the cure plan immediately after plan approval. If the non-performing party fails to provide or implement a cure plan, then the injured party, in addition to any other rights available to it under law, may immediately terminate this Contract effective upon giving a written notice of termination to the defaulting party.

Any termination of this Contract will not relieve either party of obligations previously incurred pursuant to this Contract, including payments which may be due and owing at the time of termination. All sums owed and not in dispute by City will become due and payable immediately upon termination of this Contract. Upon the effective date of termination, Contractor will have no further obligation to provide Services.

**XVII.
SEVERABILITY**

The provisions of this Contract are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Contract is for any reason held to be contrary to the law or contrary to any rule or regulation having the force and effect of the law, such decisions shall not affect the remaining portions of the Contract. However, upon the occurrence of such event, either party may terminate this Contract by giving the other party thirty (30) days written notice.

**XVIII.
TERMINATION FOR CONVENIENCE**

City may, at its option, with or without cause, and without penalty or prejudice to any other remedy it may be entitled to at law, or in equity or otherwise under this Contract, terminate further work under this Contract, in whole or in part by giving at least sixty (60) days prior written notice thereof to Contractor with the understanding that all services being terminated shall cease upon the expiration of the 60-day period.

If Contractor provides Services after the termination or expiration of this Contract, the terms and conditions in effect at the time of the termination or expiration will apply to those Services.

**XIX.
PROPRIETARY INFORMATION; CONFIDENTIALITY;
INTELLECTUAL PROPERTY RIGHTS**

To the extent permitted by law, any information or data in the form of specifications, drawings, reprints, technical information or otherwise furnished to City under this Contract will remain Contractor's property, will be deemed proprietary, will be kept confidential, and will be promptly returned at Contractor's request. City may not disclose, without Contractor's written permission or as required by law, any such information, or data to any person, or use such information or data itself for any purpose other than performing its obligations under this Contract. The obligations set forth in this Section will survive the expiration or termination of this Contract.

**XX.
MAILING OF NOTICES**

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

City of Plano
Technology Services
P.O. Box 860358
Plano, Texas 75086-0358
Attn: David Stephens

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

Scientel Wireless, LLC
1007 Oak Creek Drive
Lombard, Illinois 60148
Attn: _____

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.

XXI. ENTIRE AGREEMENT

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

City agrees to reference this Contract and The Houston-Galveston Area Council Contract No. HGAC CW 10-09, on any purchase order issued in furtherance of this Contract, however, an omission of the reference to this Contract shall not affect its applicability. In no event shall either party be bound by any terms contained in a City purchase order, acknowledgement, or other writings unless: (i) such purchase order, acknowledgement, or other writings specifically refer to this Contract; (ii) clearly indicate the intention of both parties to override and modify this Contract; and (iii) such purchase order, acknowledgement, or other writings are signed by authorized representatives of both parties.

XXII. AUTHORITY TO SIGN

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

XXIII. SUCCESSORS AND ASSIGNS

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

**XXIV.
HEADINGS**

The headings of this Contract are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

IN WITNESS WHEREOF, the parties have executed this Contract by signing below.

SCIENTEL WIRELESS, LLC.

Date: _____

By: _____
Name: _____
Title: _____

CITY OF PLANO, TEXAS

Date: _____

By: _____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM

Diane C. Wetherbee, CITY ATTORNEY

Proprietary Information
CITY OF PLANO

MOTOMESH MAINTENANCE & SUPPORT PLAN

Submitted to

**David Stephens
City of Plano, TX**



August 25, 2010

Scientel Wireless, LLC
Lombard Office
1007 Oak Creek Drive
Lombard, Illinois 60148
Tel: 630-652-3800
Fax: 630-652-3805

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 SUPPORT PROCEDURE: 9

15.0 PRICING.....10

1. INTRODUCTION

- 1.1. The project involves the inspection, maintenance and support of the City of Plano's Wireless Mobile Broadband Network including, MotoMesh Intelligent Access Points (IAPs), Mobile Wireless Routers (MWRs), Enhanced Wireless Routers (EWRs), and Mobile Internet Switching Controller (MiSC), DragonWave's AirPair & Future Quantum System, Canopy and APC's UPS that are used throughout the City of Plano to provide high-speed Intranet access to city officials and patrol officers. City Hall is the network's infrastructure access point.
- 1.2. The objective of the maintenance & monitoring program is to assure that the wireless network continues to perform at peak functionality and that the integrity of the installed hardware remains secure and free from erosion due to local climate.

2. MAINTENANCE OBJECTIVES & SCOPE OF WORK:

- 2.1. This procedure provides the methodology for conducting a physical maintenance inspection (antenna infrastructure and network hardware & software) and the corrective action process.
- 2.2. A series of wireless installation and system maintenance checklists shall be used during all inspections. The checklist(s) shall be controlled documents for the life of the project.
- 2.3. On a monthly and quarterly basis, a Scientel Wireless technician will perform an on-site inspection of the installed equipment and perform a variety of upgrades and system optimizations to assure the network system is operating at peak performance. The inspection includes site conditions, equipment, and antenna systems, network device firmware, as well as the network's computer (MiSC) hardware & software. A qualified Scientel Wireless Inc. technician will perform all maintenance and inspection activities.

3. PROJECT ORGANIZATION:

- 3.1. The project will be managed by a Scientel Wireless Project Manager and maintained by a local Scientel Wireless technician dedicated solely to the network. The Maintenance Project Manager will be responsible for the monthly and quarterly inspection performance and subsequent formal reporting of the inspection findings. A Scientel Wireless network technician will assist with the inspection of network equipment and MiSC testing. Contact data for the maintenance & monitoring project principles can be found within this project plan.

4. PROJECT SCHEDULE:

- 4.1. The maintenance and inspection contract of the City of Plano, MotoMesh network will occur on an annual basis. When the inspection is scheduled to occur, the City of Plano, will be notified of the dates.

5. MAINTENANCE SERVICES STATEMENT OF WORK

- 5.1. Under the Terms and Conditions of this Maintenance Agreement, periodic maintenance will be conducted on the City of Plano Broadband Wireless Network. The first major inspection will occur on the third month (90 days) after the system acceptance by the City of Plano. The inspections will involve but not be limited to: 1. Perform system visual inspection, 2. Check components, 3. Run system self-test, 4. Install and test manufacturer provided software upgrades and enhancements. 5. Verify against baseline documentation.
- 5.2. Document test results and file report with customer identifying all modifications or repairs made to the system during the maintenance inspection and documenting any recommended repairs or upgrades for the system.

6. MAINTENANCE PROCEDURE: ANTENNA INFRASTRUCTURE

- 6.1. Prior to a site visit, the individual performing the inspection shall prepare a "Telecom Inspection Checklist" as applicable for each site to be visited. When in the field, the inspecting individual shall mark the checklist to confirm that a certain aspect of the project has been inspected, and note any discrepancies or needed modifications to the checklist.
- 6.2. Maintenance Checklist: An inspection of each site will be performed to ensure that the integrity of the original installation remains intact. During the physical inspection process, data on the following items will be collected and provided to the City of Plano in a formal report.

IAP Sites:

- MotoMesh Antenna's (IAP7300) condition
- Connection(s) condition (Bolts, clamps, brackets, etc.)
- Power cable condition
- Communication cable condition
- Radio/switch installation condition
- Connection(s) condition (cabling)

MWR Sites:

- MotoMesh Antenna's (MWR7300) condition
- Connection(s) condition (Bolts, clamps, brackets, etc.)
- Power cable condition
- Cable routing condition
- Connection(s) condition (cabling)

Canopy Sites:

- Canopy Antenna condition
- Connection(s) condition (Bolts, clamps, brackets, etc.)
- PoE cable condition
- Cable routing condition
- Connection(s) condition (cabling)
- GPS Cable Testing

Other Site Maintenance:

DragonWave Sites:

- DragonWave Antenna condition
- Connection(s) condition (Bolts, clamps, brackets, etc.)
- LMR and Fiber cable condition
- Cable routing condition
- Connection(s) condition (cabling)

- **Cabinet Maintenance:** Scientel will provide the necessary monthly inspections, and take the necessary steps to maintain cabinets that are part of this bid proposal. Cabinet Maintenance includes periodic painting and repairing cabinets to prevent the cabinet from failing to protect the System equipment.
- **Antenna Support Structures:** Scientel will provide antenna support structure maintenance (poles, mounts, etc.) and take the necessary steps to maintain the antenna support structures that are part of this bid proposal. This includes corrosion control and defective part replacement.
- **Microwave Antenna Systems:** Scientel will provide inspections on a quarterly basis using various test equipment to measure the condition of the Microwave antenna, coax, cables and connectors. Scientel will provide any needed repair for the antenna systems, by replacing any defective antenna hardware, to assure proper operation of the antenna system.
- **Tower Maintenance:** Scientel will provide inspections and take the necessary steps to maintain the tower structures. This includes painting, corrosion control, and defective part replacement.

7. MAINTENANCE PROCEDURE: NETWORK SOFTWARE & HARDWARE

7.1. To help minimize the risk of potential problems, Scientel Wireless will check Network Software & Hardware Maintenance Checklist during the preventative maintenance period to ensure continued network stability, information security, and data integrity.

7.2. As a service to City of Plano, Scientel will perform the Network Software & Hardware Maintenance Checklist on a monthly basis to keep your systems and network running smoothly:

- Apply any critical service packs and software upgrades.
- Upgrade firmware in Firewalls/Router, UPS, DragonWave and all MotoMesh equipment and verify correct operation.
- Test speed of Mobile network connection via sample download/upload.
- Hardware conflicts.
- Software compliance & Upgrades.
- Critical OS updates.
- BIOS updates.
- Standalone Performance Checks.
- Network Connectivity Checks.
- Network Performance Checks.
- Check Event logs on MiSC.
- Verify Security.
- Fault Tolerance Verification.
- Meeting to discuss current issues and address future requirements.

8. ITEMS COVERED UNDER THE CONTRACT:

Items covered under this contract are passed on the MotoMesh System installed to date and to be installed in 2007. All sites are within the City Limits of The City of Plano, TX. The system maintenance is based on the following:

- 176 IAP7000 Intelligent Access Points
- 1269 MWR7000 Mobile Wireless Routers
- 8 hops of DragonWave Licensed Microwave
- 101 Motorola Canopy Advantage Access Points
- 176 Motorola Canopy Subscriber Modules
- 16 Canopy Cluster Management Modules w/TSP
- 1 MeshManager
- 2 Canopy Backhaul's
- 300' Ridgeview Tower

9. SYSTEM REPAIRS WHEN NECESSARY:

- Replace minor components (connectors, fittings, etc.) as needed, to ensure continued reliable operation of the system, at no charge to the City of Plano.
- Perform Warranty Related Repairs (if hardware or software is still under warranty), at no charge to the City of Plano.
- Estimate cost, time, and materials for repairs for non-warranty related items for any significant items needing repair, which are identified during the maintenance inspection.
- If estimate is accepted, perform repairs.
- Replace units as required and when necessary to ensure reliable operation of the system. These devices will be replaced by the fixed unit or a new unit when available.
- Store spares at Scientel's Plano facility.

10. LIMITATIONS/EXCLUSIONS:

10.1 Scientel Wireless will not cover, under the contract terms/amounts paid, when time and material repairs are needed for:

- Vandalism/abuse of the installed hardware and software.
- 3rd party hardware or software changes made by the customer after system acceptance.
- Electricity service caused problems, such as lightning strikes or power outages.
- Out of warranty software or hardware

11. TERMS AND CONDITIONS: SYSTEM MAINTENANCE

11.1 Unless otherwise stated, all maintenance services will be provided in accordance with the Purchase Order Terms and Conditions dated between Scientel Wireless, and City of Plano.

12. RATES FOR NON-WARRANTY & MAINTENANCE RELATED ITEMS:

- 12.1 All non-warranty related work authorized to be performed by Scientel Wireless, LLC's technicians shall be billed at an hourly rate of \$90.00/hr for normal work hours plus expenses. Overtime work and Saturday work shall be billed at an overtime rate of \$135.00/hour and Sunday and holiday work shall be billed at \$180.00 /hour.
- 12.2 No work shall be performed unless Scientel Wireless has provided a written estimate to the customer and a written authorization (Purchase Order) has been received from the City of Plano to perform the work.
- 12.3 Scientel Wireless, LLC reserves the right to revise the hourly technician billing rate upon thirty (30) days written notice to City of Plano.

13. RECORDS

- 13.1 The "Telecom Inspection Checklist" shall be maintained for after the project is completed.
- 13.2 At the conclusion of the project, the "Telecom Inspection Checklist" shall be updated as deemed warranted by the individual currently maintaining the checklist.
- 13.3 Individuals performing inspections shall be certified in the inspection they are performing using TOP IM 10.1 Inspections Form 1 Inspector Certification.

14. CALL-OUTS and CORRECTIVE MAINTENANCE:

- 14.1 Scientel will respond to all emergency failures of the system on a 24 hour, 7 days a week basis. On-Call technical repair response is provided on a 24x7 basis during normal business hours by calling the Scientel Plano Office. After hours repair service is requested by calling the Scientel 7x24 Answering Service who shall contact the Scientel On-Call technicians. The Answering Service has a list of all available Scientel technicians, and escalation numbers for Scientel management so that a response by Scientel to the call-out is assured. In addition, Scientel will provide City of Plano with the On-Call Technical Support Number, which directly contacts the Scientel service personnel. Once a trouble call is generated to the Scientel Plano office or after hours Answering Service, the trouble call is tracked and will be escalated to the next level responder in the event the initial responder does not confirm receipt of the trouble call. Using an escalating response procedure guarantees initial contact will be made with Scientel's technicians within the required response time.

Upon notification to the on-call technician, the technician will respond within the required response window. Scientel will provide 2 hour phone response and the on-site response time of four hours. If additional support is required, Scientel has a team based regionally fully trained and equipped to maintain MotoMesh, Cisco, DragonWave and Canopy Equipment and resolve any system issues after a disaster or emergency situation.

SUPPORT PROCEDURE:

Upon receipt of a major alarm Scientel will dispatch a technician from our Plano, TX facility in accordance with the following procedure:

- Scientel Wireless receives notification of problem or failure.
 1. Scientel technician uses NMS to troubleshoot problem or failure.
 2. Scientel technician determines if problem or failure is minor or major.

If problem is classified Minor (non-traffic affecting):

1. NOC technician contacts City of Plano technical representative during normal business hours (Monday through Friday, 8am to 5pm, central standard time).
2. City of Plano technical representative attempts to correct problem.
3. City of Plano technical representative determines if call out of Scientel technician is required.
4. If needed, Scientel technician is dispatched to City of Plano to rectify the problem.
5. Scientel technician corrects problem or failure.
6. Scientel technician documents repairs made and files report.

If problem is classified as Major (traffic affecting):

1. Scientel technician contacts City of Plano technical representative if major problem occurs during normal business hours (Monday through Friday, 8am to 5pm, central standard time).
2. City of Plano technical representative attempts to correct problem.
3. City of Plano technical representative determines if call out of Scientel technician is required.
4. If needed, Scientel technician is dispatched to City of Plano to rectify the problem.
5. If major problem occurs during non-business hours, Scientel technician is dispatched to the City of Plano to rectify the problem.
6. Scientel technician corrects problem or failure
7. Scientel technician documents repairs made and files report.

15. PRICING

Maintenance and On Site Support, 2 Hour Call Response and 4 Hour Site Response

- Project Manager
- Engineering Technician(s)
- Network Engineer as Required
- Tower Climbers as Required
- Bucket Trucks as Required
- All device spare storage in local Plano Facility
- Materials (See section 9)
- System Maintenance (as per this proposal)
- On Site Support (as required)
- 2 Hour Call Response
- 4 Hour On Site Response

Spares & Extended Product Warranties

- DragonWave Extended Warranty & Advanced Replacement (All)

Total Per Month	\$41,666.67
Total From Nov. 1, 2010 to Oct. 31, 2011	\$500,000.00



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY					
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory					
Council Meeting Date:		October 11, 2010			
Department:		Library Administration			
Department Head		Cathy Ziegler			
Agenda Coordinator (include phone #): Mary Ann Dunnivant (4208)					
CAPTION					
Approval of the purchase of library materials for Plano Public Library System (PPLS) in the amount of \$125,000 from Brodart through an existing contract/agreement with Texas State Contract 715-N1 Print Materials and Multimedia; and authorizing the City Manager or his authorized designee to execute all necessary documents.					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	FY 2010-11	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	1,000,000	0	0	1,000,000
Encumbered/Expended Amount	0	0	0	0	0
This Item	0	-125,000	0	0	-125,000
BALANCE	0	875,000	0	0	875,000
FUND(S): GENERAL FUND					
COMMENTS: Funds are included in the FY 2010-11 adopted budget to purchase Books, Multimedia, and Library materials. Approval of this item authorizes the City to purchase \$125,000 in Books, Multimedia, and Library materials. The remaining balance of funds will be used for other multimedia and library materials.					
STRATEGIC PLAN GOAL: Providing multimedia and library materials purchases relates to the City's Goal of a "Financially Strong City with Service Excellence."					
SUMMARY OF ITEM					
The State of Texas CO-OP Purchasing Program, of which the City of Plano is a member, secures competitive bids for books and multimedia among many other things. Because of the City of Plano's participation, the purchase from Brodart in the amount of \$125,000 satisfies the law relating to this bid. Therefore, PPLS staff recommends purchase of these various library materials from Brodart through the Texas State Contract 715-N1 Print Materials and Multimedia. The City is authorized to purchase from the State Contract list pursuant to Section 271 Subchapter D of the Local Government Code and by doing so satisfies any State Law requiring local governments to seek competitive bids for items.					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		
1. Memo from Julie Torstad dated 09.20.2010					



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

Memorandum

Date: September 20, 2010
To: Mary Ann Dunnavant
From: Julie Torstad, Library Technology Services Manager
Subject: City Council Approval for Brodart

Please request City Council approval to spend approximately \$125,000 with Brodart for the purchase of various library materials including books, compact disks, and books-on-CD. Funds should be taken from 01-682-8441. Some of the funds will be transferred into 01-682-8442.

These purchases will be made through the State of Texas CO-OP Purchasing Program under Texas State Contract 715-N1 Print Materials and Multimedia with Brodart. The City is authorized to purchase from the State Contract list pursuant to Section 271 Subchapter D of the Local Government Code and by doing so satisfies any State Law requiring local governments to seek competitive bids for items.



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY					
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory					
Council Meeting Date:		October 11, 2010			
Department:		Library Administration			
Department Head		Cathy Ziegler			
Agenda Coordinator (include phone #): Mary Ann Dunnivant (4208)					
CAPTION					
Approval of the purchase of library materials for Plano Public Library System (PPLS) in the amount of \$250,000 from Ingram Library Services through an existing contract/agreement with Texas State Contract 715-N1 Print Materials and Multimedia; and authorizing the City Manager or his authorized designee to execute all necessary documents.					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	FY 2010-11	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	1,000,000	0	1,000,000
Encumbered/Expended Amount		0	0	0	0
This Item		0	-250,000	0	-250,000
BALANCE		0	750,000	0	750,000
FUND(S): GENERAL FUND					
COMMENTS: Funds are included in the FY 2010-11 adopted budget to purchase Books, Multimedia, and Library materials. Approval of this item authorizes the City to purchase \$250,000 in Books, Multimedia, and Library materials. The remaining balance of funds will be used for other multimedia and library materials.					
STRATEGIC PLAN GOAL: Providing multimedia and library materials purchases relates to the City's Goal of a "Financially Strong City with Service Excellence."					
SUMMARY OF ITEM					
The State of Texas CO-OP Purchasing Program, of which the City of Plano is a member, secures competitive bids for books and multimedia among many other things. Because of the City of Plano's participation, the purchase from Ingram Library Services in the amount of \$250,000 satisfies the law relating to this bid. Therefore, PPLS staff recommends purchase of these various library materials from Ingram Library Services through the Texas State Contract 715-N1 Print Materials and Multimedia. The City is authorized to purchase from the State Contract list pursuant to Section 271 Subchapter D of the Local Government Code and by doing so satisfies any State Law requiring local governments to seek competitive bids for items.					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		
1. Memo from Julie Torstad dated 09.20.2010					



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

Memorandum

Date: September 20, 2010
To: Mary Ann Dunnavant
From: Julie Torstad, Library Technology Services Manager
Subject: City Council Approval for Ingram Library Services

Please request City Council approval to spend approximately \$250,000 with Ingram Library Services for the purchase of various library materials including music CDs, books-on-CD, DVDs, downloadable audios and e-books. Funds should be taken from 01-682-8441. Some of the funds will be transferred into 01-682-8442.

These purchases will be made through the State of Texas CO-OP Purchasing Program under Texas State Contract 715-N1 Print Materials and Multimedia with Ingram Library Services. The City is authorized to purchase from the State Contract list pursuant to Section 271 Subchapter D of the Local Government Code and by doing so satisfies any State Law requiring local governments to seek competitive bids for items.



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		October 11, 2010		
Department:		Library Administration		
Department Head		Cathy Ziegler		
Agenda Coordinator (include phone #): Mary Ann Dunnivant (4208)				
CAPTION				
Approval of the purchase of library materials for Plano Public Library System (PPLS) in the amount of \$275,000 from Midwest Tapes through an existing contract/agreement with Texas State Contract 715-N1 Print Materials and Multimedia; and authorizing the City Manager or his authorized designee to execute all necessary documents.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	FY 2010-11	Prior Year (CIP Only)	Current Year	Future Years
		TOTALS		
Budget	0	1,000,000	0	1,000,00
Encumbered/Expended Amount	0	0	0	0
This Item	0	-275,000	0	-275,000
BALANCE	0	725,000	0	725,000
FUND(S): GENERAL FUND				
COMMENTS: Funds are included in the FY 2010-11 adopted budget to purchase Books, Multimedia, and Library materials. Approval of this item authorizes the City to purchase \$275,000 in Books, Multimedia, and Library materials. The remaining balance of funds will be used for other multimedia and library materials.				
STRATEGIC PLAN GOAL: Providing multimedia and library materials purchases relates to the City's Goal of a "Financially Strong City with Service Excellence."				
SUMMARY OF ITEM				
The State of Texas CO-OP Purchasing Program, of which the City of Plano is a member, secures competitive bids for books and multimedia among many other things. Because of the City of Plano's participation, the purchase from Midwest Tapes in the amount of \$275,000 satisfies the law relating to this bid. Therefore, PPLS staff recommends purchase of these various library materials from Midwest Tapes through the Texas State Contract 715-N1 Print Materials and Multimedia. The City is authorized to purchase from the State Contract list pursuant to Section 271 Subchapter D of the Local Government Code and by doing so satisfies any State Law requiring local governments to seek competitive bids for items.				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
1. Memo from Julie Torstad dated 09.20.2010				



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

Memorandum

Date: September 20, 2010

To: Mary Ann Dunnavant

From: Julie Torstad, Library Technology Services Manager

Subject: City Council Approval for Midwest Tapes

Please request City Council approval to spend approximately \$275,000 with Midwest Tapes for the purchase of various library materials including music CDs, 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.

These purchases will be made through the State of Texas CO-OP Purchasing Program under Texas State Contract 715-N1 Print Materials and Multimedia with Midwest Tapes. The City is authorized to purchase from the State Contract list pursuant to Section 271 Subchapter D of the Local Government Code and by doing so satisfies any State Law requiring local governments to seek competitive bids for items.



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		October 11, 2010		
Department:		Library Administration		
Department Head		Cathy Ziegler		
Agenda Coordinator (include phone #): Mary Ann Dunnivant (4208)				
CAPTION				
Approval of the purchase of library materials for Plano Public Library System (PPLS) in the amount of \$350,000 from Baker and Taylor through an existing contract/agreement with Texas State Contract 715-N1 Print Materials and Multimedia; and authorizing the City Manager or his authorized designee to execute all necessary documents.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	FY 2010-11	Prior Year (CIP Only)	Current Year	Future Years
		0	1,000,000	0
	Encumbered/Expended Amount	0	0	0
	This Item	0	-350,000	0
	BALANCE	0	650,000	0
FUND(S): GENERAL FUND				
COMMENTS: Funds are included in the FY 2010-11 adopted budget to purchase Books, Multimedia, and Library materials. Approval of this item authorizes the City to purchase \$350,000 in Books, Multimedia, and Library materials. The remaining balance of funds will be used for other multimedia and library materials.				
STRATEGIC PLAN GOAL: Providing multimedia and library materials purchases relates to the City's Goal of a "Financially Strong City with Service Excellence."				
SUMMARY OF ITEM				
The State of Texas CO-OP Purchasing Program, of which the City of Plano is a member, secures competitive bids for books and multimedia among many other things. Because of the City of Plano's participation, the purchase from Baker & Taylor in the amount of \$350,000 satisfies the law relating to this bid. Therefore, PPLS staff recommends purchase of these various library materials from Baker & Taylor through the Texas State Contract 715-N1 Print Materials and Multimedia. The City is authorized to purchase from the State Contract list pursuant to Section 271 Subchapter D of the Local Government Code and by doing so satisfies any State Law requiring local governments to seek competitive bids for items.				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
1. Memo from Julie Torstad dated 09.20.2010				



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

Memorandum

Date: September 20, 2010
To: Mary Ann Dunnavant
From: Julie Torstad, Library Technology Services Manager
Subject: City Council Approval for Baker & Taylor

Please request City Council approval to spend approximately \$350,000 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.

These purchases will be made through the State of Texas CO-OP Purchasing Program under Texas State Contract 715-N1 Print Materials and Multimedia with Baker & Taylor. The City is authorized to purchase from the State Contract list pursuant to Section 271 Subchapter D of the Local Government Code and by doing so satisfies any State Law requiring local governments to seek competitive bids for items.



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		10-11-10		
Department:		Finance		
Department Head		Denise Tacke		
Agenda Coordinator (include phone #): Katherine Crumbley - x7479				
CAPTION				
To approve a contract by and between the City of Plano and Plano Economic Development Board, Inc. in the amount of \$855,758.00 to initiate, promote, monitor and perform activities related to economic development; and authorizing the City Manager or his designee to execute any and all documents in connection herewith.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2010-11	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	855,758	0	855,758
Encumbered/Expended Amount	0	0	0	0
This Item	0	-855,758	0	-855,758
BALANCE	0	0	0	0
FUND(S): GENERAL FUND				
COMMENTS: This item in the amount of \$855,758 is included in the approved 2010-11 budget.				
STRATEGIC PLAN GOAL: Economic Development relates to the City's Goal of "Financially Strong City with Service Excellence.				
SUMMARY OF ITEM				
This item approves the Agreement with Plano Economic Development Board, Inc. to perform activities related to economic development.				
List of Supporting Documents: Agreement			Other Departments, Boards, Commissions or Agencies	

**AGREEMENT BETWEEN CITY OF PLANO
AND PLANO ECONOMIC DEVELOPMENT BOARD, INC.**

STATE OF TEXAS)
)
COUNTY OF COLLIN) **KNOW ALL PERSONS BY THESE PRESENTS**

THIS AGREEMENT, this day made and entered into by and between the **CITY OF PLANO**, a Texas home rule municipal corporation (hereinafter referred to as "City"), and the **PLANO ECONOMIC DEVELOPMENT BOARD, INC., OF PLANO, TEXAS**, a Texas non-profit corporation, acting herein through its duly authorized representative (hereinafter referred to as "Board");

WHEREAS, it is deemed to be in the best interest of the residents of and the City of Plano to expend public funds for business expansion, redevelopment, attraction, and retention within the corporate limits of the City of Plano; and

WHEREAS, the City of Plano has employees who are knowledgeable in the field of economic development so that these employees can serve a valuable public service by assisting the Board in facilitating business expansion, redevelopment, attraction, and retention within the corporate limits of the City of Plano; and

WHEREAS, the City Council finds that expending public funds for business expansion, attraction, and retention is a valid public purpose; and

WHEREAS, on October 11, 2010, the Plano City Council authorized that an amount up to **EIGHT HUNDRED FIFTY FIVE THOUSAND SEVEN HUNDRED FIFTY EIGHT AND 00/100 DOLLARS (\$855,758.00)** shall be expended for the purposes as outlined in the attachment entitled "Plano Economic Development Board, Inc. Program of Work FY 10/11"; and

WHEREAS, the Board has established itself as being able to initiate, promote, monitor and perform activities related to economic development.

NOW, THEREFORE, for and in consideration of the covenants, obligations, and undertakings of each of the respective parties to the Agreement, the parties hereby agree as follows:

**Section I.
Purposes/Consideration; Priority of Documents; Designees**

1.01 Purpose/Consideration. The purpose of this Agreement is to provide terms and conditions under which City shall make available personnel and grant funding for in-kind services as shown in **Exhibit "B"**, the cumulative value of which shall be an amount up to **EIGHT HUNDRED FIFTY FIVE THOUSAND SEVEN HUNDRED FIFTY EIGHT AND 00/100 DOLLARS (\$855,758.00)** to be used for business expansion, attraction, redevelopment, and retention within the corporate limits of the City of Plano.

City's source of these grant funds is general revenues derived from collection of property, sales and other taxes, as well as other sources. In consideration of the City of Plano providing and administering funding for in-kind services shown in **Exhibit "B"**, including city employees that are on loan to the Plano Economic Development Board, in the amount of **EIGHT HUNDRED FIFTY FIVE THOUSAND SEVEN HUNDRED FIFTY EIGHT AND 00/100 DOLLARS (\$855,758.00)** for the 2010-2011 fiscal year, Board shall abide by the terms and conditions of this Agreement.

1.02 Priority of Documents. This Agreement consists of: Agreement Between City of Plano and Plano Economic Development Board, Inc.; Plano Economic Development Board, Inc. Program of Work FY 10/11, a copy of which is attached hereto and incorporated herein as **Exhibit "A"**; Board's FY 10/11 Proposed Budget Request, a copy of which is attached hereto and incorporated herein as **Exhibit "B"**; General Conditions of Agreement, a copy of which is attached hereto and incorporated herein as **Exhibit "C"**, and an Affidavit of No Prohibited Interest, a copy of which is attached hereto and incorporated herein as **Exhibit "D"**. The documents are complementary, and what is called for by one shall be binding as if called for by all. In the event of inconsistency in any provisions of the documents, the inconsistency shall be resolved by giving precedence to the documents in the order in which they are listed above.

1.03 Designees of Parties. Whenever used in this Agreement, the terms City, Plano City Manager, and Board shall also include the designees of each of the respective parties.

Section II. Permitted Uses of Funds

2.01. Board shall use any and all funds furnished by City under this Agreement for the purposes outlined in **Exhibits "A" and "B"**. City shall be responsible for administering funds provided hereunder.

a. If during the term of this Agreement, the Board wishes to utilize funds for purposes other than stated in **Exhibits "A" and "B"**, such change will only be allowed as follows:

1. Board, as evidenced by the official minutes of the Board authorizing the change, must first approve all changes;

2. The Board shall submit the request for the change to the City Manager, or his designee, for approval. The request for change shall state the reason for and the amount of the change requested.

3. No expenditure of funds contrary to the terms of this Agreement is permitted until written approval is received from the City Manager or his designee.

2.02 All funds shall be utilized in compliance with the Agreement and attachments hereto. Agreement compliance is defined as:

a. At least 90% of expenses funded by City monies and budgeted in each category of the application must be spent in that category. Notwithstanding the foregoing, funds may be shifted between categories with the approval of the Board and the Plano City Manager or his designee;

b. All other conditions of this Agreement must be met.

2.03 Board agrees to the general conditions of the grant as set forth in the attachment entitled "General Conditions of Contract" (hereinafter referred to as the "General Conditions"), a copy of which is attached hereto and incorporated herein for all purposes as **Exhibit "C"**.

2.04 Any City grant funds remaining with Board which are not expended or which are unencumbered on September 30, 2011, will revert to the City general revenues. However, upon the written request of Board and the written approval of City, funds remaining with Board on September 30, 2011, may be retained for use as approved by City.

Section III. Obligations of the Parties

3.01 General. City shall loan City employees to Board to be used for those purposes outlined in this agreement, including but not limited to providing administrative functions for Board activities, providing accounting, banking and investment services and acting as the custodian of funds.

3.02 City Employees. City shall loan up to five (5) full time employees to Board for the purpose of conducting economic development activities to fulfill Board's obligations to City as specified in this Agreement (hereinafter "Employee(s)" or "City Employee(s)"). The following Employees shall be provided for the purposes specified below:

- a) One of the Employees shall serve as Executive Director of the Plano Economic Development Board, Inc.;
- b) One Employee shall deal with issues related to businesses currently operating in Plano and in that capacity shall act as the Director of Business Retention and Expansion;
- (c) One Employee shall act as the Director of Technology Marketing and Redevelopment; and
- (d) Two Employees shall serve as an Administrative Assistants and provide clerical and secretarial support for Board and City Employees.

Section IV.
Suspension of Services

Upon thirty (30) days prior written notice to Board, City may temporarily suspend personnel services being provided to Board, either in whole or in part. City may exercise these options without cause and without prejudice to any remedy that City may be entitled to at law, in equity, or otherwise under this Agreement.

Section V.
Quarterly Reports to City

Staff shall present monthly oral reports of Board's activities to the Plano City Manager, who may require staff to present such reports to the Plano City Council. Each report shall contain information regarding the Board's activities for the previous month, including but not limited to, completed and on-going projects of Board, and any other information as requested by the Plano City Council or City staff. In addition the Board shall present an annual progress report outlining the Board's accomplishments over the previous calendar year. City will provide budget reports to Board upon request.

Section VI.
Term

The term of this Agreement shall coincide with the City's fiscal year, October 1, 2010, through September 30, 2011. At the expiration of this Agreement, Board shall have the continuing obligation to complete any unfulfilled terms and conditions of this Agreement, including but not limited to the submission of a final report to City.

Board and City herein recognize that the continuation of any contract after the close of any given fiscal year of the City of Plano, which fiscal year ends on September 30th of each year, shall be subject to Plano City Council approval. In the event that the Plano City Council does not approve the appropriation of funds for this Agreement, the Agreement shall terminate at the end of the fiscal year for which funds were appropriated and the parties shall have no further obligations hereunder.

Section VII.
Independent Contractor

Board covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City; that Board shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, except for City Employees, and shall be responsible for the acts and omissions of its officers, agents, contractors, subcontractors, consultants, and employees, other than City Employees provided pursuant to this Agreement; that the doctrine of respondeat superior shall not apply as between City and Board, and their respective officers, agents, employees, contractors, subcontractors and consultants,

and nothing herein shall be construed as creating a partnership or joint enterprise between City and Board.

**Section VIII.
Disbursement of Funds**

8.01 Funds provided for under this Agreement shall be disbursed as follows:

a. Recurring items such as office supplies, bills such as telephone, copier, mail, etc., shall be funded as soon as practical after October 1, as provided in this Agreement.

b. Non-recurring expenses such as purchases for capital equipment, travel, etc. shall be funded as soon as practical after the expense occurred as provided in this Agreement.

c. Expenses incurred after the termination date will not be reimbursed under this Agreement and the City shall assume no liability for same.

**Section IX.
Affidavit of No Prohibited Interest**

Board acknowledges and represents it is aware of the laws, City Charter, and City Code of Conduct regarding conflicts of interest. At the time of execution of this Agreement, a duly authorized representative of Board shall execute the Affidavit of No Prohibited Interest, attached and incorporated herein as **Exhibit "D"**. By execution, Board acknowledges and accepts that the existence of a prohibited interest at any time during the term of this Agreement will render the Agreement voidable.

**Section X.
Insurance Requirements/Indemnification**

10.01 Insurance. At its own expense, Board agrees to maintain during the term of this Agreement, or any extension thereof, insurance as follows:

a. Commercial General Liability - \$500,000 combined single limit coverage with \$1,000,000 general aggregate covering all premises, contents, and operations and including Personal Injury. The general aggregate limit is to apply per project.

b. The City is to be named as an additional insured in Board's Commercial General Liability policy.

c. A ten (10) day notice of cancellation or nonrenewal in writing shall be furnished by the Board's insurance carrier(s) or insurance agent(s) to the City's Risk Manager.

d. All companies must be authorized to do business in the State of Texas. The City of Plano prefers that all insurance companies be rated "A-VI" by A.M. Best or "A" or better by Standard and Poors.

10.02 Indemnification.

THE CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONTRACTOR'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE CONTRACTOR IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS. THE CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

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

**Section XI.
Non-Assignment**

Board shall not assign any interest in this Agreement, whether in whole or part, without the prior written approval of the City Council as reflected by a duly authorized resolution. Any such unapproved assignment shall render this Agreement voidable by City.

**Section XII.
Termination**

Either party shall have the right to an early termination of this Agreement by giving the other party written notice of intention of such early termination, with such notice to be given in writing sixty (60) days before the desired early termination date. The right to early termination of this Agreement is specifically reserved to both parties. However, such commitments and obligations of Board existing prior to notice of early termination shall be honored and shall not prejudice the right of Board to pay such costs previously incurred and to be paid out of the funds furnished by City. In the event of such early termination, or at the end of the term of this Agreement, Board agrees to return to City the unused balance of any funds previously disbursed to Board by City pursuant to this Agreement within ten (10) days of either event.

In the event Board breaches any of the terms or conditions of this Agreement, whether in whole or part, City shall have the right to immediately terminate this Agreement by providing written notice to Board, notwithstanding any provisions to the contrary. In the event of termination for breach, Board shall be solely responsible for funds expended contrary to the terms and conditions of this Agreement.

**Section XIII.
Miscellaneous**

13.01 Entire Agreement/Amendment. This Agreement and its attachments embody the entire agreement between the parties and may only be modified, amended or supplemented in writing if executed by both parties.

13.02 Authorized to Execute/Binding on Board. The undersigned represents and warrants that he or she is the duly authorized representative of Board and that this Agreement has been approved and accepted by the Board of Trustees (or equivalent) of Board pursuant to Board resolution, a certified copy of which is attached hereto.

13.03 Binding on the City of Plano. This Agreement shall not be considered fully executed or binding on the City of Plano until the same shall have been executed by Board, the City Manager or his designate, and the City Secretary, and approved and accepted by the City Council of the City of Plano in open meeting as required by law. After such approval and acceptance, City shall deliver to Board a certified copy of the Resolution as evidence of the authority of the City Manger or his

designate to bind the City of Plano to the covenants, terms and provisions of this Agreement and to perform the same in accordance herewith.

The parties agree that they, their officials, successors, legal representatives and administrators are bound to the terms and conditions of this Agreement.

13.04 Notice. Notice as required by this Agreement shall be in writing delivered to the parties as follows:

<u>City</u>	<u>Board</u>
Karen Rhodes c/o Budget Department City of Plano P.O Box 860358 Plano, Texas 75086-0358	Thomas Quirk Executive Vice President Plano Economic Development Board, Inc. 5601 Granite Parkway, Suite 310 Plano, Texas 75024
Telephone: 972/941-7194	Telephone: 972/208-8300
Fax: 972/941-7434	Fax: 972/208-8305

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

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

13.07 Venue. In the event of breach of this Agreement, venue for all causes of action shall be instituted and maintained in Collin County, Texas

IN TESTIMONY OF WHICH THE PARTIES HERETO AFFIXED THEIR SIGNATURES ON THIS THE _____ DAY OF _____, 2010.

**PLANO ECONOMIC DEVELOPMENT
BOARD, INC. OF PLANO, TEXAS**

Date: _____

By: _____
Thomas Quirk
Executive Vice President,
PLANO ECONOMIC
DEVELOPMENT BOARD, Inc.

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 _____)

This instrument was acknowledged before me on the _____ day of _____, 2010, by Thomas Quirk, Executive Vice President of **PLANO ECONOMIC DEVELOPMENT BOARD, INC. OF PLANO, TEXAS**, a Texas non-profit 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 _____, 2010 by **THOMAS H. MUEHLENBECK**, City Manager of the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, on behalf of such corporation.

Notary Public, State of Texas

EXHIBIT "A"



PROGRAM OF WORK FY 10/11

The Mission of the Plano Economic Development Board, Inc. is to:

- ❑ To identify and recruit businesses which contribute to Plano's economic well being by broadening and diversifying the tax base and creating quality employment opportunities, while maintaining the high quality of life.

- ❑ Provide for a vibrant economy through a pro-active business retention and expansion program that encourages Plano companies to grow and expand their presences in Plano.

- ❑ Encourage the local economy through a business re-development program that focuses on stimulating new investment in targeted geographic areas.

- ❑ Promote a pro-business environment in Plano, in coordination with the City of Plano, Plano Independent School District, Collin College, Collin County, Plano Chamber of Commerce and other interested parties, through the development of policies and resources that create sustainable competitive advantages.

PLANO ECONOMIC DEVELOPMENT BOARD, INC.
PROGRAM OF WORK
FY 10/11

ORGANIZATIONAL INITIATIVES

The organizational outreach and business recruitment efforts of the Plano Economic Development Board, Inc. will include, but are not limited to, the following initiatives:

- Pro-actively market the comparative advantages of Plano, on a local, national, and international basis, as the optimum city for relocation and expansion.
 - Conduct marketing trips to and advertising campaigns in targeted regions.
 - Distribute annual Progress Report, aerials map(s), CD, Community Profile and other collateral materials to targeted audiences.
 - Conduct ongoing campaign to market the community to Site Selectors.
 - Create and distribute quarterly newsletter
 - Work with media to promote new real estate deals and Plano.
 - Create two industry-profile brochures.

- Improve and evolve the new PEDB website to ensure relevance to the business, real estate and site selection communities.

- Partner with Collin County communities on opportunities to jointly promote the County as an advantageous location for relocations and expansions.

- Secure projects that represent 2,000 employment opportunities for the citizens of the community.

- Network with key members of the real estate brokerage and development community to promote and reinforce Plano's standing as the optimum city for relocation and expansion.
 - Participate in events to detail recent developments and opportunities.
 - Conduct meetings and outreach with top six leading tenant brokers; coordinated by Director of Technology Marketing.
 - Attend trade shows/conferences that pertain to corporate real estate, economic development and professional education.

- Stimulate technology entrepreneurship and small business development.
 - Work with partners to organize matchmaking program to link high-potential technology entrepreneurs and small companies with investors and venture capitalists.

- Expand and maintain the Economic Development contact management data base detailing activities, issues, recognitions, correspondence and projects.

- Collaborate with the Collin County Community College District, University of Texas – Dallas, and Southern Methodist University-in-Plano on opportunities to improve the skills, training and education of Plano's workforce.

RETENTION AND EXPANSION

The Business Retention and Expansion program is designed to sustain positive and ongoing relationships with businesses in Plano that promote a vibrant economy, encourage long term business success, and optimize opportunities for expansion and employment growth. These efforts will include, but are not limited to, the following initiatives:

- Conduct 80 Business Retention & Expansion visits with executives of Plano firms to:
 - Determine level of satisfaction with local business climate
 - Explore opportunities for existing business expansion or contraction
 - Explore plans for employee growth and retention
 - Identify areas of interest or concern
 - As applicable, involve Plano's leadership in resolution of concerns identified
 - Communicate relevant information identified with other regional allies

- Target businesses with expiring leases to encourage and influence lease renewal. Influence a lease renewal rate of 75% or greater.

- ❑ Organize business meetings or “Breakfast with the Mayor and City Council” events focused on relevant informational topics or feedback on Plano’s business climate. Host four events annually based on industry or geographic sectors.
- ❑ Collaborate with Collin College to promote information on workforce training and grant opportunities for Plano businesses.
- ❑ Collaborate with Small Business Development Center on an event or program to inform and assist small businesses in Plano.
- ❑ Explore opportunities with Plano Convention and Visitors Bureau to develop a campaign to promote the use of Plano hotels, meeting venues, and associated trades for business events in Plano.
- ❑ Conduct business satisfaction survey:
 - Goal: Launch electronic survey to over 600 business stakeholders to identify:
 - Satisfaction for doing business in Plano
 - Opportunities for business expansions
 - Business interests or concerns
 - Trends in business segments

MARKETING & REDEVELOPMENT

The technology marketing program of the Plano Economic Development Board will be designed to communicate the advantages of doing business in Plano, and the redevelopment efforts will be tailored to the needs of targeted areas of the community. These initiatives will include, among others, the following:

- ❑ Assist in the continued development of the **Research/Technology Crossroads** by both responding to the needs of area developers, real estate professionals and local businesses.
 - Market available sites to site selectors.
- ❑ Refine and implement a marketing program and the associated collateral materials designed to encourage relocation or expansion of technology businesses and other desirable employers into targeted areas.
 - Maintain a page on the website dedicated to R/T area.
 - Attend at least three technology trade shows and seek to cultivate four prospects per trade show.
- ❑ Assist in the coordination of the Southeast Plano Business Alliance to increase development of the area and its businesses.
 - Serve as advisor and on committees.
 - Promote alliance to new and existing firms.
- ❑ Work closely with the Director, Business Retention & Expansion and participate in at least 12 interviews with executives of eastern Plano firms.
 - Share information of at risk companies.
 - Develop leads of potential suppliers and partners.
- ❑ Stimulate redevelopment of aging retail sites.
 - Organize informal network of retail advisors to develop strategies to revitalize aging shopping centers.
 - Identify qualified developers and capital partners for potential redevelopment and or adaptive reuse, and connect them with owners of problematic sites.
 - Attend ICSC events and market to targeted retailers.
- ❑ Continue collaborating with existing businesses, developers and academic institutions to develop an interactive media/video game cluster in Plano.
 - Develop marketing collateral for prospective companies.
 - Attend two industry conferences.
 - Form and convene a Digital Media Cabinet for Plano companies and academic institutions to meet annually.

EXHIBIT "B"

PLANO ECONOMIC DEVELOPMENT BOARD, INC. REQUEST FY 10/11

BUDGET CATEGORY	10/11 REQUEST
610 Personal Services	
6103 Classified Salaries	\$410,469
6113 Longevity	\$2,732
6121 RSP	\$14,366
6122 TMRS	\$69,466
6123 Health Insurance	\$63,617
6125 Life Insurance	\$3,899
6127 Medicare	\$6,053
6132 Long Term Disability	\$328
6133 OPEB	\$10,080
Sub-Total	\$581,010
6141 Car Allowance	\$4,260
Sub-Total	\$585,270
620 Materials and Supplies	
6201 Office Supplies	\$3,000
6202 Postage	\$750
6203 Publications	\$713
6204 Food	\$3,000
6208 Minor Apparatus	\$1,000
6219 Promotional Supplies	\$5,000
6251 Software--Non-Capital	\$1,000
6252 Hardware--Non-Capital	\$1,000
Sub-Total	\$15,463
630 Contractual/Professional	
6303 Communications	\$2,500
6305 Insurance	\$2,900
6306 Advertising	\$143,797
6307 Travel/Professional Dev.	\$20,000
6312 Contracts-Professional	\$11,000
6313 Maintenance Agreements	\$972
6342 PC Replacement Charges	\$0
6346 Equipment Rentals	\$840
6347 Copy Machine Rental	\$1,616
6353 Leased Space	\$67,300
Sub-Total	\$250,925
640 Sundry	
6443 Associations	\$3,100
6499 Miscellaneous	\$1,000
Sub-Total	\$4,100
Grand Total	\$855,758

EXHIBIT "C"

GENERAL CONDITIONS OF AGREEMENT

The Contractor agrees to the following general conditions:

- (1) The Contractor must provide reports of its activities as described in Section V of the Agreement. Disbursements may cease if reports are not submitted.
- (2) All procedures, records, and reports of programs and accounts shall be available for inspection by a duly authorized representative of the City. The materials shall be made available during regular business hours and not later than three (3) business days after request to do so. An independent audit of Contractor's financial records, paid for by Contractor, shall be furnished to the City upon request.
- (3) The Contractor agrees to on-site inspection of its facilities and/or programs by the City, at City's option.
- (4) Improper use of funds provided by City may result in the termination of the Agreement, forfeiture of any outstanding monies to be provided by City, and/or recovery of previous payments, disqualification from future participation in grant program offered or sponsored by or through City.
- (5) Programs, activities, employment opportunity, etc. funded totally or partially by the City of Plano must be made available to all people regardless of race, color, religious, sex, age, national origin, disability, familial status, or political affiliation.
- (6) The Contractor and any person or organization it contracts with shall comply with all applicable laws, regulations, ordinances, and codes of the United States of American, the State of Texas, and the City of Plano.
- (7) The Contractor shall comply with all Federal, State and Local conflict of interest laws, statues, and regulations, and said laws shall apply to all parties and beneficiaries under this contract as well as to all officers, employees, and agents of City.
- (8) None of the funds, materials, property, or services provided directly under this contract shall be used for any partisan political activity or to further the election or defeat of any candidate for public office, or

for publicity, lobbying and/or propaganda purposes designed to support or defeat legislation pending before the Congress of the United States of America, the Legislature of the State of Texas, the City Council of the City of Plano, or any other political body.

- (9) The City shall have the right to review any and all contracts to be let by the Contractor prior to execution by the Contractor, and to require such terms and conditions as it deems necessary to protect the City's interests to be modified, added, or deleted.
- (10) For a non-profit corporation in existence for more than one (1) year at the time of the execution of this Agreement, Contractor agrees to provide a sworn statement attesting to the fact that the status of the Contractor is currently valid as a non-profit corporation.
- (11) If any of the terms, sections, subsections, sentences, clauses, phrases, provisions, covenants, conditions or any other part of this contract are for any reason held to be invalid, void or unenforceable, the remainder of the terms, sections, subsections, sentences, clauses, phrases, provisions, covenants, conditions or any other part of this contract shall remain in full force and effect and shall in no way be affected, impaired or invalidated.
- (12) City of Plano will utilize its equipment, materials, and personnel to publish newsletters for Contractor.

EXHIBIT "D"

AFFIDAVIT OF NO PROHIBITED INTEREST

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

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

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

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

**PLANO ECONOMIC DEVELOPMENT BOARD, INC., a
Texas non-profit corporation**

By: _____

Signature

Print Name

Title

Date

STATE OF _____

§

COUNTY OF _____

§

§

SUBSCRIBED AND SWORN TO before me this _____ day of _____,
2010.

Notary Public, State of _____



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		10/11/2010		
Department:		Technology Services		
Department Head		David Stephens		
Agenda Coordinator (include phone #): Amy Powell X7342				
CAPTION				
To Loblolly Consulting, LLC, increasing the contract by \$38,000 for the purchase of additional services related to the Customer and Utility Services Department's Business Process Mapping and Documentation Project, Change Order No. 1. (Contract No. DIR-SDD-893)				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2010-11	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	38,000	0	38,000
Encumbered/Expended Amount	0	0	0	0
This Item	0	-38,000	0	-38,000
BALANCE	0	0	0	0
FUND(S): TECHNOLOGY FUND (062)				
COMMENTS: Funds are available in the 2010-11 Technology Fund operating budget for additional consulting services in the amount of \$38,000. Approval of this change order No. 1 will allow for additional services from Loblolly for the Customer & Utility Services Business Process Mapping project.				
STRATEGIC PLAN GOAL: Developing policies, practices and other controls for this project relate to the City's Goal of "Financially Strong City with Service Excellence".				
SUMMARY OF ITEM				
Technology Services requests Council approval of Change Order No. 1 to Loblolly Consulting, LLC., to perform additional consulting services for the Customer and Utility Services Department, in the amount of \$38,000. This additional amount will bring the project total to \$136,000 and will provide for developing and incorporating policies, practices and other controls, SPS Product customizations into a single and separate Utility Billing Service Department's use of SPS Technology document of process flow diagrams and descriptions to include: 1.) support the 132 documented processes for the UBS Department; 2.) interview up to five (5) client staff; 3.) define SPS Technology. The change order will also extend the duration of the project for seven (7) consecutive weeks and a maximum of 558 hours of effort from October 4, 2010 through November 19, 2010. (DIR-SDD-893).				
List of Supporting Documents: Contract Modification No. 1			Other Departments, Boards, Commissions or Agencies	

THE STATE OF TEXAS § First Modification of Contract
§ **By and Between City of Plano and**
§ **Loblolly Consulting, LLC**
COUNTY OF COLLIN §

THIS FIRST MODIFICATION OF Contract (hereinafter "First Modification") is made and entered into on this the ____ day of _____, 20____, by and between **LOBLOLLY CONSULTING, LLC.** (hereinafter "Contractor"), Austin, Texas, and the **CITY OF PLANO, TEXAS**, a home rule municipal corporation (hereinafter "City"), acting by and through its City Manager or his designee.

WITNESSETH:

WHEREAS, City and Contractor entered into an Agreement on June 16, 2010 (hereinafter "Agreement") for business process mapping and documentation project (hereinafter "Services"); and

WHEREAS, City and Contractor desire to amend such Agreement in certain respects as set forth herein in this First Modification.

NOW THEREFORE, the Agreement is incorporated herein as if written word for word. Except as provided below, all other terms and conditions of the Agreement shall remain unchanged and shall remain in full force and effect. In the event of any conflict or inconsistency between the provisions set forth in this First Modification and the Agreement, priority of interpretation shall be in the following order: First Modification, Agreement. In consideration of the foregoing, and for other good and valuable consideration, the parties hereto agree as follows:

I.

Beginning on the effective date of this Modification and continuing through the remaining term of the Agreement, Section I. Scope of Services is hereby modified to include the services listed on the attached Exhibit "A-1."

II.

Beginning on the effective date of this Modification and continuing through the remaining term of the Agreement, Section II. Payment is hereby modified to increase the original sum by **THIRTY-EIGHT THOUSAND AND 00/100**

DOLLARS (\$38,000.00) for the additional services listed on the attached Exhibit "A-1."

IN WITNESS WHEREOF, the parties enter into this First Modification on the date first written above.

LOBLOLLY CONSULTING, LLC

By: _____
Name: _____
Title: _____

CITY OF PLANO, TEXAS

By: _____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 20____ by _____, (*Authorized representative*) _____ (*Title*) of **LOBLOLLY CONSULTING, LLC** a _____, (*Name of state*) limited liability company on behalf of said limited liability company.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

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

Notary Public, State of Texas



September 14, 2010

To: David Stephens, CIO
City of Plano
1520 Ave. K
Plano, TX 75086

From: Pat Wyman, President
Loblolly Consulting, LLC

Regarding PO Number: 381005 OC

Cost Center: 062

Subject: Change Request for Business Process Mapping and Documentation Project

SCOPE REVISIONS

- Develop and incorporate policies and practices and other controls, and SPS product customizations into a single document of process flow diagrams and descriptions.
- Define SPS technology:
 - related UBS process interactions
 - other UBS process City organizational dependencies
 - SPS product functions related to UBS processes
- Interview up to 5 Client staff.
- Work will support the 132 documented processes for the Utility Billing Service
- Extension of project duration for 7 consecutive weeks and a maximum of 558 hours of effort from October 4th, 2010 through November 19th, 2010.

DELIVERABLES

The final deliverables are:

- 2 bound printed color copies of the UBS SPS Processes Document
- CD that contains:
 - Executive Summary presentation in Microsoft PowerPoint format
 - UBS SPS Process Document in Microsoft Word format
 - All related documents and materials

PRICE

The value of this Change Request is \$38,000.



ASSUMPTIONS

- UBS related processes will not exceed 250
- 5 individual Client project participants
- Project end date will be November 19, 2010
- A maximum of two consecutive on-site days per week are required.

PAYMENT SCHEDULE

1. \$19,000 (50%) payable within 10 days of the signing of the "Authorization to Proceed"
2. \$19,000 (50%) payable within 10 days of project completion and turnover of all deliverables.

To confirm resources and dates, kindly email to pwyman@loblollyconsulting.com a copy of this signed Change Request and an updated Purchase Order reflecting the additional \$38,000.

Loblolly appreciates the opportunity to provide these expanded services to support your initiative.

The signature below represents the understanding and authorization to proceed for this engagement. The signature shall be granted by an individual sufficiently authorized to act as an agent of the City of Plano in such transactions.

Authorization to Proceed

Full name

Title

Signature

Date



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		October 11, 2010		
Department:		Public Information		
Department Head		Dana Conklin - 7321		
Agenda Coordinator (include phone #): Kimberly Simmons - 7307				
CAPTION				
A Resolution of the City of Plano, Texas approving the terms and conditions of funding agreements between the City of Plano, Texas and various arts organizations; authorizing their execution by the City Manager or his designee; and providing an effective date.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2010-2011	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	591,917	0	591,917
Encumbered/Expended Amount	0	0	0	0
This Item	0	-591,917	0	-591,917
BALANCE	0	0	0	0
FUND(S): CONVENTION AND TOURISM				
COMMENTS: Funding for this item is included in the approved 2010-2011 Budget. The total amount of \$591,917.01 is funded from hotel/motel tax revenue in the Convention and Tourism Fund.				
STRATEGIC PLANO GOALS: Funding for Cultural Arts relates to the City's goal of "Partnering for Community Benefit."				
SUMMARY OF ITEM				
This resolution establishes funding agreements with various arts organizations for a total amount of \$591,917.01 approved in the FY 2010-2011 budget. Funds will be distributed to the organizations on the following schedule: an amount not to exceed 50% of the funds by November 30, 2010; an amount not to exceed 25% of the funds by February 28, 2011; an amount not to exceed the remaining 25% of the funds by July 1, 2011. Small Grants (\$1,000 or less will be distributed in a single payment to the recipient organization by November 30, 2010				
ArtCentre of Plano	\$	62,439.27		
Chamberlain Performing Arts	\$	68,915.56		
Children's Chorus of Collin Co.	\$	9,035.59		
Dallas Asian Amer. Youth Orch.	\$	10,126.52		
Dallas Chinese Choral Society	\$	1,000.00		
Men of Note	\$	12,016.65		



**CITY OF PLANO
COUNCIL AGENDA ITEM**

Musical Angels, Inc.	\$ 1,000.00
Orchestra of New Spain	\$ 4,999.01
Plano Art Association	\$ 14,050.05
Plano Children's Theatre	\$ 43,000.00
Plano Civic Chorus	\$ 11,686.52
Plano Community Band	\$ 24,888.38
Plano Metropolitan Ballet	\$ 7,787.46
Plano Symphony Orchestra	\$ 231,806.19
Plano Teen Harmony	\$ 1,000.00
Quilters Guild of Plano	\$ 2,732.37
Rhythm Junkies	\$ 1,000.00
Rover Dramawerks	\$ 64,335.68
Strings of Color	\$ 1,000.00
TX Performing Chinese Arts Assoc.	\$ 5,756.32
Younger Generation Chorus	\$ 13,341.44
TOTAL:	\$ 591,917.01
List of Supporting Documents: Sample Funding Agreements : Arts Grants	Other Departments, Boards, Commissions or Agencies

A Resolution of the City of Plano, Texas approving the terms and conditions of funding agreements between the City of Plano, Texas and various arts organizations; authorizing their execution by the City Manager or his designee; and providing an effective date.

WHEREAS, the City Council established the Cultural Affairs Commission for the purpose of considering funding requests from outside organizations; and

WHEREAS, this Commission considered funding requests, conducted extensive review, and made recommendation for funding to the City Council based on established criteria; and

WHEREAS, the City Council received such recommendations during budget deliberations, conducted a public hearing on the proposed budget and approved and adopted the 2010-11 budget; and

WHEREAS, pursuant to Ordinance No. 2010-9-08, the City Council has appropriated \$591,917.01 for such purposes and finds that the services provided by the twenty-one organizations are beneficial to the public and serve a valid public purpose; and

WHEREAS, the City Council desires to enter into Funding Agreements with twenty-one arts organizations, sample copy are attached hereto by reference as Exhibit "A", which establish the terms and conditions for funding.

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

Section I. The City Council, after reviewing the terms and conditions of the Funding Agreements and the maximum recommended funding amounts for the below named organizations, hereby approves the Agreements and funding amounts, which are proper and in the best interests of the City of Plano.

Support of the Arts:

ArtCentre of Plano	\$	62,439.27
Chamberlain Performing Arts	\$	68,915.56
Children's Chorus of Collin Co.	\$	9,035.59
Dallas Asian Amer. Youth Orch.	\$	10,126.52
Dallas Chinese Choral Society	\$	1,000.00
Men of Note	\$	12,016.65
Musical Angels, Inc.	\$	1,000.00
Orchestra of New Spain	\$	4,999.01
Plano Art Association	\$	14,050.05
Plano Children's Theatre	\$	43,000.00
Plano Civic Chorus	\$	11,686.52

Plano Community Band	\$ 24,888.38
Plano Metropolitan Ballet	\$ 7,787.46
Plano Symphony Orchestra	\$ 231,806.19
Plano Teen Harmony	\$ 1,000.00
Quilters Guild of Plano	\$ 2,732.37
Rhythm Junkies	\$ 1,000.00
Rover Dramawerks	\$ 64,335.68
Strings of Color	\$ 1,000.00
TX Performing Chinese Arts Assoc.	\$ 5,756.32
Younger Generation Chorus	\$ 13,341.44

TOTAL: \$ 591,917.01

Section II. The City Manager, or his authorized designee, is hereby authorized to execute such Agreements on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreements, and to act in behalf of the City with regard to its terms and conditions.

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

DULY PASSED AND APPROVED this 11th day of October, 2010.

Phil Dyer, **MAYOR**

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

**FUNDING AGREEMENT BETWEEN CITY OF PLANO
AND
_____ (ARTS ORGANIZATION) _____**

The **CITY OF PLANO**, a Texas home rule municipal corporation (hereinafter referred to as “City”), and _____, a Texas non-profit corporation, acting herein through its duly authorized representative (hereinafter referred to as “Contractor”), enter into this funding agreement for the purposes set out herein.

WHEREAS, the City Council finds that the expenditure of public funds to Contractor is in the best interest of the residents and the City of Plano; and

WHEREAS, the City Council finds that expending public funds for the purpose stated above is a valid public purpose; and

WHEREAS, the City Council determined that the City should award grant funding in a sum not to exceed \$_____ for the purposes outlined in the attachment entitled “Cultural Affairs Commission FY 2010-11 _____ Grant Application” (hereinafter referred to as “Application”); and

WHEREAS, Contractor has established itself as having the ability to perform such activities.

NOW, THEREFORE, for and in consideration of the covenants, obligations, and undertakings of each of the respective parties to the Agreement, the parties hereby agree as follows:

**SECTION I
PURPOSES/CONSIDERATION; PRIORITY OF DOCUMENTS**

1.01 Purpose/Consideration.

This Agreement provides the terms and conditions under which City will make available grant funding in a sum not to exceed \$_____, for use to support the activities outlined in attached Exhibit A, Contractor’s funding application. The City's source of these funds is derived from the Hotel/Motel Tax revenues and total grant funding awarded to Contractor is subject to change pursuant to Section 5.07 of the agreement herein. Contractor agrees to accept responsibility for guaranteeing City grant funds are used for the items in Exhibit A.

In consideration of the City of Plano providing the funding specified for the 2010-11 fiscal year, Contractor shall abide by the terms and conditions of this Agreement.

1.02 Priority of Documents.

This Agreement consists of: Agreement between City of Plano and Contractor; Application; Revised Line Item Budget of Approved Expenditures; General Conditions; Affidavit of No Prohibited Interest; Insurance, and Employee Dishonesty Bond when required. The documents are complementary, and what is called for by one shall be binding as if called for by all. In the event of inconsistency in any provisions of the documents, the inconsistency shall be resolved by giving precedence to the documents in the order in which they are listed above.

**SECTION II
PERMITTED USES OF FUNDS; CONDITIONS OF USE**

2.01 Contractor shall use any and all funds furnished by City under this Agreement for the purposes outlined in the Application, which is made a part hereof by reference and incorporated as Exhibit A. In the event that the amount of funds requested and outlined for expenditure in the Application differs from the amount of funds actually awarded by the City, then Contractor shall submit a revised line item budget on a form provided by the City which shall be substituted for the original budget submitted with the Application. The revised line item budget must be submitted within 10 days of the execution of this Agreement and no funds shall be disbursed by the City to Contractor unless and until the revised line item budget is submitted. The **Revised Line Item Budget of Approved Expenditures** shall be signed by two members of Contractor's executive board or, in the alternative, one member of Contractor's executive board and the executive director. The revised line item budget shall be attached hereto and incorporated herein as part of Exhibit B.

Request to encumber city funds for projects, as approved in Exhibit A, to be completed after September 30, 2011 shall be submitted to the Contract Administrator for review and approval by September 1, 2011. If approved by the City, the encumbered city funds for specific projects must be completed by December 31, 2011. An additional expense report, in accordance with the reporting requirements set forth in 5.08, describing the expenditure of encumbered

funds must be submitted to the City no later than January 31, 2012. City funds may only be encumbered for projects that have commenced prior to September 1, 2011.

1. Subsequent to the initial contract submittal, should the Contractor wish to utilize funds for a purpose other than those stated in Exhibit A, the Contractor must submit an additional amended **Revised Line Item Budget of Approved Expenditures** and request approval from the Contractor's Board, Cultural Affairs Commission, and City Manager. No change may occur unless:
 - a. Approved by Contractor's Board, as evidenced by the official minutes of the Board authorizing the change;
 - b. Approved by the Cultural Affairs Commission, as evidenced by the official minutes of the Commission authorizing the change presented by the Contractor's Board;
 - c. Approved by the City Manager, or his designee, after submission of the requested change by the Cultural Affairs Commission.

Contractor cannot expend any funds for a purpose not listed in the funding application until receipt of written approval from the City Manager or his designee.

2.02 All expenditures of City funds must comply with the Agreement and attachments hereto. Agreement compliance is defined as:

1. At least 90% of expenses budgeted in each category of the Application and funded by City monies must be spent in that category;
2. All requests to reallocate funds from one line item to another must first be approved by the Contractor's Board, as evidenced by the official minutes of the Board authorizing the change and submitted to the Contract Administrator. If the Contract Administrator finds that the request conforms to Item 1 of 2.02 above, the amended line item budget shall be approved. If the Contract Administrator finds that the amendments do not conform to 2.02.1 above, the request must be approved in accordance with the conditions set forth in b and c of Item 1 of 2.01;
3. Contractor must meet all other conditions of this Agreement.

2.03 Contractor agrees to the general conditions of the grant as set forth in the attachment entitled “General Conditions of Contract” (hereinafter referred to as the “General Conditions”), which is attached hereto and incorporated herein for all purposes as Exhibit C.

2.04 Unexpended and unencumbered City funds that remain with the Contractor after September 30, 2011, will revert to the City and the Contractor must return said funds to the City on or before October 31, 2011. Encumbered City funds are those funds which the Contractor has received and obligated for payment by written agreement or contract to expend on approved projects listed in Exhibit A.

SECTION III NON-ASSIGNMENT

3.01 Contractor may not assign any interest in this Agreement, whether in whole or part, without prior approval of the City Council, as reflected by a duly authorized resolution.

SECTION IV INDEPENDENT CONTRACTOR

4.01 The City enters into this Agreement with Contractor for the purposes enumerated in Section I. Contractor asserts and agrees that Contractor is an independent contractor and not an officer, agent, servant or employee of the City. Contractor has exclusive control over the details of the activity, and is responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants. The doctrine of respondeat superior does not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors and consultants. Further, this agreement does not create a partnership or joint enterprise between City and Contractor.

**SECTION V
DISBURSEMENT OF FUNDS**

5.01 The City will disburse funds provided under this Agreement as follows:

1. for grants of **\$1,000** or less, 100 % of the funds by November 30, 2010.
For all grants greater than \$1,000:
2. an amount not to exceed 50% of the funds by November 30, 2010.
3. an amount not to exceed 25% of the funds by February 28, 2011.
4. an amount not to exceed the remaining 25% of the funds by July 1, 2011.

5.02 Expenses incurred after the termination date will not be reimbursed under this Agreement and the City shall assume no liability for same.

5.03 Failure to comply with the quarterly reporting requirements as outlined in Section 5.08 of this agreement below, including submittal of an executed certificate of compliance, shall result in funds being withheld from disbursement to the Contractor until a properly prepared report is submitted to the City as required.

5.04 Failure to submit a Revised Line Item Budget of Approved Expenditures as required in Section II of this agreement when applicable shall result in funds being withheld from disbursement to the Contractor until it is submitted to the City.

5.05 Failure to submit an Employee Dishonesty Bond as required in Section VII of this agreement when applicable shall result in funds being withheld from disbursement to the Contractor until it is submitted to the City as required.

5.06 Contractor recognizes that this Contract shall commence upon the effective date herein and continue in full force and effect until termination in accordance with its provisions. Contractor and City herein recognize that the continuation of any contract after the close of any given fiscal year of the City of Plano, which fiscal year ends on September 30th of each year, shall be subject to Plano City Council approval. In the event that the Plano City Council does not approve the appropriation of funds for this contract, the Contract shall terminate at the end of

the fiscal year for which funds were appropriated and the parties shall have no further obligations hereunder.

5.07 Contractor recognizes that grant funding is derived from Hotel/Motel tax revenue collected by the City. In the event that the Hotel/Motel Tax revenue generated for fiscal year 2010-11 is lower than initially anticipated, Contractor agrees that the total sum of grant funding awarded by the City to the Contractor may be adjusted accordingly at the City's sole discretion.

5.08 Reporting Requirements.

Within thirty (30) days of the close of each preceding quarter of the contract term, Contractor agrees to provide financial statements to the Contract Administrator sufficiently describing the expenditure of funds provided by the City to be compared against the Revised Line Item Budget of Approved Expenditures attached in Exhibit B, a list of all bank checks dispatched per quarter relating to the approved expenditures attached in Exhibit A, as well as a description of program goals achieved and/or progress of same for the preceding quarter. These reports shall contain a Certificate of Compliance with notarized signatures of two members of Contractor's executive board or, in the alternative, one member of Contractor's executive board and the executive director. In the case of grants of **\$1,000** or less, the report is due within 30 days of the close of the quarter in which the funds were expended. Reports submitted without required notarized signatures will be rejected and considered incomplete.

At the end of the Contract Term or in the event of earlier termination, Contractor shall provide a final written report of its activities and expenditures to the Contract Administrator within 30 days.

5.09 Failure to resolve any outstanding fire, health and safety code requirements found at the Contractor's facilities shall result in funds being withheld from disbursement to the Contractor until those requirements have been resolved. Contractor is responsible for the expenses to resolve the fire, health and safety code requirements and may not use City funds unless the activity has been approved on the projects list in Exhibit A.

5.10 If the Contractor is found to be in breach of any of the terms or conditions of a prior year's City funding agreement, or has any outstanding items from previous years funding agreement, funds from the current fiscal year shall be withheld from disbursement to the Contractor until those items have been resolved.

**SECTION VI
AFFIDAVIT OF NO PROHIBITED INTEREST**

6.01 Contractor acknowledges and represents it is aware of all applicable laws, the City Charter, and the City Code of Conduct regarding prohibited interests, and that the existence of a prohibited interest at any time will render the Contract voidable. At the time of signing this Agreement, a representative of Contractor shall execute the Affidavit of No Prohibited Interest, attached and incorporated herein as Exhibit D.

**SECTION VII
INSURANCE REQUIREMENTS/INDEMNIFICATION**

7.01 Insurance.

At its own expense, Contractor agrees to maintain during the term of this Agreement, or any extension thereof, insurance in the type and amounts as shown in Exhibit E. Additionally, this insurance must specifically cover any and all activities occurring on City property, including those activities of Contractor's employees, volunteers, vendors, contractors, or subcontractors. Contractor must provide proof of this insurance to the Contract Administrator within ten (10) days of execution of this Agreement. A properly executed certificate of insurance issued by Contractor's insurance agency is sufficient proof of insurance. Contractor must maintain a current copy of the certificate(s) and provide proof of its current insurance to City throughout the entire term of this Contract. These insurance requirements shall apply only to grants of more than \$1,000.

7.02 Employee Dishonesty Bond Requirement Applicable to Contractors Receiving Funds of \$75,000.00 or greater

At its own expense, a Contractor receiving funds in the amount of \$75,000.00 or more agrees to maintain during the term of this Agreement, or any extension thereof, an Employee Dishonesty Bond (EDB) in an amount equal to the total dollar amount awarded to Contractor by the City as defined in the grant agreement. A copy of proof of EDB shall be attached to the funding agreement as an additional attachment to Exhibit E. Bonds shall be placed with insurers with an A.M. Best rating of no less than A:VI or a Standard & Poors rating of A or better.

Bonds shall be made payable to the City of Plano and shall be maintained by Contractor throughout the contract period. Contractor must provide proof of this EDB to the Contract Administrator within ten (10) days of execution of this Agreement. A properly executed bond certificate issued by Contractor's insurance agency is sufficient proof of EDB. Contractor must maintain a current copy of the certificate(s) and provide proof of its current EDB to City throughout the entire term of this Contract. Failure to provide proof of the EDB shall result in the City withholding disbursement of funds to the Contractor until proof is provided as required under this Agreement.

7.03 Indemnification.

THE CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONTRACTOR'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE CONTRACTOR IS LEGALLY RESPONSIBLE IN THE

PERFORMANCE OF THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THE PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS. THE CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

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

SECTION VIII TERM

8.01 The term of this Agreement is November 1, 2010 through September 30, 2011. At the expiration of this Agreement, the Contractor shall have the continuing obligation to complete any unfulfilled terms and conditions of this Agreement, including the submission of a final written report to the City and any other requested written documentation verifying Contractor's compliance with the terms of this Agreement.

**SECTION IX
TERMINATION**

9.01 Each party shall have the right to an early termination of this Agreement by giving the other party written notice thirty (30) days before the desired early termination date. After a notice of early termination, Contractor may use City funds only for costs incurred before the notice of termination date. Contractor, however, must return to the City the unused balance of any funds disbursed to the Contractor pursuant to this Agreement within ten (10) days of either an early termination or at the end of the Agreement term.

9.02 In the event Contractor breaches any of the terms or conditions of this Agreement, whether in whole or part, the City may immediately terminate this Agreement by providing written notice to the Contractor, notwithstanding any other provision. Contractor is solely responsible for funds expended contrary to the terms and conditions of this Agreement, and must return the City funds within ten (10) days of the termination.

**SECTION X
MISCELLANEOUS**

10.01 Entire Agreement.

This Agreement and its attachments constitute the entire agreement between the parties. The parties may only modify, amend, or supplement this Agreement through a written instrument executed by both parties.

10.02 Authority

The undersigned represents and warrants that he or she is the duly authorized representative of the Contractor, and that the Board of Trustees (or equivalent) of the Contractor has approved and accepted this Agreement by Board resolution. Contractor at all times shall maintain a copy of the Board resolution for submission to City upon request.

This Agreement does not become binding on the City of Plano until both the Contractor and the City Manager, or his designee, has executed it.

10.03 Successors and Assigns

This Contract is binding upon the parties hereto, their successors, heirs, personal representatives and assigns.

10.04 Notice.

Any Notice, Reports or Documents required to be provided by this Agreement shall be in writing and delivered to the parties as follows:

City Contract Administrator
Dana Conklin
Director of Public Information
City of Plano
P.O. Box 860358
Plano, TX 75086-0358
Telephone: 972-941-7321

Contractor

Telephone: _____

10.05 Paragraph Headings.

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

10.06 Interpretation of Contract.

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

10.07 Venue.

The parties agree that the laws of the State of Texas govern this Agreement, and which is performable in Collin County, Texas. In the event of breach of this Agreement, venue for all causes of action shall exclusively lie in Collin County, Texas.

IN TESTIMONY OF WHICH THE PARTIES HERETO AFFIXED THEIR SIGNATURES ON THIS THE _____ DAY OF _____, 20__.

Organization

BY: _____
Name:
Title:

CITY OF PLANO, TEXAS

BY: _____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS)
)
COUNTY OF _____)

This instrument was acknowledged before me on the ____ day of _____, 2010 by _____, _____ of _____, a non-profit corporation, on behalf of said corporation.

Notary Public in and for the
State of Texas

STATE OF TEXAS)
)
COUNTY OF COLLIN)

This instrument was acknowledged before me on the ____ day of _____, 2010 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

EXHIBIT A

CONTRACTOR'S APPLICATION

This exhibit represents only the Budget portion of the application.

The remainder of the application is attached hereto by reference and is on file in the Parks and Recreation Department and may be viewed by contacting that office during normal business hours.



Cultural Arts Grant REVISED CATEGORY ITEM BUDGET for 2010-11 Grant

Please complete the following by providing information based on your FY 2010-11 request and attach a new copy of your complete budget for the year of your request.

Organization Name: _____

Address: _____

Contact Person: _____

Phone: _____ Email: _____

Total Approved City of Plano Funding for FY 2010-2011: _____

Budget Category: _____ **Amount:** _____

Personnel (Artistic, Cultural, Technical & Administrative Staff	
Contracted Services	
Travel	
Rental Expense	
Advertising and Promotion	
Insurance	
Other Expenses	
TOTAL PROJECTED AUTHORIZED EXPENDITURE OF CITY OF PLANO ARTS GRANT:	

EXHIBIT C

GENERAL CONDITIONS OF AGREEMENT

The Contractor agrees to the following general conditions:

- (1) The Contractor must provide reports of its activities as described in Section V, *Disbursement of Funds*, Paragraph 5.08, *Reporting Requirement*, of the Funding Agreement and as otherwise required by the Special Conditions of the Agreement on a format acceptable to the City. Disbursements may cease if reports are not submitted.
- (2) All of Contractor's procedures, records, and reports of programs and accounts shall be available for inspection by a duly authorized representative of the City. The materials shall be made available during regular business hours and not later than three (3) business days after request to do so. An independent audit of Contractor's financial records, paid for by Contractor, shall be furnished to the City upon request.
- (3) The Contractor agrees to on-site inspection of its facilities and/or programs by the City.
- (4) Improper use of funds provided by City may result in the termination of the Agreement, forfeiture of any outstanding monies to be provided by City, recovery of previous payments, recovery of bond payments, requirement for Contractor to provide an Employee Dishonesty Bond for future participation and/or disqualification of Contractor from future participation in grant programs offered or sponsored by or through City.
- (5) Programs, activities, employment opportunities, and other participatory events funded totally or partially by the City of Plano must be made available to all people regardless of race, color, religion, sex, age, national origin, disability, familial status, or political affiliation.
- (6) The Contractor and any person or organization it contracts with shall comply with all applicable laws, regulations, ordinances, and codes of the United States of America, the State of Texas, and the City of Plano.
- (7) The Contractor shall comply with all Federal, State and Local conflict of interest laws, statutes, and regulations; these laws shall apply to all parties and beneficiaries under this Agreement as well as to all officers, employees, and agents of City.
- (8) None of the funds, materials, property, or services provided directly under this Agreement shall be used for any partisan political activity, to further the election or defeat of any candidate for public office, or for publicity, lobbying and/or propaganda purposes designed to support or defeat legislation pending before the Congress of the United States of America, the Legislature of the State of Texas, the City Council of the City of Plano, or any other political body.
- (9) The City shall have the right to review any and all of Contractor's agreements and contracts prior to execution by the Contractor. City further has the right to require the modification, addition, or deletion of such terms and conditions in Contractor's agreements or contracts as it deems necessary to protect the City's interests.
- (10) For a non-profit corporation in existence for more than one (1) year at the time of the execution of this Agreement, Contractor agrees to provide a sworn statement attesting to the fact that the status of the Contractor is currently valid as a non-profit corporation. All corporations must be in good standing with the Texas Secretary of State.

EXHIBIT D

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 _____ §

COUNTY OF _____ §

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2010.

Notary Public, State of _____

EXHIBIT E

Contractor shall procure and maintain for the duration of the grant agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the services performed or to be performed hereunder by the Contractor, its agents, representatives, employees, volunteers, officers, directors or sub-contractors.

The Contractor shall maintain insurance with limits not less than \$1,000,000 per occurrence, \$2,000,000 aggregate and will be as broad as ISO Form Number GL 0002 (Ed 1/72) covering Comprehensive General Liability and ISO Form Number GL 0404 covering Broad Form Comprehensive General Liability, or ISO Commercial General Liability coverage ("occurrence" form CG 0001). Coverage will include: A) Premises - Operations, B) Broad Form Contractual Liability, C) Broad Form Property Damage and D) Personal Injury.

The policy will be endorsed to contain the following provisions: The City, its officials, employees, volunteers, Boards and Commissions are to be added as "Additional Insureds" in respect to liability arising out of any activities performed by or on behalf of the Contractor. The policy shall contain no special limitations to the scope of coverage afforded to the City. The Contractor's insurance coverage shall be primary and any insurance or self-insurance shall be in excess of the Contractor's insurance and shall not contribute with it. Certificate must include a waiver of subrogation as regards the workers compensation policy.

Insurance shall be placed with insurers with an A.M. Best rating of no less than A:VI or a Standard & Poors rating of A or better.

The Contractor shall furnish the City with a certificate of insurance which shows the coverage provided. The insurance policy will be endorsed to state that coverage shall not be suspended, voided, canceled, non-renewed, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular <input type="checkbox"/> Statutory
Council Meeting Date:	10/11/10
Department:	Public Information
Department Head	Dana Conklin x7321
Agenda Coordinator (include phone #): Kimberly Simmons x7307	

CAPTION

A Resolution of the City of Plano, Texas approving the terms and conditions of funding agreements between the City of Plano, Texas, and various special event organizers; authorizing their execution by the City Manager or his designee; and providing an effective date.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR: 2010-11	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	228,683	0	228,683
Encumbered/Expended Amount	0	0	0	0
This Item	0	-222,851	0	-222,851
BALANCE	0	5,832	0	5,832

FUND(S): GENERAL FUND; CONVENTION & TOURISM FUND

COMMENTS: Funding for this item in the amount of \$222,851 is included in the approved 2010-11 Budget leaving a balance of \$5,832. This amount includes \$151,358 from the Convention & Tourism Fund for the Plano Balloon Festival and \$71,493 from the General Fund for various special events held throughout the City.

STRATEGIC PLAN GOAL: Funding for the Plano Balloon Festival and various special events relates to the City's goal of "Partnering for Community Benefit."

SUMMARY OF ITEM

This resolution establishes funding agreements for eight special events totaling \$222,851 which was approved in the FY 2010-11 budget. Funds will be distributed to each event separately and no earlier than 120 days prior to the event. The special events are:

Komen Race for the Cure	\$ 8,670
Plano International Festival	\$ 8,925
AsiaFest	\$ 10,165
July 4 th Parade	\$ 3,811
Children's Christmas Parade	\$ 10,712
Taste of Plano	\$ 7,365
Red Balloon Relay	\$ 21,845
Plano Balloon Festival	\$ 151,358
TOTAL:	\$ 222,851



**CITY OF PLANO
COUNCIL AGENDA ITEM**

<p>List of Supporting Documents: Sample Funding Agreements: Special Event In-Kind</p>	<p>Other Departments, Boards, Commissions or Agencies</p>

A Resolution of the City of Plano, Texas approving the terms and conditions of funding agreements between the City of Plano, Texas and various special event organizers; authorizing their execution by the City Manager or his designee; and providing an effective date.

WHEREAS, the City Council established the Cultural Affairs Commission for the purpose of considering funding requests from outside organizations; and

WHEREAS, this Commission considered funding requests, conducted extensive review, and made recommendation for funding to the City Council based on established criteria; and

WHEREAS, the City Council received such recommendations during budget deliberations, conducted a public hearing on the proposed budget and approved and adopted the 2010-11 budget; and

WHEREAS, pursuant to Ordinance No. 2010-09-08, the City Council has appropriated \$222,851 for such purposes and finds that the services provided by the eight organizations are beneficial to the public and serve as a valid public purpose; and

WHEREAS, the City Council desires to enter into Funding Agreements with eight special events, a sample copy is attached hereto by reference as Exhibit "A", which establishes the terms and conditions for funding.

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

Section I. The City Council, after reviewing the terms and conditions of the Funding Agreements and the maximum recommended funding amounts for the below named organizations, hereby approves the Agreement and funding amounts, which are proper and in the best interests of the City of Plano.

Special Event Grants:

Komen Race for the Cure	\$ 8,670
Plano International Festival	\$ 8,925
AsiaFest	\$ 10,165
July 4 th Parade	\$ 3,811
Children's Christmas Parade	\$ 10,712
Taste of Plano	\$ 7,365
Red Balloon Relay	\$ 21,845
Plano Balloon Festival	\$ 151,358
TOTAL:	\$ 222,851

Section II. The City Manager, or his authorized designee, is hereby authorized to execute such Agreements on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreements, and to act in behalf of the City with regard to its terms and conditions.

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

DULY PASSED AND APPROVED this the 11th day of October, 2010.

Phil Dyer, **MAYOR**

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

**AGREEMENT BETWEEN CITY OF PLANO
AND
_____ (EVENT) _____**

The **CITY OF PLANO**, a Texas home rule municipal corporation (hereinafter referred to as “City”), and _____, a Texas non-profit corporation, acting herein through its duly authorized representative (hereinafter referred to as “Contractor”), enter into this agreement for performance of the _____.

WHEREAS, the City Council finds that the expenditure of public funds to _____, is in the best interest of the residents and the City of Plano; and

WHEREAS, the City Council finds that providing City Services for the purpose stated above is a valid public purpose; and

WHEREAS, the City Council determined that the City should expend the sum of _____ (**\$ 0.00**) for the purposes outlined in the attachment entitled Special Event Start Up/Sustaining or Urban-Town Center Grant Application (hereinafter referred to as “Application”); and

WHEREAS, Contractor has established itself as having the ability to perform such activities.

NOW, THEREFORE, for and in consideration of the covenants, obligations, and undertakings of each of the respective parties to the Agreement, the parties hereby agree as follows:

**SECTION I
PURPOSES/CONSIDERATION; PRIORITY OF DOCUMENTS**

1.01 Purpose/Consideration.

This Agreement provides the terms and conditions under which City will make available the sum of _____ (**cash**) _____ (**\$0.00**), to support the _____ (**event**) _____. The City's source of funds is hotel/motel tax

revenues/ general revenues derived from collection of property, sales and other taxes, as well as other sources. Contractor agrees to accept responsibility for guaranteeing City grant funds are used for the items in Exhibit A.

City further agrees to make available City Services as provided in Exhibit D in an amount not to exceed _____ **(in-kind)**_____ **(\$0.00)** to assist with the event _____ **(dates)**_____. The City will notify Contractor if Contractor's request for City Services exceeds the amount indicated in Exhibit D. Any City Services requested by Contractor that exceed the Exhibit D amount will be billed back to Contractor by City. Payments for those additional City Services are to be paid in full within 30 days of the invoice date.

In consideration of the City of Plano providing the funding specified for the 2010-11 fiscal year, Contractor shall abide by the terms and conditions of this Agreement.

1.02 Priority of Documents.

This Agreement consists of: Agreement between City of Plano and Contractor; Contractor's Application; Revised Line Item Budget of Approved Expenditures; Special Conditions; General Conditions; Affidavit of No Prohibited Interest; Insurance, and Employee Dishonesty Bond when required. The documents are complementary, and what is called for by one shall be binding as if called for by all. In the event of inconsistency in any provisions of the documents, the inconsistency shall be resolved by giving precedence to the documents in the order in which they are listed above.

**SECTION II
PERMITTED USES OF FUNDS; CONDITIONS OF USE**

2.01 Contractor shall perform all activities under this Agreement for the purposes outlined in the Application, which is made a part hereof by reference and incorporated as Exhibit A. In the event that the amount of funds requested and outlined for expenditure in the

Application differs from the amount of funds actually awarded by the City, then Contractor shall submit a revised line item budget on a form provided by the City which shall be substituted for the original budget submitted with the Application. The revised line item budget must be submitted within 10 days of the execution of the Agreement and no funds shall be disbursed by the City to Contractor unless and until the revised line item budget is submitted. The **Revised Line Item Budget of Approved Expenditures** shall be signed by two members of Contractor's executive board or, in the alternative, one member of Contractor's executive board and the executive director. The revised line item budget shall be attached hereto and incorporated herein as part of Exhibit B.

Request to encumber city funds for projects, as approved in Exhibit A, completed after September 30, 2011, shall be submitted to the City Contract Administrator for review and approval by September 1, 2011. If approved by the City, the encumbered city funds for specific projects must be completed by December 31, 2011. An additional expense report, in accordance with the reporting requirements set forth in 5.01, describing the expenditure of encumbered funds, must be submitted to the City no later than January 31, 2012. City funds may only be encumbered for projects that have commenced prior to September 1, 2011.

1. Subsequent to the initial contract submittal, should the Contractor wish to provide activities for a purpose other than those stated in Exhibit A, the Contractor must submit an a revision and request approval from the Contractor's Board, Cultural Affairs Commission, and City Manager. No change may occur unless:

- a. Approved by Contractor's Board, as evidenced by the official minutes of the Board authorizing the change;
- b. Approved by the Cultural Affairs Commission, as evidenced by the official minutes of the Commission authorizing the change presented by the Contractor's Board;
- c. Approved by the City Manager, or his designee, after submission of the requested change by the Cultural Affairs Commission.

Contractor cannot receive City Services for a purpose not listed in the funding application until receipt of written approval from the City Manager or his designee.

2.02 All City Services must comply with the Agreement and attachments hereto and Contractor must meet all other conditions of this Agreement.

2.03 Contractor agrees to the general conditions of the grant as set forth in the attachment entitled “General Conditions of Agreement” (hereinafter referred to as the “General Conditions”), which is attached hereto and incorporated herein for all purposes as Exhibit C.

SECTION III NON-ASSIGNMENT

3.01 Contractor may not assign any interest in this Agreement, whether in whole or part, without prior approval of the City Council, as reflected by a duly authorized resolution.

SECTION IV INDEPENDENT CONTRACTOR

4.01 The City enters into this Agreement with Contractor for the purposes enumerated in Section I. Contractor asserts and agrees that Contractor is an independent contractor and not an officer, agent, servant or employee of the City. Contractor has exclusive control over the details of the activity, and is responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants. The doctrine of respondeat superior does not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors and consultants. Further, this agreement does not create a partnership or joint enterprise between City and Contractor.

SECTION V

REPORTING REQUIREMENTS

5.01 Within sixty (60) days following the event, Contractor agrees to provide a final written report of its activities and expenditures along with associated financial statements to the Contract Administrator sufficiently describing the expenditure of funds provided by the City to be compared against the Application attached in Exhibit A and any Revised Line Item Budget of Approved Expenditures documents, as well as a description of program goals achieved and/or progress toward those goals. These reports shall contain a Certificate of Compliance with notarized signatures of two members of Contractor's executive board or, in the alternative, one member of Contractor's executive board and the executive director. Reports submitted without required notarized signatures will be rejected and considered incomplete.

SECTION VI AFFIDAVIT OF NO PROHIBITED INTEREST

6.01 Contractor acknowledges and represents it is aware of all applicable laws, the City Charter, and the City Code of Conduct regarding prohibited interests, and that the existence of a prohibited interest at any time will render the Contract voidable. At the time of signing this Agreement, a representative of Contractor shall execute the Affidavit of No Prohibited Interest, attached and incorporated herein as Exhibit E.

SECTION VII INSURANCE REQUIREMENTS/INDEMNIFICATION

7.01 Insurance.

At its own expense, Contractor agrees to maintain during the term of this Agreement, or any extension thereof, insurance in the type and amounts as shown in Exhibit F. Additionally, this insurance must specifically cover any and all activities occurring on City property, including those activities of Contractor's employees, volunteers, vendors, contractors, or subcontractors. Contractor must provide proof of this insurance to the Contract Administrator no less than 120

days prior to the event. A properly executed Certificate of Insurance issued by Contractor's insurance agency is sufficient proof of insurance. Contractor must maintain a current copy of the certificate(s) and provide proof of its current insurance to City throughout the entire term of this Contract.

7.02 Indemnification.

THE CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONTRACTOR'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE CONTRACTOR IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS. THE CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT

INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

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

SECTION VIII TERM

8.01 The term of this Agreement is November 1, 2010 through **_(last day of month of event)_____**. At the expiration of this Agreement, the Contractor shall have the continuing obligation to complete any unfulfilled terms and conditions of this Agreement, including the submission of a final written report to the City and any other requested written documentation verifying Contractor's compliance with the terms of this Agreement.

SECTION IX TERMINATION

9.01 Each party shall have the right to an early termination of this Agreement by giving the other party written notice thirty (30) days before the desired early termination date.

9.02 In the event Contractor breaches any of the terms or conditions of this Agreement, whether in whole or part, the City may immediately terminate this Agreement by providing written notice to the Contractor, notwithstanding any other provision.

SECTION X MISCELLANEOUS

10.01 Entire Agreement.

This Agreement and its attachments constitute the entire agreement between the parties. The parties may only modify, amend, or supplement this Agreement through a written instrument executed by both parties.

10.02 Authority

The undersigned represents and warrants that he or she is the duly authorized representative of the Contractor, and that the Board of Trustees (or equivalent) of the Contractor has approved and accepted this Agreement by Board resolution. Contractor at all times shall maintain a copy of the Board resolution for submission to City upon request.

This Agreement does not become or binding on the City of Plano until both the Contractor and the City Manager or his designee have executed it.

10.03 Successors and Assigns

This Contract is binding upon the parties hereto, their successors, heirs, personal representatives and assigns.

10.04 Notice.

Any Notice, Reports or Documents required to be provided by this Agreement shall be in writing and delivered to the parties as follows:

<u>City Contract Administrator</u>	<u>Contractor</u>
Karen Williams	_____
Event Supervisor	_____
City of Plano	_____
P O Box 860358	_____
Plano, TX 75086-0358	_____
972-941-7250	

10.05 Paragraph Headings.

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

10.06 Interpretation of Contract.

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

10.07 Venue.

The parties agree that the laws of the State of Texas govern this Agreement, and which is performable in Collin County, Texas. In the event of breach of this Agreement, venue for all causes of action shall exclusively lie in Collin County, Texas.

IN TESTIMONY OF WHICH THE PARTIES HERETO AFFIXED THEIR SIGNATURES ON THIS THE _____ DAY OF _____, 20____.

BY: _____

Name: _____

Title: _____

CITY OF PLANO, TEXAS

BY: _____

Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS)
)
COUNTY OF _____)

This instrument was acknowledged before me on the ____ day of _____,
20____ by _____, _____ of
_____, a non-profit corporation, on behalf of said corporation.

Notary Public in and for the
State of Texas

STATE OF TEXAS)
)
COUNTY OF COLLIN)

This instrument was acknowledged before me on the ____ day of _____,
20____ by **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

EXHIBIT A

CONTRACTOR'S APPLICATION

This exhibit represents only the Budget portion of the application.

The remainder of the application is attached hereto by reference and is on file in the Parks and Recreation Department and may be viewed by contacting that office during normal business hours.

EXHIBIT B



Special Event Grant

REVISED LINE ITEM BUDGET of APPROVED EXPENDITURES for 2010-11 Grant

Please complete the following by providing information based on your FY 2010-11 request and attach a new copy of your complete budget for the year of your request.

ORGANIZATION: _____

DATE: _____

Expenses:

	Total Event Budget	City Cash Requested	REVISED Cash Requested	City In-Kind Requested	REVISED In-Kind Requested
Contracted City Services*					
Contracted Services other than City		x	x	x	x
Rental Expenses					
In-Kind Services other than City		x	x	x	x
Advertising & Promotion					
Insurance				x	x
Other					
Grand Total					

CERTIFICATE OF COMPLIANCE

CERTIFICATION: _____ and _____,

members of the Board of Directors of _____
agency

By signatures below, we attest to the accuracy of the information contained in this document.

Attest: _____

signature

signature

name printed

name printed

date

date

*Typically provided as in-kind services only. These will be calculated in accordance with Fair Labor Standards Act.

EXHIBIT C

GENERAL CONDITIONS OF AGREEMENT

The Contractor agrees to the following general conditions:

- (1) The Contractor must provide reports of its activities as described in Section V, *Disbursement of Funds*, Paragraph 5.01, *Reporting Requirement*, of the Funding Agreement and as otherwise required by the Special Conditions of the Agreement on a format acceptable to the City. Disbursements may cease if reports are not submitted.
- (2) All of Contractor's procedures, records, and reports of programs and accounts shall be available for inspection by a duly authorized representative of the City. The materials shall be made available during regular business hours and not later than three (3) business days after request to do so. An independent audit of Contractor's financial records, paid for by Contractor, shall be furnished to the City upon request.
- (3) The Contractor agrees to on-site inspection of its facilities and/or programs by the City.
- (4) Improper use of funds provided by City may result in the termination of the Agreement, forfeiture of any outstanding monies to be provided by City, recovery of previous payments, recovery of bond payments, requirement for Contractor to provide an Employee Dishonesty Bond for future participation and/or disqualification of Contractor from future participation in grant programs offered or sponsored by or through City.
- (5) Programs, activities, employment opportunities, and other participatory events funded totally or partially by the City of Plano must be made available to all people regardless of race, color, religion, sex, age, national origin, disability, familial status, or political affiliation.
- (6) The Contractor and any person or organization it contracts with shall comply with all applicable laws, regulations, ordinances, and codes of the United States of America, the State of Texas, and the City of Plano.
- (7) The Contractor shall comply with all Federal, State and Local conflict of interest laws, statutes, and regulations; these laws shall apply to all parties and beneficiaries under this Agreement as well as to all officers, employees, and agents of City.
- (8) None of the funds, materials, property, or services provided directly under this Agreement shall be used for any partisan political activity, to further the election or defeat of any candidate for public office, or for publicity, lobbying and/or propaganda purposes designed to support or defeat legislation pending before the Congress of the United States of America, the Legislature of the State of Texas, the City Council of the City of Plano, or any other political body.
- (9) The City shall have the right to review any and all of Contractor's agreements and contracts prior to execution by the Contractor. City further has the right to require the modification, addition, or deletion of such terms and conditions in Contractor's agreements or contracts as it deems necessary to protect the City's interests.

EXHIBIT D

SPECIAL CONDITIONS

The Contractor agrees to the following special conditions:

Public safety for the event will be provided by the Plano Police personnel under the direction of the Plano Police Chief or the Police Chief's designee.

Expenses for City services, i.e., Police, Parks and Recreation, Fire, and Public Works Departments will be appropriated by the City in the amounts listed on the chart below. These expenses shall be considered a part of the grant by the City.

Department	
	\$
	\$
TOTAL	\$

The event shall not be charged by City departments for planning or administrative time performed during regular business hours.

The Contractor must show evidence of all incurred expenses for funds received under this Agreement.

Any surplus of City contributed funds following payment of all qualified expenses shall be remitted to the City of Plano.

Settlement of all qualified expenses and return of surplus funds to the City of Plano shall occur no later than sixty (60) days after the event end date.

The event shall be considered an officially sponsored event of the City of Plano, and as such follow and be subject to all regulations and guidelines of other City of Plano events.

Public Service booth space will be provided by the event to the City of Plano and its departments at no charge subject to space availability.

The event shall require all vendors to comply with applicable laws and regulations and publicly display all appropriate health, fire, sales tax, or other permits.

The event shall provide adequate handicapped parking or transportation.

The event will be responsible for application and completion of the Special Event Permit as prescribed by ordinance.

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 _____ §

COUNTY OF _____ §

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

Notary Public, State of _____

EXHIBIT F

INSURANCE

Contractor shall procure and maintain for the duration of the grant agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the services performed or to be performed hereunder by the Contractor, its agents, representatives, employees, volunteers, officers, directors or sub-contractors.

The Contractor shall maintain insurance with limits not less than \$1,000,000 per occurrence, \$2,000,000 aggregate and will be as broad as ISO Form Number GL 0002 (Ed 1/72) covering Comprehensive General Liability and ISO Form Number GL 0404 covering Broad Form Comprehensive General Liability, or ISO Commercial General Liability coverage ("occurrence" form CG 0001). Coverage will include: A) Premises - Operations, B) Broad Form Contractual Liability, C) Broad Form Property Damage and D) Personal Injury.

The policy will be endorsed to contain the following provisions: They City, its officials, employees, volunteers, Boards and Commissions are to be added as "Additional Insureds" in respect to liability arising out of any activities performed by or on behalf of the Contractor. The policy shall contain no special limitations to the scope of coverage afforded to the City. The Contractor's insurance coverage shall be primary and any insurance or self-insurance shall be in excess of the Contractor's insurance and shall not contribute with it. Certificate must include a waiver of subrogation as regards the workers compensation policy.

Insurance shall be placed with insurers with an A.M. Best rating of no less than A:VI or a Standard & Poor's rating of A or better.

The Contractor shall furnish the City with a certificate of insurance which shows the coverage provided. The insurance policy will be endorsed to state that coverage shall not be suspended, voided, canceled, non-renewed, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

**AGREEMENT BETWEEN CITY OF PLANO
AND
(EVENT)

TO PROVIDE IN-KIND CITY SERVICES**

The **CITY OF PLANO**, a Texas home rule municipal corporation (hereinafter referred to as “City”), and _____, a Texas non-profit corporation, acting herein through its duly authorized representative (hereinafter referred to as “Contractor”), enter into this agreement for performance of the _____.

WHEREAS, the City Council finds that the provision of in-kind services, “City Services,” to _____, is in the best interest of the residents and the City of Plano; and

WHEREAS, the City Council finds that providing City Services for the purpose stated above is a valid public purpose; and

WHEREAS, the City Council determined that the City should provide City Services in the nature of public safety, parks and recreation, solid waste collection or others for the purposes outlined in the attachment entitled Special Event Start Up/Sustaining or Urban-Town Center Grant Application (hereinafter referred to as “Application”); and

WHEREAS, Contractor has established itself as having the ability to perform such activities.

NOW, THEREFORE, for and in consideration of the covenants, obligations, and undertakings of each of the respective parties to the Agreement, the parties hereby agree as follows:

**SECTION I
PURPOSES/CONSIDERATION; PRIORITY OF DOCUMENTS**

1.01 Purpose/Consideration.

This Agreement provides the terms and conditions under which City will make available City Services valued at _____, to support the _____ as provided in Exhibit D attached hereto. The City's source of funds to pay for these City Services

is general revenues derived from collection of property, sales and other taxes, as well as other sources. The City will notify Contractor if Contractor's request for City Services exceeds amount indicated in Exhibit D. Any City Services requested by Contractor that exceed the Exhibit D amount will be billed back to Contractor by City. Payments for those additional City Services are to be paid in full within 30 days of the invoice date.

In consideration of the City of Plano providing the funding specified for the 2010-11 fiscal year, Contractor shall abide by the terms and conditions of this Agreement.

1.02 Priority of Documents.

This Agreement consists of: Agreement between City of Plano and Contractor; Contractor's Application; Revised Line Item Budget of Approved Expenditures; Special Conditions; General Conditions; Affidavit of No Prohibited Interest; Insurance, and Employee Dishonesty Bond when required. The documents are complementary, and what is called for by one shall be binding as if called for by all. In the event of inconsistency in any provisions of the documents, the inconsistency shall be resolved by giving precedence to the documents in the order in which they are listed above.

SECTION II PERMITTED USES OF FUNDS; CONDITIONS OF USE

2.01 Contractor shall perform all activities under this Agreement for the purposes outlined in the Application, which is made a part hereof by reference and incorporated as Exhibit A. In the event that the amount of funds requested and outlined for expenditure in the Application differs from the amount of funds actually awarded by the City, then Contractor shall submit a revised line item budget on a form provided by the City which shall be substituted for the original budget submitted with the Application. The revised line item budget must be submitted within 10 days of the execution of this Agreement and no funds shall be disbursed by the City to Contractor unless and until the revised line item budget is submitted. The **Revised**

Line Item Budget of Approved Expenditures shall be signed by two members of Contractor's executive board or, in the alternative, one member of Contractor's executive board and the executive director. The revised line item budget shall be attached hereto and incorporated herein as part of Exhibit B.

Request to encumber city funds for projects, as approved in Exhibit A, completed after September 30, 2011, shall be submitted to the City Contract Administrator for review and approval by September 1, 2011. If approved by the City, the encumbered city funds for specific projects must be completed by December 31, 2011. An additional expense report, in accordance with the reporting requirements set forth in 5.01, describing the expenditure of encumbered funds must be submitted to the City no later than January 31, 2012. City funds may only be encumbered for projects that have commenced prior to September 1, 2011.

1. Subsequent to the initial contract submittal, should the Contractor wish to provide activities for a purpose other than those stated in Exhibit A, the Contractor must submit an additional amended **Revised Line Item Budget of Approved Expenditures** and request approval from the Contractor's Board, Cultural Affairs Commission, and City Manager. No change may occur unless:

- a. Approved by Contractor's Board, as evidenced by the official minutes of the Board authorizing the change;
- b. Approved by the Cultural Affairs Commission, as evidenced by the official minutes of the Commission authorizing the change presented by the Contractor's Board;
- c. Approved by the City Manager, or his designee, after submission of the requested change by the Cultural Affairs Commission.

Contractor cannot receive City Services for a purpose not listed in the funding application until receipt of written approval from the City Manager or his designee.

2.02 All City Services must comply with the Agreement and attachments hereto and Contractor must meet all other conditions of this Agreement.

2.03 Contractor agrees to the general conditions of the grant as set forth in the attachment entitled “General Conditions of Agreement” (hereinafter referred to as the “General Conditions”), which is attached hereto and incorporated herein for all purposes as Exhibit C.

**SECTION III
NON-ASSIGNMENT**

3.01 Contractor may not assign any interest in this Agreement, whether in whole or part, without prior approval of the City Council, as reflected by a duly authorized resolution.

**SECTION IV
INDEPENDENT CONTRACTOR**

4.01 The City enters into this Agreement with Contractor for the purposes enumerated in Section I. Contractor asserts and agrees that Contractor is an independent contractor and not an officer, agent, servant or employee of the City. Contractor has exclusive control over the details of the activity, and is responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants. The doctrine of respondeat superior does not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors and consultants. Further, this agreement does not create a partnership or joint enterprise between City and Contractor.

**SECTION V
REPORTING REQUIREMENTS**

5.01 Within sixty (60) days following the event, Contractor agrees to provide a final written report of its activities and expenditures along with associated financial statements to the Contract Administrator sufficiently describing the expenditure of funds provided by the City to be compared against the Application attached in Exhibit A and any Revised Line Item Budget of Approved Expenditures documents, as well as a description of program goals achieved and/or

progress toward those goals. These reports shall contain a Certificate of Compliance with notarized signatures of two members of Contractor's executive board or, in the alternative, one member of Contractor's executive board and the executive director. Reports submitted without required notarized signatures will be rejected and considered incomplete.

SECTION VI AFFIDAVIT OF NO PROHIBITED INTEREST

6.01 Contractor acknowledges and represents it is aware of all applicable laws, the City Charter, and the City Code of Conduct regarding prohibited interests, and that the existence of a prohibited interest at any time will render the Contract voidable. At the time of signing this Agreement, a representative of Contractor shall execute the Affidavit of No Prohibited Interest, attached and incorporated herein as Exhibit E.

SECTION VII INSURANCE REQUIREMENTS/INDEMNIFICATION

7.01 Insurance.

At its own expense, Contractor agrees to maintain during the term of this Agreement, or any extension thereof, insurance in the type and amounts as shown in Exhibit F. Additionally, this insurance must specifically cover any and all activities occurring on City property, including those activities of Contractor's employees, volunteers, vendors, contractors, or subcontractors. Contractor must provide proof of this insurance to the Contract Administrator no less than 120 days prior to the event. A properly executed Certificate of Insurance issued by Contractor's insurance agency is sufficient proof of insurance. Contractor must maintain a current copy of the certificate(s) and provide proof of its current insurance to City throughout the entire term of this Contract.

7.02 Indemnification.

THE CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONTRACTOR'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE CONTRACTOR IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS. THE CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

CONTRACTOR AT ITS OWN EXPENSE IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS. CITY RESERVES THE RIGHT TO

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

SECTION VIII TERM

8.01 The term of this Agreement is November 1, 2010 through **_(last day of month of event)_____**. At the expiration of this Agreement, the Contractor shall have the continuing obligation to complete any unfulfilled terms and conditions of this Agreement, including the submission of a final written report to the City and any other requested written documentation verifying Contractor's compliance with the terms of this Agreement.

SECTION IX TERMINATION

9.01 Each party shall have the right to an early termination of this Agreement by giving the other party written notice thirty (30) days before the desired early termination date. After a notice of early termination, Contractor may use City funds only for costs incurred before the notice of termination date.

9.02 In the event Contractor breaches any of the terms or conditions of this Agreement, whether in whole or part, the City may immediately terminate this Agreement by providing written notice to the Contractor, notwithstanding any other provision.

SECTION X MISCELLANEOUS

10.01 Entire Agreement.

This Agreement and its attachments constitute the entire agreement between the parties. The parties may only modify, amend, or supplement this Agreement through a written instrument executed by both parties.

10.02 Authority

The undersigned represents and warrants that he or she is the duly authorized representative of the Contractor, and that the Board of Trustees (or equivalent) of the Contractor has approved and accepted this Agreement by Board resolution. Contractor at all times shall maintain a copy of the Board resolution for submission to City upon request.

This Agreement does not become or binding on the City of Plano until both the Contractor and the City Manager or his designee have executed it.

10.03 Successors and Assigns

This Contract is binding upon the parties hereto, their successors, heirs, personal representatives and assigns.

10.04 Notice.

Any Notice, Reports or Documents required to be provided by this Agreement shall be in writing and delivered to the parties as follows:

<u>City Contract Administrator</u>	<u>Contractor</u>
Karen Williams	_____
Event Supervisor	_____
City of Plano	_____
P O Box 860358	_____
Plano, TX 75086-0358	_____
972-941-7250	

10.05 Paragraph Headings.

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

10.06 Interpretation of Contract.

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

10.07 Venue.

The parties agree that the laws of the State of Texas govern this Agreement, and which is performable in Collin County, Texas. In the event of breach of this Agreement, venue for all causes of action shall exclusively lie in Collin County, Texas.

**IN TESTIMONY OF WHICH THE PARTIES HERETO AFFIXED THEIR
SIGNATURES ON THIS THE _____ DAY OF _____, 20____.**

BY: _____

Name: _____

Title: _____

CITY OF PLANO, TEXAS

BY: _____

Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS)
)
COUNTY OF _____)

This instrument was acknowledged before me on the ____ day of _____,
20____ by _____, _____ of
_____, a non-profit corporation, on behalf of said corporation.

Notary Public in and for the
State of Texas

STATE OF TEXAS)
)
COUNTY OF COLLIN)

This instrument was acknowledged before me on the ____ day of _____,
20____ by **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

EXHIBIT A

CONTRACTOR'S APPLICATION

This exhibit represents only the Budget portion of the application.

The remainder of the application is attached hereto by reference and is on file in the Parks and Recreation Department and may be viewed by contacting that office during normal business hours.

EXHIBIT B



Special Event Grant

REVISED LINE ITEM BUDGET of APPROVED EXPENDITURES for 2010-11 Grant

Please complete the following by providing information based on your FY 2010-11 request and attach a new copy of your complete budget for the year of your request.

ORGANIZATION: _____

DATE: _____

Expenses:

	Total Event Budget	City Cash Requested	REVISED Cash Requested	City In-Kind Requested	REVISED In-Kind Requested
Contracted City Services*					
Contracted Services other than City		x	x	x	x
Rental Expenses					
In-Kind Services other than City		x	x	x	x
Advertising & Promotion					
Insurance				x	x
Other					
Grand Total					

CERTIFICATE OF COMPLIANCE

CERTIFICATION: _____ and _____,

members of the Board of Directors of _____
agency

By signatures below, we attest to the accuracy of the information contained in this document.

Attest: _____

signature

signature

name printed

name printed

date

date

*Typically provided as in-kind services only. These will be calculated in accordance with Fair Labor Standards Act.

EXHIBIT C

GENERAL CONDITIONS OF AGREEMENT

The Contractor agrees to the following general conditions:

- (1) The Contractor must provide reports of its activities as described in Section V, *Disbursement of Funds*, Paragraph 5.01, *Reporting Requirement*, of the Funding Agreement and as otherwise required by the Special Conditions of the Agreement on a format acceptable to the City. Disbursements may cease if reports are not submitted.
- (2) All of Contractor's procedures, records, and reports of programs and accounts shall be available for inspection by a duly authorized representative of the City. The materials shall be made available during regular business hours and not later than three (3) business days after request to do so. An independent audit of Contractor's financial records, paid for by Contractor, shall be furnished to the City upon request.
- (3) The Contractor agrees to on-site inspection of its facilities and/or programs by the City.
- (4) Improper use of funds provided by City may result in the termination of the Agreement, forfeiture of any outstanding monies to be provided by City, recovery of previous payments, recovery of bond payments, requirement for Contractor to provide an Employee Dishonesty Bond for future participation and/or disqualification of Contractor from future participation in grant programs offered or sponsored by or through City.
- (5) Programs, activities, employment opportunities, and other participatory events funded totally or partially by the City of Plano must be made available to all people regardless of race, color, religion, sex, age, national origin, disability, familial status, or political affiliation.
- (6) The Contractor and any person or organization it contracts with shall comply with all applicable laws, regulations, ordinances, and codes of the United States of America, the State of Texas, and the City of Plano.
- (7) The Contractor shall comply with all Federal, State and Local conflict of interest laws, statutes, and regulations; these laws shall apply to all parties and beneficiaries under this Agreement as well as to all officers, employees, and agents of City.
- (8) None of the funds, materials, property, or services provided directly under this Agreement shall be used for any partisan political activity, to further the election or defeat of any candidate for public office, or for publicity, lobbying and/or propaganda purposes designed to support or defeat legislation pending before the Congress of the United States of America, the Legislature of the State of Texas, the City Council of the City of Plano, or any other political body.
- (9) The City shall have the right to review any and all of Contractor's agreements and contracts prior to execution by the Contractor. City further has the right to require the modification, addition, or deletion of such terms and conditions in Contractor's agreements or contracts as it deems necessary to protect the City's interests.

EXHIBIT D

SPECIAL CONDITIONS

The Contractor agrees to the following special conditions:

Public safety for the event will be provided by the Plano Police personnel under the direction of the Plano Police Chief or the Police Chief's designee.

Expenses for City services, i.e., Police, Parks and Recreation, Fire, and Public Works Departments will be appropriated by the City in the amounts listed on the chart below. These expenses shall be considered a part of the grant by the City.

Department	
	\$
	\$
TOTAL	\$

The event shall not be charged by City departments for planning or administrative time performed during regular business hours.

The Contractor must show evidence of all incurred expenses for funds received under this Agreement.

Any surplus of City contributed funds following payment of all qualified expenses shall be remitted to the City of Plano.

Settlement of all qualified expenses and return of surplus funds to the City of Plano shall occur no later than sixty (60) days after the event end date.

The event shall be considered an officially sponsored event of the City of Plano, and as such follow and be subject to all regulations and guidelines of other City of Plano events.

Public Service booth space will be provided by the event to the City of Plano and its departments at no charge subject to space availability.

The event shall require all vendors to comply with applicable laws and regulations and publicly display all appropriate health, fire, sales tax, or other permits.

The event shall provide adequate handicapped parking or transportation.

The event will be responsible for application and completion of the Special Event Permit as prescribed by ordinance.

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 _____ §

COUNTY OF _____ §

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

Notary Public, State of _____

EXHIBIT F

INSURANCE

Contractor shall procure and maintain for the duration of the grant agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the services performed or to be performed hereunder by the Contractor, its agents, representatives, employees, volunteers, officers, directors or sub-contractors.

The Contractor shall maintain insurance with limits not less than \$1,000,000 per occurrence, \$2,000,000 aggregate and will be as broad as ISO Form Number GL 0002 (Ed 1/72) covering Comprehensive General Liability and ISO Form Number GL 0404 covering Broad Form Comprehensive General Liability, or ISO Commercial General Liability coverage ("occurrence" form CG 0001). Coverage will include: A) Premises - Operations, B) Broad Form Contractual Liability, C) Broad Form Property Damage and D) Personal Injury.

The policy will be endorsed to contain the following provisions: They City, its officials, employees, volunteers, Boards and Commissions are to be added as "Additional Insureds" in respect to liability arising out of any activities performed by or on behalf of the Contractor. The policy shall contain no special limitations to the scope of coverage afforded to the City. The Contractor's insurance coverage shall be primary and any insurance or self-insurance shall be in excess of the Contractor's insurance and shall not contribute with it. Certificate must include a waiver of subrogation as regards the workers compensation policy.

Insurance shall be placed with insurers with an A.M. Best rating of no less than A:VI or a Standard & Poor's rating of A or better.

The Contractor shall furnish the City with a certificate of insurance which shows the coverage provided. The insurance policy will be endorsed to state that coverage shall not be suspended, voided, canceled, non-renewed, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY	
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory	
Council Meeting Date:	10/11/10
Department:	Parks and Recreation
Department Head	Amy Fortenberry
Agenda Coordinator (include phone #): Susan Berger (7255)	

CAPTION

A Resolution of the City of Plano, Texas approving the terms and conditions of an agreement by and between the City of Plano and Maurice Barnett Geriatric Wellness Center, Inc., for administration of the senior transportation program; and authorizing its execution by the City Manager or his designee; and providing an effective date.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR: 2010-11	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	60,000	0	60,000
Encumbered/Expended Amount	0	0	0	0
This Item	0	-25,000	0	-25,000
BALANCE	0	35,000	0	35,000

FUND(S): GENERAL FUND

COMMENTS: Funds are available from an agreement signed into effect September 2010 with Dallas Area Rapid Transit to provide funds for the Senior Transportation Agreement. The programs will be administered by Maurice Barnett Geriatric Wellness Center Inc. The remaining balance will be used for contractual expenditures related to the program.

STRATEGIC PLAN GOAL: Administration of the Senior Transportation Program relates to the City's Goal of a "Financially Strong City with Service Excellence."

SUMMARY OF ITEM

Approval is recommended for the terms and conditions set forth in the agreement between the City of Plano, Texas, and Maurice Barnett Geriatric Wellness Center for administration of the Senior Transportation Program. The agreement is for a two (2) year period beginning as of the effective date of this agreement with the City. This program will service those Plano seniors 65 and older who are unable to access transportation through personal means or public/private services. This service will allow trips to businesses, grocery stores and medical services in Plano by means of a cab voucher program. Maurice Barnett Geriatric Wellness Center has administered this program for the last two years.

Additionally, the Maurice Barnett Geriatric Wellness Center will provide insurance.



**CITY OF PLANO
COUNCIL AGENDA ITEM**

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

A Resolution of the City of Plano, Texas approving the terms and conditions of an agreement by and between the City of Plano and Maurice Barnett Geriatric Wellness Center, Inc., for administration of the senior transportation program; and authorizing its execution by the City Manager or his designee; and providing an effective date.

WHEREAS, the City Council has been presented a proposed Agreement by and between City of Plano and Maurice Barnett Geriatric Wellness Center, Inc., a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (herein called "Agreement"); and,

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

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

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

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

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

DULY PASSED AND APPROVED this the 11th day of October, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

**FUNDING AGREEMENT BETWEEN CITY OF PLANO
AND
MAURICE BARNETT GERIATRIC WELLNESS CENTER, INC.**

The **CITY OF PLANO**, a Texas home rule municipal corporation (hereinafter referred to as "City"), and **MAURICE BARNETT GERIATRIC WELLNESS CENTER, INC.**, a Texas non-profit corporation, acting herein through its duly authorized representative (hereinafter referred to as "Contractor"), enter into this funding agreement for Administration of the Senior Transportation Program entitled Senior Rides Program.

WHEREAS, the City Council finds that the expenditure of public funds to Contractor is in the best interest of the residents and the City of Plano; and

WHEREAS, the City Council finds that expending public funds for the purpose stated above is a valid public purpose; and

WHEREAS, the City Council finds that the City should expend the sum of \$25,000 per year for two years for the purposes outlined in the specifications attached hereto as **Exhibit A** (the "Specifications") provided that funds are available as set forth in the Senior Citizen Transportation Funding Agreement between the City and Dallas Area Rapid Transit (the "DART Agreement") and attached hereto as **Exhibit B**.

WHEREAS, Contractor has established itself as having the ability to perform such activities.

NOW, THEREFORE, for and in consideration of the covenants, obligations, and undertakings of each of the respective parties to the Agreement, the parties hereby agree as follows:

**SECTION I
PURPOSES/CONSIDERATION; PRIORITY OF DOCUMENTS**

1.01 Purpose/Consideration.

This Agreement provides the terms and conditions under which City will make available the sum of \$25,000 for the first year and distribute funds the second year as outlined in the DART Agreement, for use to support the activities outlined in the Specifications. The City's sole source of funding for this contract is provided by DART pursuant to the DART Agreement. Contractor agrees to accept responsibility for guaranteeing City grant funds are used solely for the items in **Exhibit A**. In consideration of the City of Plano providing the funding specified for the 2010-11 and 2011-12 fiscal years, Contractor shall abide by the terms and conditions of this Agreement.

1.02 Priority of Documents.

This Agreement and its Exhibits are complementary, and what is called for by one shall be binding as if called for by all. In the event of inconsistency in any provisions of the documents, the inconsistency shall be resolved by giving precedence to the documents in the following order: This Agreement, Exhibit A, Exhibit B, Exhibit C, Exhibit D, Exhibit E.

**SECTION II
PERMITTED USES OF FUNDS; CONDITIONS OF USE**

2.01 Contractor shall use any and all funds furnished by City under this Agreement for the purposes outlined in **Exhibit A**.

1. Subsequent to the initial contract submittal, should the Contractor wish to utilize funds for a purpose other than those stated in **Exhibit A**, the Contractor must submit an additional amended Line Item Budget of Approved Expenditures and request approval from the Contractor's Board, and City Manager. No change may occur unless:

- a. Approved by Contractor's Board, as evidenced by the official minutes of the Board authorizing the change; and
- b. Approved by the City Manager

Contractor cannot expend any funds for a purpose not listed in the funding application until receipt of written approval from the City Manager or his designee.

2.02 All expenditures of City funds must comply with the Agreement and attachments hereto. Agreement compliance is defined as:

1. At least 90% of expenses budgeted in each category of the Proposal and funded by City monies must be spent in that category;
2. Contractor must meet all other conditions of this Agreement.

2.03 Contractor agrees to the general conditions of the grant as set forth in the attachment entitled "General Conditions of Contract" (hereinafter referred to as the "General Conditions"), which is attached hereto and incorporated herein for all purposes as **Exhibit C**.

2.04 Unexpended and unencumbered City funds that remain with the Contractor after September 30, 2010, will revert to the City.

SECTION III NON-ASSIGNMENT

3.01 Contractor may not assign any interest in this Agreement, whether in whole or part, without prior approval of the City Council, as reflected by a duly authorized resolution.

SECTION IV INDEPENDENT CONTRACTOR

4.01 The City enters into this Agreement with Contractor for the purposes enumerated in Section I. Contractor asserts and agrees that Contractor is an independent contractor and not an officer, agent, servant or employee of the City. Contractor has exclusive control over the details of the activity, and is responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants. The doctrine of respondeat superior does not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors and consultants. Further, this agreement does not create a partnership or joint enterprise between City and Contractor.

**SECTION V
DISBURSEMENT OF FUNDS**

5.01 The City will disburse funds provided under this Agreement by or near October 15, 2010 and then quarterly beginning October 2011 as funding is available per the DART Agreement.

5.02 Expenses incurred after the termination date will not be reimbursed under this Agreement and the City shall assume no liability for same.

5.03 Failure to comply with the reporting requirements as outlined in Section 5.07 of this agreement below, including submittal of an executed certificate of compliance, shall result in funds being withheld from disbursement to the Contractor until a properly prepared report is submitted to the City as required.

5.04 Failure to submit a revised Line Item Budget as required in Section II of this agreement when applicable shall result in funds being withheld from disbursement to the Contractor until it is submitted to the City.

5.05 Failure to submit an Employee Dishonesty Bond as required in Section VII of this agreement when applicable shall result in funds being withheld from disbursement to the Contractor until it is submitted to the City as required.

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

5.07 Reporting Requirements.

Within twenty (20) days of the close of each quarter of the contract term, Contractor agrees to provide financial statements to the Contract Administrator sufficiently describing the expenditure of funds provided by the City to be compared against the line item budget as submitted in the Proposal, as well as a description of program goals achieved and/or progress of same for the preceding quarter. These reports shall contain a Certificate of Compliance with notarized signatures of two members of Contractor's executive board or, in the alternative, one member of Contractor's executive board and the executive director. Reports submitted without required notarized signatures will be rejected and considered incomplete.

At the end of the Contract Term or in the event of earlier termination, Contractor shall provide a final written report of its activities and expenditures to the Contract Administrator.

**SECTION VI
AFFIDAVIT OF NO PROHIBITED INTEREST**

6.01 Contractor acknowledges and represents it is aware of all applicable laws, the City Charter, and the City Code of Conduct regarding prohibited interests, and that the existence of a prohibited interest at any time will render the Contract voidable. At the time of signing this Agreement, a representative of Contractor shall execute the Affidavit of No Prohibited Interest attached and incorporated herein as **Exhibit D.**

**SECTION VII
INSURANCE REQUIREMENTS/INDEMNIFICATION****7.01 Insurance.**

At its own expense, Contractor agrees to maintain during the term of this Agreement, or any extension thereof, insurance in the type and amounts as shown in **Exhibit E.** Additionally,

this insurance must specifically cover any and all activities occurring on City property, including those activities of Contractor's employees, volunteers, vendors, contractors, or subcontractors. Contractor must provide proof of this insurance to the Contract Administrator within ten (10) days of execution of this Agreement. A properly executed certificate of insurance issued by Contractor's insurance agency is sufficient proof of insurance. Contractor must maintain a current copy of the certificate(s) and provide proof of its current insurance to City throughout the entire term of this Contract.

7.02 Employee Dishonesty Bond Requirement Applicable to Contractors Receiving Funds of \$75,000.00 or greater

At its own expense, a Contractor receiving funds in the amount of \$75,000.00 or more agrees to maintain during the term of this Agreement, or any extension thereof, an Employee Dishonesty Bond (EDB) in an amount equal to the total dollar amount awarded to Contractor by the City as defined in the grant agreement. A copy of proof of EDB, if applicable, shall be attached to the funding agreement as an additional attachment to **Exhibit F**. Bonds shall be placed with insurers with an A.M. Best rating of no less than A:VI or a Standard & Poors rating of A or better.

Bonds shall be made payable to the City of Plano and shall be maintained by Contractor throughout the contract period. Contractor must provide proof of this EDB to the Contract Administrator within ten (10) days of execution of this Agreement. A properly executed bond certificate issued by Contractor's insurance agency is sufficient proof of EDB. Contractor must maintain a current copy of the certificate(s) and provide proof of its current EDB to City throughout the entire term of this Contract. Failure to provide proof of the EDB shall result in the City withholding disbursement of funds to the Contractor until proof is provided as required under this Agreement.

7.03 Indemnification.

THE CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS

AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONTRACTOR'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE CONTRACTOR IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS. THE CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

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

SECTION VIII TERM

8.01 The term of this Agreement is October 1, 2010, through September 30, 2012 subject to funding by DART pursuant to the terms of the DART Agreement. At the expiration of this Agreement, the Contractor shall have the continuing obligation to complete any unfulfilled terms and conditions of this Agreement, including the submission of a final written report to the City and any other requested written documentation verifying Contractor's compliance with the terms of this Agreement.

SECTION IX TERMINATION

9.01 Each party shall have the right to an early termination of this Agreement by giving the other party written notice thirty (30) days before the desired early termination date. After a notice of early termination, Contractor may use City funds only for costs incurred before the notice of termination date. Contractor, however, must return to the City the unused balance of any funds disbursed to the Contractor pursuant to this Agreement within ten (10) days of either an early termination or at the end of the Agreement term.

9.02 In the event Contractor breaches any of the terms or conditions of this Agreement, whether in whole or part, the City may immediately terminate this Agreement by providing written notice to the Contractor, notwithstanding any other provision. Contractor is solely responsible for funds expended contrary to the terms and conditions of this Agreement, and must return the City funds within ten (10) days of the termination.

SECTION X MISCELLANEOUS

10.01 Entire Agreement.

This Agreement and its attachments constitute the entire agreement between the parties. The parties may only modify, amend, or supplement this Agreement through a written instrument executed by both parties.

10.02 Authority

The undersigned represents and warrants that he or she is the duly authorized representative of the Contractor, and that the Board of Trustees (or equivalent) of the Contractor has approved and accepted this Agreement by Board resolution. Contractor at all times shall maintain a copy of the Board resolution for submission to City upon request.

This Agreement does not become binding on the City of Plano until both the Contractor and the City Manager or his designee have executed it.

10.03 Successors and Assigns

This Contract is binding upon the parties hereto, their successors, heirs, personal representatives and assigns.

10.04 Notice.

Any Notice, Reports or Documents required to be provided by this Agreement shall be in writing and delivered to the parties as follows:

City – Contract Administrator
Parks and Recreation Department
Attention: Colette Hall
1409 Avenue K
Plano, Texas

Contractor
Maurice Barnett Geriatric Wellness Center, Inc.,
Attention: Carolyn Rice
401 West 16th Street, Suite 600
Plano, Texas 75075

10.05 Paragraph Headings.

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

10.06 Interpretation of Contract.

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

10.07 Venue.

The parties agree that the laws of the State of Texas govern this Agreement, and which is performable in Collin County, Texas. In the event of breach of this Agreement, venue for all causes of action shall exclusively lie in Collin County, Texas.

Signed this the 29 day of Sept, 2010.

**MAURICE BARNETT GERIATRIC WELLNESS
CENTER, INC.**

BY: 
Jim Strozewski
BOARD CHAIR

CITY OF PLANO, TEXAS

BY: _____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS

COUNTY OF Collin)

This instrument was acknowledged before me on the 29 day of September, 2010 by **JIM STROZEWSKI**, Board Chair of **Maurice Barnett Geriatric Wellness Center, Inc.**, a non-profit corporation, on behalf of said corporation.

Brenda Richardson

Notary Public in and for the State of Texas

STATE OF TEXAS

COUNTY OF COLLIN)

This instrument was acknowledged before me on the ___ day of _____, 20___ by **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

EXHIBIT A

SPECIFICATIONS FOR PLANO SENIOR RIDES PROGRAM

Plano Senior Rides Program is a transportation program for Plano senior citizens 65 and older to be run as a taxi cab voucher program.

Administer Plano Senior Rides including but not limited to the following:

- along with the City of Plano staff, set the parameters and rules of the program
- become the point of contact for the program
- all advertising and marketing
- determine with the City of Plano the eligibility requirements of participants
- receive invoice, used vouchers and taxi destination logs to check for accuracy
- sell taxi coupon booklets and deposit money daily with the Senior Center
- submit an approved formatted quarterly report no later than twenty (20) business days from the first of the quarter.
- use only the taxi company approved by the city
- any changes must be discussed with the City of Plano staff

EXHIBIT B

SENIOR CITIZEN TRANSPORTATION FUNDING AGREEMENT

Between

DALLAS AREA RAPID TRANSIT

And

CITY OF PLANO

THIS SENIOR CITIZEN TRANSPORTATION FUNDING AGREEMENT, (the "Agreement") is by and between DALLAS AREA RAPID TRANSIT ("DART"), a regional transportation authority organized and existing pursuant to Chapter 452, Texas Transportation Code and the CITY OF PLANO, TEXAS ("the CITY"), acting by and through their respective representatives.

WITNESSETH:

WHEREAS, the CITY desires to provide enhanced transportation services to senior citizens (age 65 and older) serving various residential, commercial and other locations within its boundaries, and serving other various locations where medical services are provided during the Term of this Agreement and in advance of the opening of DART's Northwest Park and Ride facility located at the North Dallas Tollway north of Spring Creek Parkway (the "Service"); and,

WHEREAS, the CITY has requested financial participation from DART in order to implement the Service; and,

WHEREAS, DART analysis predicts the attraction of new riders to the DART transit system through provision of such Service; and

WHEREAS, DART desires to cooperate with the CITY by providing funding to support the Service.

NOW THEREFORE, in consideration of the mutual promises contained in this Agreement and other valuable consideration, the sufficiency and receipt of which are acknowledged, the parties agree as follows:

1. City Responsibilities

1.01. The CITY shall be responsible for all aspects of the Service, including but not limited to the development, design, implementation, operation, management, administration and promotion of the Service and the eligibility criteria for use of the Service.

1.02. The CITY shall make information about the Service and the eligibility criteria available to the public and shall acknowledge DART's participation in funding the Service in all advertising and promotion of the Service.

1.03. The CITY shall maintain records related to the Service, including records of all costs and expenses related to providing the Service along with ridership information, and shall make such information available to DART upon reasonable request.

1.04. The CITY shall be responsible for receiving and responding to all customer communications and complaints related to the Service. DART shall not be responsible for handling or resolving any customer communication or complaint related to the Service.

1.05. The CITY shall at all times be responsible for the safe operation of the Service and the protection of the passengers.

1.06. The CITY shall secure or cause to be secured all permits and other governmental authorizations which may be required to provide the Service.

1.07. The CITY, its agents, employees and contractors shall abide by and be governed by all laws, ordinances and regulations of any and all governmental entities having jurisdiction over the Service.

1.08. For the period beginning on October 1, 2011 and ending on the opening date of DART's Northwest Park and Ride facility or September 30, 2012, whichever is earlier, the City shall prepare and forward to DART an invoice once each quarter that itemizes the actual costs for providing the Service, including costs for administration of the Service.

1.09. If the CITY discontinues or otherwise fails to provide the Service during the Term of this agreement, the CITY shall promptly provide Notice to DART and shall promptly return to DART a pro-rata portion of the funding received from DART under this Agreement based on the length of time that the service was not provided as required under this Agreement.

1.10. Within 60 days following the end of the Term of this Agreement, the CITY shall return to DART any funds paid by DART to the CITY under this agreement that were not expended for the Service.

2. DART Responsibilities.

2.01 DART shall make a one-time payment in the amount of \$50,000 to the CITY no later than 30 days following execution of this Agreement by both parties.

2.02 DART Shall provide at least 30 days written notice to the City of the opening date of DART's Northwest Park and Ride facility.

2.03 Beginning on October 1, 2011 and ending on the opening date of DART's Northwest Park and Ride facility or September 30, 2012, whichever is earlier, DART shall pay to the City the amount invoiced for the actual costs for providing the Service, including costs for administration of the Service, but in no event shall DART be obligated to pay for Service provided after the opening of DART's Northwest Park and Ride facility. The total aggregate amount of payments under this paragraph shall not exceed \$50,000.

2.04. Upon receipt of the CITY's written request, DART shall provide to the City such DART logos, trademarks or service marks, whether registered or not, that may be required to carry out the terms of this Agreement.

3. Term. The Term of this Agreement shall begin on October 1, 2010 and shall end on September 30, 2012.

4. Audit; Retention of Records. DART, upon giving five (5) business days notice, shall have the right to request, at DART's expense, an audit of the CITY records reflecting the costs of providing the Service. The CITY shall retain adequate cost accounting records for auditing purposes for a period of three (3) years after the expiration of this Agreement.

5. Indemnification. The CITY shall, to the extent allowed by law, and without waiving the right to assert any defenses or immunities provided under state or federal law, defend, indemnify and hold DART, its Board, officers and employees, harmless from all loss, cost and expense by reason of injury (including death) to any person or damage to property, arising out of or from any accident or other occurrence in connection with the operation of the Service during the performance of this Agreement, which injury or damage results from negligence or willful misconduct on the part of the CITY, its agents, employees, or contractors. In the event of joint or concurring negligence or fault of the CITY and DART, responsibility and indemnity, if any, shall be apportioned comparatively in accordance with the law of the State of Texas. The provisions of this section are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity, nor limit the right of DART to assert any governmental immunity defense to any claim of such other party or entity and shall survive termination of this Agreement.

6. Miscellaneous.

6.01. Assignment. Neither party may assign this Agreement in whole or in part, without first obtaining the written consent of the other party.

6.02. Notices. Any notice by either party to the other shall be in writing and shall be deemed to have been duly given only if delivered personally or sent by United States mail, certified, return receipt requested, in a postage paid envelope addressed to the party at the address set out below:

DART:

DALLAS AREA RAPID TRANSIT
P.O. Box 660163
Dallas, Texas 75266-7210
Attention: Vice President, Planning and Development

CITY:

THE CITY OF PLANO
P.O. Box 860358

Plano, Texas 75086-0358
Attention: Thomas H. Muehlenbeck, City Manager

Either party may designate another address by giving notice thereof to the other party.

6.03. Binding Effect. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

6.04. Headings. The paragraph headings in this Agreement are intended for convenience only and shall not be taken into consideration in the construction or interpretation of this Agreement.

6.05. Number and Gender. Whenever used herein, unless the context otherwise provides, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all other genders.

6.06. Partial Invalidity. Any portion of this Agreement being declared by law to be invalid shall not invalidate the remaining provisions which shall remain in full force and effect.

6.07. Merger and Amendment. This instrument constitutes the entire agreement of the parties with respect to the matters contemplated herein and it may be modified or amended only in writing, approved and signed by all parties hereto.

6.08. No Partnership or Joint Enterprise. It is mutually understood and agreed that this Agreement is intended by the parties to establish only an independent contractual relationship and is not intended to create a partnership or joint venture.

6.09. Use of Contractors. Nothing in this agreement shall prevent the CITY from using a contractor or agent to perform the duties and responsibilities contemplated by this Agreement.

6.10. Effective Date. This Agreement shall be effective on the last date of execution of this Agreement.

6.11. No Waiver. Neither party shall be deemed, by any actor omission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by the waiving party, and then only to the extent specifically set forth in such writing. A waiver with reference to one event shall not be construed as continuing or as a bar to or waiver of any right or remedy as to a subsequent event.

{This space intentionally left blank – Signature page follows}

Executed this the ____ day of _____ 2010.

DALLAS AREA RAPID TRANSIT

By: _____
Gary C. Thomas
President/Executive Director

Executed this the ____ day of _____ 2010.

CITY OF PLANO

By: _____
Thomas H. Muehlenbeck, City Manager

APPROVED AS TO FORM:

DIANE C. WETHERBEE
City Attorney

EXHIBIT C**GENERAL CONDITIONS OF AGREEMENT**

The Contractor agrees to the following general conditions:

- (1) The Contractor must provide reports of its activities as described in Section V, *Disbursement of Funds*, Paragraph 5.07, *Reporting Requirement*, of the Funding Agreement and as otherwise required by the Special Conditions of the Agreement on a format acceptable to the City. Disbursements may cease if reports are not submitted.
- (2) All of Contractor's procedures, records, and reports of programs and accounts shall be available for inspection by a duly authorized representative of the City. The materials shall be made available during regular business hours and not later than three (3) business days after request to do so. An independent audit of Contractor's financial records, paid for by Contractor, shall be furnished to the City upon request.
- (3) The Contractor agrees to on-site inspection of its facilities and/or programs by the City.
- (4) Improper use of funds provided by City may result in the termination of the Agreement, forfeiture of any outstanding monies to be provided by City, recovery of previous payments, recovery of bond payments, requirement for Contractor to provide an Employee Dishonesty Bond for future participation and/or disqualification of Contractor from future participation in grant programs offered or sponsored by or through City.
- (5) Programs, activities, employment opportunities, and other participatory events funded totally or partially by the City of Plano must be made available to all people regardless of race, color, religion, sex, age, national origin, disability, familial status, or political affiliation.
- (6) The Contractor and any person or organization it contracts with shall comply with all applicable laws, regulations, ordinances, and codes of the United States of America, the State of Texas, and the City of Plano.
- (7) The Contractor shall comply with all Federal, State and Local conflict of interest laws, statutes, and regulations; these laws shall apply to all parties and beneficiaries under this Agreement as well as to all officers, employees, and agents of City.
- (8) None of the funds, materials, property, or services provided directly under this Agreement shall be used for any partisan political activity, to further the election or defeat of any candidate for public office, or for publicity, lobbying and/or propaganda purposes designed to support or defeat legislation pending before the Congress of the United States of America, the Legislature of the State of Texas, the City Council of the City of Plano, or any other political body.
- (9) The City shall have the right to review any and all of Contractor's agreements and contracts prior to execution by the Contractor. City further has the right to require the modification, addition, or deletion of such terms and conditions in Contractor's agreements or contracts as it deems necessary to protect the City's interests.

- (10) For a non-profit corporation in existence for more than one (1) year at the time of the execution of this Agreement, Contractor agrees to provide a sworn statement attesting to the fact that the status of the Contractor is currently valid as a non-profit corporation. All corporations must be in good standing with the Texas Secretary of State.

EXHIBIT E

INSURANCE

Contractor shall procure and maintain for the duration of the grant agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the services performed or to be performed hereunder by the Contractor, its agents, representatives, employees, volunteers, officers, directors or sub-contractors.

The Contractor shall maintain insurance with limits not less than \$500,000 per occurrence, \$1,000,000 aggregate and will be as broad as ISO Form Number GL 0002 (Ed 1/72) covering Comprehensive General Liability and ISO Form Number GL 0404 covering Broad Form Comprehensive General Liability, or ISO Commercial General Liability coverage ("occurrence" form CG 0001). Coverage will include: A) Premises - Operations, B) Broad Form Contractual Liability, C) Broad Form Property Damage and D) Personal Injury.

The policy will be endorsed to contain the following provisions: The City, its officials, employees, volunteers, Boards and Commissions are to be added as "Additional Insureds" in respect to liability arising out of any activities performed by or on behalf of the Contractor. The policy shall contain no special limitations to the scope of coverage afforded to the City. The Contractor's insurance coverage shall be primary and any insurance or self-insurance shall be in excess of the Contractor's insurance and shall not contribute with it. Certificate must include a waiver of subrogation as regards the workers compensation policy.

Insurance shall be placed with insurers with an A.M. Best rating of no less than A:VI or a Standard & Poors rating of A or better.

The Contractor shall furnish the City with a certificate of insurance which shows the coverage provided. The insurance policy will be endorsed to state that coverage shall not be suspended, voided, canceled, non-renewed, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY					
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory					
Council Meeting Date:		10/11/2010			
Department:		Police			
Department Head		Gregory W. Rushin			
Agenda Coordinator (include phone #): Pam Haines, ext 2538					
CAPTION					
A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of a grant awarded by the Edward Byrne Memorial Justice Assistance (JAG) State Formula Program through the Criminal Justice Division of the Office of the Governor of Texas to the City of Plano, Texas for Firearms and Ballistic Forensic Analysis; authorizing the execution of any and all documents in connection therewith by the City Manager or his authorized designee; and providing an effective date.					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input checked="" type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	2009-10, 1010-11	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	0	0	0
Encumbered/Expended Amount		0	0	0	0
This Item		0	59,500	0	59,500
BALANCE		0	59,500	0	59,500
FUND(S): GRANT FUND					
COMMENTS: This item accepts grant funding in the amount of \$59,500 for Police Department expenditures related to firearms and ballistic forensic analysis.					
STRATEGIC PLAN GOAL: Acceptance of grant funds relates to the City's Goal of "Financially Strong City with Service Excellence".					
SUMMARY OF ITEM					
The Criminal Justice Division of the Office of the Governor of Texas, pursuant to the Edward Byrne Memorial Justice Assistance (JAG) State Formula Program has offered the City of Plano a grant totaling \$59,500.00 for the purpose of firearms and ballistic forensic analysis. This grant does not require matching funds from the City. The effective grant period will be for one year from the grant's effective date.					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		
Memo, Resolution, Exhibit "A"					



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

MEMORANDUM

DATE: September 29, 2010

TO: Bruce D. Glasscock, Deputy City Manager

FROM:  Gregory W. Rushin, Chief of Police

SUBJECT: *Acceptance of funds from the FY 2011 Criminal Justice Programs; Edward Byrne Memorial Justice Assistance (JAG) State Formula Program for Firearms and Ballistic Forensic Analysis (Grant# DJ-09-A10-23764-01)*

In March 2010, an application was made by the Plano Police Department for the above referenced grant in the amount of \$59,500 to continue the National Integrated Ballistics Information Network (NIBIN) program. Funding for the past five years to support these operations had been provided by a federally funded Project Safe Neighborhood grant. The grant funds for this project were fully expended by June 2010 and were not renewed for FY 2010 through the PSN grant. An alternative funding source had to be identified to continue operations.

The NIBIN program provides firearms and ballistic analysis services to law enforcement agencies throughout Collin, Dallas and Denton Counties. The unit provides critical analysis and support in the investigation and prosecution of criminal activity involving the use of firearms. The existing unit has demonstrated its effectiveness for the past five years of operation. It is staffed and equipped to provide comprehensive analysis of firearms and ballistic evidence in the investigation of criminal activity to include entry, search, and correlations of casings and bullets in the ATF sponsored National Integrated Ballistic Information (NIBIN) database. Access to this database has proved particularly beneficial when separate offenses in different cities have been linked together through the ballistic evidence. To date, 5,689 bullets and casings have been entered and searched in the database, and the unit has maintained an average unit workload of 280 cases per year. The unit has been examined, evaluated, and accredited by the American Society of Crime Laboratory Directors (ASCLD). This accreditation is an organizational quality assurance program which undergoes a continuous cycle of improvement through increased training, proficiency testing, internal audits, administrative and technical reviews of work products, and annual management reviews.

On September 28, 2010, we received an award letter from the Governor's office, advising that the Plano Police Department has been selected as a recipient of the requested funds for the NIBIN project, with the grant period being September 1, 2010 through August 31, 2011. This is a one year grant with no City match but if grant is awarded for a second and third year there will be a City match. We are hereby seeking approval to accept this award and continue the proposed project.

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of a grant awarded by the Edward Byrne Memorial Justice Assistance (JAG) State Formula Program through the Criminal Justice Division of the Office of the Governor of Texas to the City of Plano, Texas for Firearms and Ballistic Forensic Analysis; authorizing the execution of any and all documents in connection therewith by the City Manager or his authorized designee; and providing an effective date.

WHEREAS, the City Council has been presented documents evidencing award of a grant provided by the Edward Byrne Memorial Justice Assistance (JAG) State Formula Program through the Criminal Justice Division of the Office of the Governor of Texas in the amount of \$59,500.00 for firearms and ballistic forensic analysis, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called the "Grant Documents"); and

WHEREAS, upon full review and consideration of the Grant Documents and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the City Manager or his authorized designed shall be authorized to execute any and all documents in connection therewith 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 Grant Documents, having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things approved.

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

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

DULY PASSED AND APPROVED this the 11th day of October, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

OFFICE OF THE GOVERNOR
CRIMINAL JUSTICE DIVISION
STATEMENT OF GRANT AWARD

Grant Number: DJ-09-A10-23764-01
Program Fund: DJ-Edward Byrne Memorial Justice Assistance Grant Program
Grantee Name: PREVIEW - Plano, City of - PREVIEW -
Project Title: Firearms and Ballistic Forensic Analysis
Grant Period: 09/01/2010 - 08/31/2011
Liquidation Date: 11/29/2011
Date Awarded: September 28, 2010
CJD Grant Manager: Helen Martinez

CJD Award Amount:	\$59,500.00
Grantee Cash Match:	\$0.00
Grantee In Kind Match:	\$0.00
Total Project Cost:	\$59,500.00

The Statement of Grant Award is your official notice of award from the Governor's Criminal Justice Division (CJD). The approved budget is reflected in the Budget/Details tab for this record in eGrants. The grantee agrees to comply with the provisions of the Governor's Criminal Justice Division's rules in Title I, Part I, Chapter 3, Texas Administrative Code in effect on the date the grant is awarded. By clicking on the 'Accept' button within the 'Accept Award' tab, the grantee accepts the responsibility for the grant project and agrees with the following conditions of grant funding. The grantee's funds will not be released until the grantee has satisfied the requirements of the following Condition(s) of Funding and Other Fund-Specific Requirement(s), if any, cited below:

Condition(s) of Funding and Other Fund-Specific Requirement(s):



State of Texas
Office of the Governor
Criminal Justice Division

Rick Perry
Governor

Memorandum

To: CJD Grant Recipients
From: Aimee Snoddy, Deputy Director
Contact: (512) 463-1919
Re: Grantee Responsibilities
Date Awarded: September 28, 2010

Congratulations on your grant award from Governor Rick Perry's Criminal Justice Division (CJD). It is important to make you aware of a few things to consider as you implement strategies to successfully manage your program. For more information and resources, refer to the Grant Resources section of eGrants available online at <https://cjdonline.governor.state.tx.us>:

Financial Reporting – Financial Status Reports must be submitted to CJD via eGrants. Financial Status Reports may be submitted monthly but must be submitted at least quarterly. Financial Status Reports are due after each calendar quarter, regardless of when the grant was awarded. Due dates are:

April 22 (January-March quarter)
July 22 (April-June quarter)
October 22 (July-September quarter)
January 22 (October-December quarter)

The final Financial Status Report must be submitted to CJD on or before the grant liquidation date or funds will lapse and CJD will provide them as grants to others who need the funding.

Payment Authorization – Payments will be generated based on expenditures reported in the Financial Status Reports. Upon CJD approval of the Financial Status Report, a payment will be issued through direct deposit or electronic transfer.

Generated Program Income – Any income generated as a direct result of the grant activities must be reported to CJD through the Financial Status Report and grant adjustment processes. Program income must be expended prior to seeking payments from CJD. Program income must be accounted and used for the purposes of the grant activities as awarded.

Grant Funded Personnel – Staff whose salaries are supported by this award must be made aware that continued funding is contingent upon the availability of appropriated funds as well as the outcome of the annual application review conducted by CJD.

Project Changes – Grantees may submit a request for grant adjustment via eGrants for any proposed budgetary or programmatic changes, including updating contact information for grant officials.

Equipment – Equipment purchased with grant funds must be used for the purpose of the grant and as approved by CJD. An inventory report should be kept on file containing all equipment purchased with any grant funds during the grant period. This report must agree with the approved grant budget and the final Financial Status Report.

Fidelity Bond – Each nonprofit corporation receiving funds from CJD will obtain and have on file a blanket fidelity bond that indemnifies CJD against the loss and/or theft of the entire amount of grant funds, including matching funds. The fidelity bond should cover at least the CJD grant period.

Required Notifications – Grantees must immediately notify CJD in writing of any misappropriation of funds, fraud, theft, embezzlement, forgery, or any other serious irregularities indicating noncompliance with grant requirements. Grantees must notify the local prosecutor's office of any possible criminal violations. Grantees must immediately notify CJD in writing if a project or project personnel become involved in any litigation, whether civil or criminal, and the grantee must immediately forward a copy of any demand notices, subpoenas, lawsuits, or indictments to CJD. If a federal or state court or administrative agency renders a judgment or order finding discrimination by a grantee based on race, color, national origin, sex, age, or handicap, the grantee agrees to immediately forward a copy of the judgment or order to CJD.

Project Effectiveness – Grantees should regularly evaluate the effectiveness of their projects. This includes a reassessment of project activities and services to determine whether they continue to be effective. Grantees must show that their activities and services effectively address and achieve the project's stated purpose.

Programmatic Reporting – Grantees must submit required reports regarding grant information, performance, and progress towards goals and objectives in accordance with the instructions provided by CJD, or its designee. To remain eligible for funding, the grantee must be able to show the scope of services provided and the impact and quality of those services.

Monitoring – Grantees must readily make available to CJD or its agents all requested records. CJD may make unannounced monitoring visits at any time. The grantee must make every effort to resolve all issues, findings, or actions identified by CJD within the time frame specified by CJD.

Audit Requirements – Grantees expending over \$500,000 in state or federal grant funds during the fiscal year are subject to the Single Audit requirements set forth in OMB Circular No. A 133 at <http://www.whitehouse.gov/omb/circulars/index.html> and the State Single Audit Circular issued under the Uniform Grant Management Standards (UGMS) at <http://www.governor.state.tx.us/grants/what/>. Grantees must electronically submit to CJD copies of the results of any single audit conducted in accordance with OMB Circular No. A-133 at <http://www.whitehouse.gov/omb/circulars/index.html> or in accordance with the State Single Audit Circular issued under UGMS, within 30 calendar days after the grantee receives the audit results or nine months after the end of the audit period, whichever is earlier.

Supplanting – Awarded funds must be used to supplement existing funds for program activities and not replace (supplant) funds that have been appropriated for the same purpose. Grant monitors and auditors will look for potential supplanting during reviews. Violations may result in a range of penalties, including suspension of future funds, suspension or debarment from receiving federal or state grants, recoupment of monies provided under the grant, and civil or criminal penalties. Refer to the Guide to Grants at <https://cjdonline.governor.state.tx.us/updates.aspx> for additional information on supplanting.

Conflict of Interest – Grantees should have in place established safeguards to prohibit employees from using their positions for a purpose that is, or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

Contracting and Procurement – Grantees must follow their established policy and best practices for procuring goods or services with grant funds. Contracts must be routinely monitored for delivery of services or goods. When a contractual or equipment procurement is anticipated to be in excess of \$100,000, grantees must submit a Procurement Questionnaire <https://cjdonline.governor.state.tx.us/updates.aspx> to CJD for approval prior to procurement.

Travel – Grantees must follow their established policies and good fiscal stewardship related to travel expenses. If the grantee does not have established policies regarding in-state and out-of-state travel, grantee must use the travel guidelines established for state employees.

Uniform Crime Reporting – Local units of governments receiving funds from CJD must comply with all requirements for uniform crime reporting and will ensure that prompt reporting will remain current throughout the grant period.

Limited English Proficiency – Grantees must take reasonable steps to ensure that persons with limited English proficiency have meaningful access to services. Meaningful access may entail providing language assistance services, including oral and written translation when necessary. Additional information on this requirement can be found at <http://www.lep.gov>.

Law Enforcement Programs – Law enforcement programs receiving funds from CJD must be in compliance with all rules developed by the Texas Commission on Law Enforcement Officer Standards and Education.

28 C.F.R. Part 23 Training - Any grant funded individual responsible for entering information into or retrieving information from an intelligence database must complete continuing education training on operating principles described by 28 C.F.R. Part 23 at least once for each continuous two-year period the person has primary responsibility for entering data into or retrieving data from an intelligence database.

Programs Approved to Pay Overtime for Personnel - Overtime is allowable to the extent that it is included in the CJD approved budget. Overtime reimbursements paid by CJD will be based on the following seven eligibility requirements:

- (1) Federal regulations governing these funds prohibit use of grant funds to pay an individual for the same hours in which the individual is being paid by a unit of government. For example, if an officer's regular work hours are 7 a.m. to 4 p.m. and he takes a day of paid annual leave, he is not eligible to be reimbursed with grant funds for any hours he voluntarily works between 7 a.m. and 4 p.m. He may be eligible for any hours worked that day outside of 7 a.m. to 4 p.m. provided the hours worked comply with the grantee agency's requirements for hours worked prior to eligibility for overtime pay. The regulation regarding hours of eligibility for overtime does not apply to an officer who volunteers to work on his regularly scheduled days off provided he complies with the grantee agency's requirements for hours worked prior to eligibility for overtime pay.
- (2) Hours worked is defined as physical hours on the job and does not include paid annual leave, compensatory leave, sick leave, holiday leave or other paid leave.
- (3) On-call hours should not be included in physical hours worked or as eligible hours for overtime.

- (4) Personnel receiving grant funds for overtime must maintain time and activity reports for all time physically worked. The activity description should include detailed information about the actual activities performed.
- (5) Time should be recorded to the nearest quarter hour.
- (6) Grantee records must include a clear calculation in how the overtime was computed.
- (7) Overtime payments issued outside this policy are the responsibility of the grantee agency.

Cancellation for Awards - Grantees must take reasonable steps to commence project activities upon receiving notice of a grant award:

Commencement Within 60 Days. If a project is not operational within 60 days of the original start date of the award period or grant award date as noted on this memorandum, whichever is later, the grantee must report by letter to CJD the steps taken to initiate the project, the reasons for delay, and the expected revised start date.

Commencement Within 90 Days. If a project is not operational within 90 days of the original start date of the award period or grant award date as noted on this memorandum, whichever is later, the grantee must submit a second statement to CJD explaining the implementation delay. Upon receipt of the 90-day letter, CJD may cancel the project and redistribute the funds to other project areas. CJD may also, where extenuating circumstances warrant, extend the implementation date of the project past the 90-day period.

Public Information Requests - Grantees must immediately notify and provide a copy to CJD of any Public Information Request received by the agency related to this grant award.

Prohibited Acts of Agencies and Individuals - Grant funds may not be used in connection with the following acts by agencies or individuals employed by grant funds:

- Grant funds may not be used to finance or otherwise support the candidacy of a person for an elected local, state, or federal office. This prohibition extends to the direct or indirect employment of a person to perform an action described by this subsection. In addition, grant-funded or grant-leased motor vehicles may not be used for the purpose described above.
- Grant officials or grant funded employees may not use official authority or influence or permit the use of a program administered by the grantee agency of which the person is an officer or employee to interfere with or affect the result of an election or nomination of a candidate or to achieve any other political purpose.
- Grant funded employees may not coerce, attempt to coerce, command, restrict, attempt to restrict, or prevent the payment, loan, or contribution of anything of value to a person or political organization for a political purpose.
- Grantees must comply with the federal Hatch Act (5 U.S.C. §§ 1501- 1508) which restricts the political activity of some state and local employees who work in connection with federally funded programs. Covered state and local employees may not: 1) be candidates for public office in a partisan election; 2) use official authority or influence to interfere with or affect the results of an election or nomination; or, 3) directly or indirectly coerce contributions from subordinates in support of a political party or candidate.

Employment of a Lobbyist - Grant funds may not be used to employ, as a regular full-time or part-time or contract employee, a person who is required by Chapter 305 of the Government Code to register as a lobbyist. Furthermore, grant funds may not be used to pay, on behalf of the agency or an officer or employee of the agency, membership dues to an organization that pays part or all of the salary of a person who is required by Chapter 305 of the Government Code to register as a lobbyist.

Legislative Lobbying - Grant funds may not be used to attempt to influence the passage or defeat of a legislative measure.

Use of Alcoholic Beverages - Grant funds may not be used to compensate an officer or employee who uses alcoholic beverages on active duty. In addition, grant funds may not be used to purchase an alcoholic beverage or to pay or reimburse a travel expense that was incurred for an alcoholic beverage.

OneStar Foundation Registration and Organization Profile for Nonprofit Corporations - Each nonprofit corporation receiving funds from CJD must register and connect their organization with the OneStar Foundation at <http://www.onestarfoundation.org/page/registration/>.

Each nonprofit corporation is also encouraged to create an organizational profile with the OneStar Foundation at <http://www.onestarfoundation.org/page/org-profile>. By completing the Organizational Profile, your organization will be eligible to receive notification of opportunities, such as:

- Organizational excellence scholarships to build the capacity of your organization, including organizational assessments, trainings, consulting, conferences and other professional development activities;
- Funding announcements and events related to national service and volunteerism; and
- Chances to participate in important research on the needs and trends of the social sector and its stakeholders.



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular <input type="checkbox"/> Statutory
Council Meeting Date:	10/11/10
Department:	Public Safety Communications
Department Head	Ronald Timmons
Agenda Coordinator (include phone #): Trang Tran x7930	

CAPTION

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano, Texas and the City of Lucas, Texas for the City of Lucas' use of the Radio Communications System owned by the Cities of Allen and Plano; authorizing execution of the agreement by the City Manager, or his authorized designee; and providing an effective date.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR: 2010-2011, 2011-2012, 2012-2013, 2013-2014, 2014-2015	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	7,193	28,772	35,965
BALANCE	0	7,193	28,772	35,965

FUND(s): INTERGOVERNMENTAL RADIO FUND (017.237)

COMMENTS: Approval of this item will result in total estimated revenues of \$53,945 over a five-year period to the Interlocal Radio System Access Fund. Plano's annual share is projected at \$7,193, or \$35,965 over the contract period. Allen is projected to receive \$3,596 annually, for a total of \$17,980.

STRATEGIC PLAN GOAL: Interlocal agreements for the use of the Allen and Plano Radio Communications System relate to the City's Goal of "Financially Strong City with Service Excellence" and "Partnering for Community Benefit".

SUMMARY OF ITEM

Staff requests Council approval of an Interlocal agreement between the Cities of Allen and Plano and the City of Lucas for the use of the Allen and Plano Radio Communications System. This agreement is for a five year period beginning on October 1, 2010 and ending on September 30, 2015.



**CITY OF PLANO
COUNCIL AGENDA ITEM**

List of Supporting Documents: Resolution, Agreement	Other Departments, Boards, Commissions or Agencies

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano, Texas and the City of Lucas, Texas for the City of Lucas' use of the Radio Communications System owned by the Cities of Allen and Plano; authorizing execution of the agreement by the City Manager, or his authorized designee; and providing an effective date.

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

WHEREAS, the City Council has before it the proposed Interlocal Cooperation Agreement by and between the Cities of Allen and Plano, Texas, and the City of Lucas attached hereto as Exhibit "A", providing terms and conditions for the use of the Cities of Plano and Allen's radio communications system by the City of Lucas; and

WHEREAS, the proposed Agreement serves a valid public purpose of interest to the City in that the use of the radio system allows emergency personnel to communicate thereby protecting the health, safety and welfare of residents; 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 of the Agreement should be approved, and that the City Manager or his authorized designee 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, are hereby in all things approved.

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

Section III. This Resolution shall become effective the first day of October 2010.

DULY PASSED AND APPROVED the 11th day of October, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

AGREEMENT BETWEEN THE CITIES OF ALLEN AND PLANO AND THE CITY OF LUCAS FOR THE USE OF THE ALLEN AND PLANO RADIO COMMUNICATIONS SYSTEM

The CITIES OF PLANO, TEXAS AND ALLEN, TEXAS, both municipal corporations, (hereinafter referred to as "Cities") and the CITY OF LUCAS, TEXAS, a home-rule municipality (hereinafter referred to as "Lucas"), agree as follows:

WHEREAS, the Cities and Lucas are political subdivisions within the State of Texas, each of which engages in the provision of governmental services for the benefit of their citizens; and

WHEREAS, the Interlocal Cooperation Act under Chapter 791 of the Texas Government Code (the "Act") provides authority for local governments of the State of Texas to enter into Interlocal agreements with each other regarding governmental functions and services as set forth in the Act; and

WHEREAS, the cities of Allen and Plano jointly own, operate, and maintain the radio communications system exclusive of the radios owned individually by each city (hereinafter referred to as "System") for the purpose of providing radio communications in support of its governmental operations; and

WHEREAS, Lucas wishes to use certain portions of the System for its governmental operations; and

WHEREAS, the use of the System in the provision of governmental services benefits the public health and welfare, promotes efficiency and effectiveness of local governments, and is of mutual concern to the contracting parties; and

WHEREAS, Lucas and the Cities have current funds available to satisfy any fees and costs required pursuant to this Agreement.

NOW, THEREFORE, the Cities and Lucas, for and in consideration of the recitals set forth above and terms and conditions below, agree as follows:

I. TERM

The term of this Agreement is for a period of five (5) years, beginning on the 1st day of October 2010, and ending on the 30th day of September 2015, with an optional three (3) year automatic renewal, unless terminated earlier by either party in accordance with the terms of this Agreement. Unless terminated by the Cities or Lucas, as set forth hereafter, this agreement shall automatically renew yearly without further action until its automatic termination on the 30th day of September, 2018.

II. OBLIGATIONS OF LUCAS

2.01 Lucas shall use the System in accordance with this Agreement to provide integration of communications by Lucas between its users on the System for governmental operations.

2.02 When using the System, Lucas shall abide by all applicable federal and state laws and regulations, including any regulations of the Allen and Plano Radio System. When Lucas uses the System for interoperability with Talkgroups other than those provided by this Agreement, Lucas will also abide by the user rules of those Talkgroups.

2.03 Lucas must provide a written request to the Plano System Manager to activate radios on the System. Such request must include the model and serial number of the radio, the name of the user, and identifying Talkgroups required in the radio.

2.04 Lucas is responsible for furnishing all its radios, which are compatible with the P-25 Digital system, and for the maintenance of the same.

III. OBLIGATIONS OF CITIES

3.01 The Cities will lease to Lucas five (5) Talkgroups, which are a primary level of communication for users on the System (hereinafter referred to as "Talkgroup"), comparable to a channel on a conventional radio system, for the exclusive use of Lucas. Talkgroups will be established for Lucas by Plano.

3.02 The Plano System Manager will not activate radios on Lucas Talkgroups nor make changes to Lucas radios without first receiving authorization from the designated representative of Lucas, unless in the opinion of Plano, such action is necessary to eliminate harmful interference.

3.03 Plano is also responsible for:

- (1) Coordinating Talkgroups among system users;
- (2) Grouping of Talkgroups to allow transmitting and receiving on all associated Talkgroups as required by Lucas;
- (3) The operation, maintenance, and control of the System.

IV. FEES

The fees assessed against Lucas and due annually for services and use of the System are as follows:

(1)	Lease radio airtime (per radio, per month)	\$ 8.56
(2)	Lease Talkgroup (per Talkgroup, per month)	\$62.97
(3)	Administrative and Technical fee (per month)	\$96.30

None of the charges listed above include the cost of maintenance of mobiles, portables, or control stations/points.

The Cities may increase these fees at the beginning of each fiscal year by an amount not to exceed seven percent (7%) of the previous year's fees. The Cities will provide 120 days notice to Lucas before increasing the fees.

Total Fees for Annual Service

Based on the fees set out above, the Cities will calculate the annual fee due based upon the total number of radios and Talkgroups and submit an invoice to Lucas on or before October 1st of each year. This amount is subject to change when Lucas adds or deletes the number of radios and/or Talkgroups in service. Lucas must notify the Plano System Manager in writing of any addition or deletion of radios and/or Talkgroups. The amount owed for annual fees for additions of radio/Talkgroups will be prorated for the year added, invoiced immediately, and amounts will be due within 30 days of receipt of the invoice for the addition(s). The amount owed for annual fees will be adjusted for deletions the next contract year. No refunds will be given for payments made for radios/Talkgroups deleted after annual payment until the next contract year.

V. PAYMENT DUE

Lucas agrees to pay the Cities the annual fees specified under Article IV within thirty (30) days of the receipt of the invoice. Should Lucas add radios or Talkgroups to the service within a term, Lucas agrees to pay the additional fee(s) due within thirty (30) days of invoice. All payments for expenses incurred as a result of the performance of this Agreement shall be made only from current revenues legally available to each respective party.

VI. TERMINATION

- 6.01 Termination of this Agreement may occur by any of the following:
- (1) Either party may terminate this Agreement at any time by giving sixty (60) days advance written notice. Lucas shall pay for all fees incurred through the effective date of termination.
 - (2) If the Cities permanently discontinue the operation of its System, this Agreement shall terminate on the date of discontinuance without further notice, and no fees will be reimbursed by the Cities to Lucas.

VII. RELEASE AND HOLD HARMLESS

Each party does hereby agree to waive all claims against, release, and hold harmless the other party and its respective officials, officers, agents, employees, in both their public and private capacities, from any and all liability, claims, suits, demands, losses, damages, attorneys fees, including all expenses of litigation or settlement, or causes of action which may arise by reason of injury to or death of any person or for loss of, damage to, or loss of use of any property arising out of or in connection with this Agreement. In the event that a claim is filed, each party is responsible for its proportionate share of liability.

VIII. IMMUNITY

In the execution of this Agreement, none of the parties waive, nor shall be deemed hereby to have waived, its sovereign immunity or any legal or equitable defense to any form of liability. The parties by entering into this Agreement do not create any

obligations, express or implied, other than those set forth herein, and this Agreement shall not create any rights in parties not signatories hereto.

IX. ASSIGNMENT

Lucas agrees to retain control and to give full attention to the fulfillment of this Agreement; Lucas cannot assign or sublet this Agreement without the prior written consent of a majority of the Cities. Further, Lucas cannot sublet any part or feature of the work to anyone objectionable to the Cities. Lucas also agrees that the subletting of any portion or feature of the work, or materials required in the performance of this Agreement, does not relieve Lucas from its full obligations to the Cities as provided by this Agreement.

X. ENTIRE AGREEMENT

This Agreement represents the entire and integrated agreement between the Cities and Lucas, and supersedes all prior negotiations, representations and/or agreements, either written or oral. The parties may amend this Agreement only by written instrument signed by Lucas and the Cities, except that execution of an amendment for assignment or subletting only requires the signature of the Cities.

XI. NOTICES

Unless notified otherwise in writing, all notices are required to be given to either party in writing and delivered in person or send via certified mail to the other party at the following respective addresses:

Lucas Representative:

City Manager
City of Lucas
665 Country Club Road
Lucas, Texas 75002
972-727-8999

Plano Representative:

Director, Public Safety Communications
City of Plano
1520 K Avenue
Plano, Texas 75074
972-941-7931

Allen Representative:

Police Chief
City of Allen
205 W. McDermott
Allen, Texas 75013
214-509-4200

XII. AUTHORITY TO SIGN/CITY COUNCIL AUTHORIZATION

The undersigned officer and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto. Cities have executed this Agreement pursuant to duly authorized action of the City Council of Plano on _____, 2010, and the City of Allen on _____, 2010. Lucas has this Agreement pursuant to duly authorized action of the City Council of Lucas on _____, 2010.

XIII. SEVERABILITY

The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement 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 Agreement. However, upon the occurrence of such event, either party may terminate this Agreement by giving the other party thirty (30) days written notice.

XIV. VENUE

This Agreement and any of its terms or provisions, as well as the rights and duties of the parties hereto, shall be governed by the laws of the State of Texas. The parties agree that this Agreement shall be enforceable in Collin County, Texas, and, if legal action is necessary, exclusive venue shall lie in Collin County, Texas.

XV. INTERPRETATION OF AGREEMENT

Although this Agreement is drafted by the Cities, this is a negotiated document. Should any part of this Agreement be in dispute, the parties agree that the Agreement shall not be construed more favorably for either party.

XVI. REMEDIES

No right or remedy granted herein or reserved to the parties is exclusive of any right or remedy granted by law or equity; but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this Agreement may be waived without the express written consent of the parties. It is further agreed that one (1) or more instances of forbearance by either party in the exercise of its respective rights under this Agreement shall in no way constitute a waiver thereof.

XVII. SUCCESSORS AND ASSIGNS

The parties each bind themselves, their respective successors, executors, administrators and assigns to the other party to this contract. Neither party will assign, sublet, subcontract or transfer any interest in this Agreement without the prior written consent of the other party. No assignment, delegation of duties or subcontract under this Agreement will be effective without the written consent of all parties.

EXECUTED on the dates indicated below:

CITY OF LUCAS, TEXAS

BY: _____
Robert Patrick
City Manager

APPROVED AS TO FORM:

Joe Gorfida Jr., City Attorney

CITY OF PLANO, TEXAS

BY: _____
Thomas H. Muehlenbeck
City Manager

APPROVED AS TO FORM:

Diane C. Wetherbee, City Attorney

CITY OF ALLEN, TEXAS

BY: _____
Peter H. Vargas, City Manager

APPROVED AS TO FORM:

Peter G. Smith, City Attorney

ACKNOWLEDGEMENTS

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the ____ day of _____, 2010, by _____, **ROBERT PATRICK**, City Manager of the **CITY OF LUCAS, TEXAS**, a home-rule municipality, on behalf of such municipality.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the ____ day of _____, 2010, by **THOMAS H. MUEHLENBECK**, City Manager of the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, on behalf of such municipal corporation.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the ____ day of _____, 2010, by **PETER H. VARGAS**, City Manager of the **CITY OF ALLEN, TEXAS**, a home-rule municipality, on behalf of such Municipality.

Notary Public, State of Texas



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY					
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory					
Council Meeting Date:		10/11/10			
Department:		Public Safety Communications			
Department Head		Ronald Timmons			
Agenda Coordinator (include phone #): Trang Tran x7930					
CAPTION					
A Resolution of the City Council of the City of Plano, Texas, approving 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 its execution by the City Manager, or his authorized designee; and providing an effective date.					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input checked="" type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	2010-2011, 2011-2012, 2012-2013, 2013-2014, 2014-2015	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	0	0	0
Encumbered/Expended Amount		0	0	0	0
This Item		0	33,455	133,820	167,275
BALANCE		0	33,455	133,820	167,275
FUND(s): GENERAL FUND					
COMMENTS: Actual revenue is variable and future revenue projections are based on the population estimates for the City of Lucas as found in the annual NCTCOG population estimates. Estimated revenue to be received by the City of Plano from the City of Lucas totals \$167,725 over the five-year period.					
STRATEGIC PLAN GOAL: Fire & Emergency Medical Dispatch service agreements relate to the City's Goal of "Financially Strong City with Service Excellence" and "Partnering for Community Benefit".					
SUMMARY OF ITEM					
Staff requests Council approval of an Interlocal agreement between the City of Plano and the City of Lucas whereby the City of Plano will dispatch calls for Fire and Emergency Medical Service for the City of Lucas. This agreement is for a five year period beginning on October 1, 2010 and ending on September 30, 2015.					



**CITY OF PLANO
COUNCIL AGENDA ITEM**

List of Supporting Documents: Resolution, Agreement	Other Departments, Boards, Commissions or Agencies

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an 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 its execution by the City Manager, or his authorized designee; and providing an effective date.

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

WHEREAS, the City Council has before it the proposed Interlocal Cooperation Agreement by and between the City of Plano, Texas (“Plano”), and the City of Lucas, Texas (“Lucas”), attached hereto as Exhibit “A” and incorporated herein by reference, which provides the terms and conditions under which Plano will dispatch calls for emergency fire and medical assistance to Lucas (hereinafter called “Agreement”); and

WHEREAS, upon full review and consideration of the Agreement and all related matters, the City Council finds that the proposed Agreement provides for services that protect the health, safety, and welfare of residents, a valid public purpose of interest to each of the entities; and

WHEREAS, the City Council desires to approve the terms and conditions of the Agreement, and to authorize the City Manager or his authorized designee 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 City Council, after review of the terms and conditions of the Agreement, hereby approves the attached Interlocal Agreement for Dispatch Services for Lucas.

Section II. The City Manager or his authorized designee is hereby authorized to execute the Agreement and all other documents in connection herewith 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 the first day of October 2010.

DULY PASSED AND APPROVED the 11th day of October, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

AGREEMENT BETWEEN THE CITY OF PLANO AND THE CITY OF LUCAS FOR FIRE AND EMERGENCY MEDICAL DISPATCH SERVICES

This Agreement is made between the CITY OF PLANO, TEXAS, a municipal corporation (hereinafter referred to as "Plano"), and the CITY OF LUCAS, TEXAS, a municipal corporation municipality (hereinafter referred to as "Lucas"), as follows:

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

WHEREAS, Plano and Lucas are political subdivisions within the State of Texas and are all engaged in the provision of governmental services for the benefit of their citizens; and

WHEREAS, the parties desire to enter into an agreement under which Plano will provide dispatch services as herein described to Lucas at a fee; and

WHEREAS, Plano and Lucas have current funds available to satisfy any fees and costs required pursuant to this Agreement.

NOW THEREFORE, Plano and Lucas, for and in consideration of the recitals set forth above and terms and conditions below, agree as follows:

I. TERM

The term of this Agreement is for a period of five (5) years, beginning on the 1st day of October, 2010, and ending on the 30th day of September, 2015, with an optional three (3) year automatic renewal, unless terminated earlier by either party in accordance with the terms of this Agreement. Unless terminated by either Plano or Lucas, as set forth hereafter, this agreement shall automatically renew yearly without further action until its automatic termination on the 30th day of September 2018.

II. OBLIGATIONS OF PLANO

- 2.01 Upon transfer of fire and Emergency Medical Services (EMS) calls from the Collin County Sheriff's Office, Plano shall:
- (a) dispatch Lucas fire calls via radio and alpha-numeric pager, or in the event of radio malfunction, dispatch via any other method available; and
 - (b) provide pre-arrival EMS instructions when necessary and appropriate, and notify an EMS Provider designated by Lucas when necessary and appropriate.

III. OBLIGATIONS OF LUCAS

- 3.01 The primary Public Safety Answering Point (PSAP) for the City of Lucas shall be the Collin County Sheriff's Office (CCSO). CCSO shall transfer all fire and EMS calls to the Plano Public Safety Communications (PSC) Center. Lucas shall be responsible for maintaining a PSAP for all calls dispatched by Plano under this agreement and shall promptly notify Plano if the PSAP changes.

- 3.02 Lucas shall identify the phone lines and all equipment necessary to accommodate the transfer of calls from its primary PSAP to Plano PSC.
- 3.03 Lucas shall at all times provide Plano with current and accurate street maps of the entire City of Lucas, including all areas that are served by fire, medical and other emergency personnel. This shall be in ESRI Shapefile format as specified by Plano.
- 3.04 Lucas shall provide a current and accurate listing of all types of apparatus in its possession and shall provide current and accurate response information.
- 3.05 Lucas shall designate and identify its EMS Provider, and shall provide all information necessary for Plano to contact the Lucas EMS Provider. Such information shall always be kept current and accurate.
- 3.06 Lucas shall provide Plano with population numbers for the Seis Lagos Utility District (SLUD) by October 1 of each year, to be included in the fee invoiced to Lucas.
- 3.07 Lucas shall provide all other information that is unique to Lucas Fire Department operations, regardless of the type of information, and shall immediately notify Plano as to changes or modifications of all such information that is reasonably necessary for Plano to provide services under this Agreement.

IV. EMPLOYMENT RIGHTS NOT ABRIDGED

Employment rights of personnel assigned to either Plano or Lucas under this Agreement are not abridged by the other agency. Participation in this Agreement by Plano and Lucas shall not penalize personnel of either department nor shall it threaten their employment rights, promotional opportunities, training opportunities, or fringe benefits.

V. FEES

- 5.01 The fees to be paid for Fire and Emergency Medical Dispatch Services shall be assessed against Lucas. All fees due hereunder shall be paid from current revenues legally available to Lucas. Lucas agrees to pay Plano according to the following schedule:
 - (a) The annual fee for dispatch services shall be based upon the estimated population served by the Lucas FD, as identified by the annual Population Estimates published by the North Texas Central Council of Governments (NCTGOC) and the separately provided SLUD population total.
 - (b) The fees for dispatching services shall be \$5.00 per resident for the first year.
 - (c) Lucas agrees to collect fees directly from SLUD and include them in the single payment made to Plano.
 - (d) The fees will increase two percent (2%) per capita for each remaining year.
 - (e) Fees shall be calculated based upon the most recently available Population Estimates.

VI. PAYMENTS DUE

All payments for expenses incurred as a result of the performance of this Agreement shall be made only from current revenues legally available to each respective party. For the

term of the Agreement ending September 30, 2018, Lucas agrees to pay Plano the Annual Fees under Article IV within thirty (30) days of the receipt of the invoice.

VII. TERMINATION

7.01 This agreement may be terminated as specified below upon the occurrence of any of the following:

- (a) Either party may terminate this Agreement at any time by giving sixty (60) days advance written notice. Lucas shall pay for all fees incurred through the effective date of termination.

VIII. RELEASE AND HOLD HARMLESS

Each party agrees to waive all claims against, to release, and to hold harmless the other party and its respective officials, agents, employees, in both their public and private capacities, from any and all liability, claims, suits, demands, losses, damages, attorney fees, including all expenses of litigation or settlement, or causes of action which may arise by reason or injury to or death of any person or for loss of, damage to, or loss of use of any property arising out of or in connection with this Agreement. In the event that a claim is filed, each party shall be responsible for its proportionate share of liability.

IX. IMMUNITY

In the execution of this Agreement, none of the parties waive, nor shall it be deemed hereby to have waived any immunity or any legal or equitable defense otherwise available against claims arising in the exercise of governmental powers or functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth herein, and this Agreement does not create any rights in parties who are not signatories to this Agreement.

X. ASSIGNMENT AND SUBLETTING

Lucas agrees to retain control and to give full attention to the fulfillment of this Agreement, that this Agreement will not be assigned or sublet without the prior written consent of Plano and Lucas, and that no part or feature of the work will be sublet to anyone objectionable to Plano. Lucas further agrees that the performance of this Agreement shall not relieve Lucas from its full obligations to Plano as provided by this Agreement.

XI. ENTIRE AGREEMENT

This Agreement represents the entire and integrated agreement between Plano and Lucas and supersedes all prior negotiations, representations, and/or agreements, either written or oral. This Agreement may be amended only by written instrument signed by Plano and Lucas.

XII. NOTICES

Unless notified otherwise in writing, all notices are required to be given to either party in writing and delivered in person or send via certified mail to the other party at the following respective addresses:

Plano Representative:
CITY OF PLANO
Director of Public Safety Communications
1520 K Avenue, Suite 010
Plano, TX 75074
972-941-7931

Lucas Representative:
CITY OF LUCAS
City Manager
665 Country Club Road
Lucas, TX 75002
972-727-8999

XIII. AUTHORITY TO SIGN/CITY COUNCIL AUTHORIZATION

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

XIV. SEVERABILITY

The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held to be contract 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 Agreement. However, upon occurrence of such event, either party may terminate this Agreement by giving the other party thirty (30) days written notice.

XV. VENUE

This agreement and any of its terms or provisions, as well as the rights and duties of the parties hereto, shall be governed by the laws of the State of Texas. The parties agree that this Agreement shall be enforceable in Collin County, Texas, and if legal and necessary, exclusive venue shall lie in Collin County, Texas.

XVI. INTERPRETATION OF AGREEMENT

Although this Agreement is drafted by Plano, this is a negotiated document. Should any part of this Agreement be in dispute, the parties agree that the Agreement shall not be constructed more favorably for either party.

XVII. REMEDIES

No right or remedy granted herein or reserved to the parties is exclusive of any right or remedy granted by law or equity; but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this Agreement may be waived without the express written consent of the parties. It is further agreed that one (1) or more instance of forbearance by either party in the exercise of its respective rights under this Agreement shall in no way constitute a waiver thereof.

XVIII. SUCCESSORS AND ASSIGNS

The parties each bind themselves, their respective successors, executors, administrators, and assigns to the other party to this contract. Neither party will assign, sublet,

subcontract or transfer any interest in this Agreement without prior written consent of the other party. No assignment, delegation of duties or subcontract under this Agreement will be effective without the written consent of all parties.

EXECUTED on the dates indicated below:

CITY OF LUCAS, TEXAS

BY: _____
Robert Patrick, City Manager

APPROVED AS TO FORM:

Joe Gorfida Jr., City Attorney

CITY OF PLANO, TEXAS

BY: _____
Thomas H. Muehlenbeck
City Manager

APPROVED AS TO FORM:

Diane C. Wetherbee, City Attorney



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY					
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory					
Council Meeting Date:		10/11/10			
Department:		Public Safety Communications			
Department Head		Ronald Timmons			
Agenda Coordinator (include phone #): Trang Tran x7930					
CAPTION					
A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano, Texas and the City of Parker, Texas for the City of Parker's use of the Radio Communications System owned by the Cities of Allen and Plano; authorizing its execution by the City Manager, or his authorized designee; and providing an effective date.					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input checked="" type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	2010-2011, 2011-2012, 2012-2013, 2013-2014, 2014-2015	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	0	0	0
Encumbered/Expended Amount		0	0	0	0
This Item		0	6,709	26,836	33,545
BALANCE		0	6,709	26,836	33,545
FUND(s): INTERGOVERNMENTAL RADIO FUND (017.237)					
COMMENTS: Approval of this item will result in total estimated revenues of \$50,315 over a five-year period to the Interlocal Radio System Access Fund. Plano's annual share is projected at \$6,709, or \$33,545 over the contract period. Allen is projected to receive \$3,354 annually, for a total of \$16,770.					
STRATEGIC PLAN GOAL: Interlocal agreements for the use of the Allen and Plano Radio Communications System relate to the City's Goal of "Financially Strong City with Service Excellence" and "Partnering for Community Benefit".					
SUMMARY OF ITEM					
Staff requests Council approval of an Interlocal agreement between the Cities of Allen and Plano and the City of Parker for the use of the Allen and Plano Radio Communications System. This agreement is for a five year period beginning on October 1, 2010 and ending on September 30, 2015.					



**CITY OF PLANO
COUNCIL AGENDA ITEM**

List of Supporting Documents: Resolution, Agreement	Other Departments, Boards, Commissions or Agencies

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano, Texas and the City of Parker, Texas for the City of Parker's use of the Radio Communications System owned by the Cities of Allen and Plano; authorizing its execution by the City Manager, or his authorized designee; and providing an effective date.

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

WHEREAS, the City Council has before it the proposed Interlocal Cooperation Agreement by and between the Cities of Allen and Plano, Texas, and the City of Parker attached hereto as Exhibit "A", providing terms and conditions for the use of the Cities of Plano and Allen's radio communications system by the City of Parker; and

WHEREAS, the proposed Agreement serves a valid public purpose of interest to the City in that the use of the radio system allows emergency personnel to communicate thereby protecting the health, safety and welfare of residents; 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 of the Agreement should be approved, and that the City Manager or his authorized designee 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, are hereby in all things approved.

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

Section III. This Resolution shall become effective the first day of October 2010.

DULY PASSED AND APPROVED the 11th day of October, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

AGREEMENT BETWEEN THE CITIES OF ALLEN AND PLANO AND THE CITY OF PARKER FOR THE USE OF THE ALLEN AND PLANO RADIO COMMUNICATIONS SYSTEM

The CITIES OF PLANO, TEXAS AND ALLEN, TEXAS, both municipal corporations, (hereinafter referred to as "Cities") and the CITY OF PARKER, TEXAS, a general-law municipality (hereinafter referred to as "Parker"), agree as follows:

WHEREAS, the Cities and Parker are political subdivisions within the State of Texas, each of which engages in the provision of governmental services for the benefit of their citizens; and

WHEREAS, the Interlocal Cooperation Act under Chapter 791 of the Texas Government Code (the "Act") provides authority for local governments of the State of Texas to enter into Interlocal agreements with each other regarding governmental functions and services as set forth in the Act; and

WHEREAS, the cities of Allen and Plano jointly own, operate, and maintain the radio communications system exclusive of the radios owned individually by each city (hereinafter referred to as "System") for the purpose of providing radio communications in support of its governmental operations; and

WHEREAS, Parker wishes to use certain portions of the System for its governmental operations; and

WHEREAS, the use of the System in the provision of governmental services benefits the public health and welfare, promotes efficiency and effectiveness of local governments, and is of mutual concern to the contracting parties; and

WHEREAS, Parker and the Cities have current funds available to satisfy any fees and costs required pursuant to this Agreement.

NOW, THEREFORE, the Cities and Parker, for and in consideration of the recitals set forth above and terms and conditions below, agree as follows:

I. TERM

The term of this Agreement is for a period of five (5) years, beginning on the 1st day of October 2010, and ending on the 30th day of September 2015, with an optional three (3) year automatic renewal, unless terminated earlier by either party in accordance with the terms of this Agreement. Unless terminated by the Cities or Parker, as set forth hereafter, this agreement shall automatically renew yearly without further action until its automatic termination on the 30th day of September, 2018.

II. OBLIGATIONS OF PARKER

2.01 Parker shall use the System in accordance with this Agreement to provide integration of communications by Parker between its users on the System for governmental operations.

2.02 When using the System, Parker shall abide by all applicable federal and state laws and regulations, including any regulations of the Allen and Plano Radio System. When Parker uses the System for interoperability with Talkgroups other than those provided by this Agreement, Parker will also abide by the user rules of those Talkgroups.

2.03 Parker must provide a written request to the Plano System Manager to activate radios on the System. Such request must include the model and serial number of the radio, the name of the user, and identifying Talkgroups required in the radio.

2.04 Parker is responsible for furnishing all its radios, which are compatible with the P-25 Digital system, and for the maintenance of the same.

III. OBLIGATIONS OF CITIES

3.01 The Cities will lease to Parker two (2) Talkgroups, which are a primary level of communication for users on the System (hereinafter referred to as "Talkgroup"), comparable to a channel on a conventional radio system, for the exclusive use of Parker. Talkgroups will be established for Parker by Plano.

3.02 The Plano System Manager will not activate radios on Parker Talkgroups nor make changes to Parker radios without first receiving authorization from the designated representative of Parker, unless in the opinion of Plano, such action is necessary to eliminate harmful interference.

3.03 Plano is also responsible for:

- (1) Coordinating Talkgroups among system users;
- (2) Grouping of Talkgroups to allow transmitting and receiving on all associated Talkgroups as required by Parker;
- (3) The operation, maintenance, and control of the System.

IV. FEES

The fees assessed against Parker and due annually for services and use of the System are as follows:

(1)	Lease radio airtime (per radio, per month)	\$ 8.56
(2)	Lease Talkgroup (per Talkgroup, per month)	\$62.97
(3)	Administrative and Technical fee (per month)	\$96.30

None of the charges listed above include the cost of maintenance of mobiles, portables, or control stations/points.

The Cities may increase these fees at the beginning of each fiscal year by an amount not to exceed seven percent (7%) of the previous year's fees. The Cities will provide 120 days notice to Parker before increasing the fees.

Total Fees for Annual Service

Based on the fees set out above, the Cities will calculate the annual fee due based upon the total number of radios and Talkgroups and submit an invoice to Parker on or before October 1st of each year. This amount is subject to change when Parker adds or deletes the number of radios and/or Talkgroups in service. Parker must notify the Plano System Manager in writing of any addition or deletion of radios and/or Talkgroups. The amount owed for annual fees for additions of radio/Talkgroups will be prorated for the year added, invoiced immediately, and amounts will be due within 30 days of receipt of the invoice for the addition(s). The amount owed for annual fees will be adjusted for deletions the next contract year. No refunds will be given for payments made for radios/Talkgroups deleted after annual payment until the next contract year.

V. PAYMENT DUE

Parker agrees to pay the Cities the annual fees specified under Article IV within thirty (30) days of the receipt of the invoice. Should Parker add radios or Talkgroups to the service within a term, Parker agrees to pay the additional fee(s) due within thirty (30) days of invoice. All payments for expenses incurred as a result of the performance of this Agreement shall be made only from current revenues legally available to each respective party.

VI. TERMINATION

- 6.01 Termination of this Agreement may occur by any of the following:
- (1) Either party may terminate this Agreement at any time by giving sixty (60) days advance written notice. Parker shall pay for all fees incurred through the effective date of termination.
 - (2) If the Cities permanently discontinue the operation of its System, this Agreement shall terminate on the date of discontinuance without further notice, and no fees will be reimbursed by the Cities to Parker.

VII. RELEASE AND HOLD HARMLESS

Each party does hereby agree to waive all claims against, release, and hold harmless the other party and its respective officials, officers, agents, employees, in both their public and private capacities, from any and all liability, claims, suits, demands, losses, damages, attorneys fees, including all expenses of litigation or settlement, or causes of action which may arise by reason of injury to or death of any person or for loss of, damage to, or loss of use of any property arising out of or in connection with this Agreement. In the event that a claim is filed, each party is responsible for its proportionate share of liability.

VIII. IMMUNITY

In the execution of this Agreement, none of the parties waive, nor shall be deemed hereby to have waived, its sovereign immunity or any legal or equitable defense to any form of liability. The parties by entering into this Agreement do not create any

obligations, express or implied, other than those set forth herein, and this Agreement shall not create any rights in parties not signatories hereto.

IX. ASSIGNMENT

Parker agrees to retain control and to give full attention to the fulfillment of this Agreement; Parker cannot assign or sublet this Agreement without the prior written consent of the Cities. Further, Parker cannot sublet any part or feature of the work to anyone objectionable to the Cities. Parker also agrees that the subletting of any portion or feature of the work, or materials required in the performance of this Agreement, does not relieve Parker from its full obligations to the Cities as provided by this Agreement.

X. ENTIRE AGREEMENT

This Agreement represents the entire and integrated agreement between the Cities and Parker, and supersedes all prior negotiations, representations and/or agreements, either written or oral. The parties may amend this Agreement only by written instrument signed by Parker and the Cities, except that execution of an amendment for assignment or subletting only requires the signature of the Cities.

XI. NOTICES

Unless notified otherwise in writing, all notices are required to be given to either party in writing and delivered in person or send via certified mail to the other party at the following respective addresses:

Parker Representative:

City Administrator
City of Parker
5700 East Parker Road
Parker, Texas 75002
972-442-6811

Plano Representative:

Director, Public Safety Communications
City of Plano
1520 K Avenue
Plano, Texas 75074
972-941-7931

Allen Representative:

Police Chief
City of Allen
205 W. McDermott
Allen, Texas 75013
214-509-4200

XII. AUTHORITY TO SIGN/CITY COUNCIL AUTHORIZATION

The undersigned officer and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto. Cities have executed this Agreement pursuant to duly authorized action of the City Council of Plano on _____, 2010, and the City of Allen on _____, 2010. Parker has executed this Agreement pursuant to duly authorized City Council Resolution No. _____, dated _____, 2010.

XIII. SEVERABILITY

The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement 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 Agreement. However, upon the occurrence of such event, either party may terminate this Agreement by giving the other party thirty (30) days written notice.

XIV. VENUE

This Agreement and any of its terms or provisions, as well as the rights and duties of the parties hereto, shall be governed by the laws of the State of Texas. The parties agree that this Agreement shall be enforceable in Collin County, Texas, and, if legal action is necessary, exclusive venue shall lie in Collin County, Texas.

XV. INTERPRETATION OF AGREEMENT

Although this Agreement is drafted by the Cities, this is a negotiated document. Should any part of this Agreement be in dispute, the parties agree that the Agreement shall not be construed more favorably for either party.

XVI. REMEDIES

No right or remedy granted herein or reserved to the parties is exclusive of any right or remedy granted by law or equity; but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this Agreement may be waived without the express written consent of the parties. It is further agreed that one (1) or more instances of forbearance by either party in the exercise of its respective rights under this Agreement shall in no way constitute a waiver thereof.

XVII. SUCCESSORS AND ASSIGNS

The parties each bind themselves, their respective successors, executors, administrators and assigns to the other party to this contract. Neither party will assign, sublet, subcontract or transfer any interest in this Agreement without the prior written consent of the other party. No assignment, delegation of duties or subcontract under this Agreement will be effective without the written consent of all parties.

EXECUTED on the dates indicated below:

CITY OF PARKER, TEXAS

BY: _____
City Administrator

APPROVED AS TO FORM:

City Attorney

CITY OF PLANO, TEXAS

BY: _____
Thomas H. Muehlenbeck
City Manager

APPROVED AS TO FORM:

Diane C. Wetherbee, City Attorney

CITY OF ALLEN, TEXAS

BY: _____
Peter H. Vargas, City Manager

APPROVED AS TO FORM:

Peter G. Smith, City Attorney

ACKNOWLEDGEMENTS

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the ____ day of _____, 2010, by _____, City Administrator of the **CITY OF PARKER, TEXAS**, a general-law municipality, on behalf of such municipality.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the ____ day of _____, 2010, by **THOMAS H. MUEHLENBECK**, City Manager of the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, on behalf of such municipal corporation.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the ____ day of _____, 2010, by **PETER H. VARGAS**, City Manager of the **CITY OF ALLEN, TEXAS**, a home-rule municipal corporation, on behalf of such corporation.

Notary Public, State of Texas



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY					
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory					
Council Meeting Date:		10/11/10			
Department:		Public Safety Communications			
Department Head		Ronald Timmons			
Agenda Coordinator (include phone #): Trang Tran x7930					
CAPTION					
A Resolution of the City Council of the City of Plano, Texas, approving 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 its execution by the City Manager, or his authorized designee; and providing an effective date.					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input checked="" type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	2010-2011, 2011-2012, 2012-2013, 2013-2014, 2014-2015	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	0	0	0
Encumbered/Expended Amount		0	0	0	0
This Item		0	18,000	72,000	90,000
BALANCE		0	18,000	72,000	90,000
FUND(s): GENERAL FUND					
COMMENTS: Actual revenue is variable and future revenue projections are based on the population estimates for the City of Parker as found in the annual NCTCOG population estimates. Estimated revenue to be received by the City of Plano from the City of Parker totals \$90,000 over the five-year period, based on current population.					
STRATEGIC PLAN GOAL: Fire & Emergency Medical Dispatch service agreements relate to the City's Goal of "Financially Strong City with Service Excellence" and "Partnering for Community Benefit".					
SUMMARY OF ITEM					
Staff requests Council approval of an Interlocal agreement between the City of Plano and the City of Parker whereby the City of Plano will dispatch calls for Fire and Emergency Medical Service for the City of Parker. This agreement is for a five year period beginning on October 1, 2010 and ending on September 30, 2015.					



**CITY OF PLANO
COUNCIL AGENDA ITEM**

List of Supporting Documents: Resolution, Agreement	Other Departments, Boards, Commissions or Agencies

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an 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 its execution by the City Manager, or his authorized designee; and providing an effective date.

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

WHEREAS, the City Council has before it the proposed Interlocal Cooperation Agreement by and between the City of Plano, Texas (“Plano”), and the City of Parker, Texas (“Parker”), attached hereto as Exhibit “A” and incorporated herein by reference, which provides the terms and conditions under which Plano will dispatch calls for emergency fire and medical assistance to Parker (hereinafter called “Agreement”); and

WHEREAS, upon full review and consideration of the Agreement and all related matters, the City Council finds that the proposed Agreement provides for services that protect the health, safety, and welfare of residents, a valid public purpose of interest to each of the entities; and

WHEREAS, the City Council desires to approve the terms and conditions of the Agreement, and to authorize the City Manager or his authorized designee 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 City Council, after review of the terms and conditions of the Agreement, hereby approves the attached Interlocal Agreement for Dispatch Services for Parker.

Section II. The City Manager or his authorized designee is hereby authorized to execute the Agreement and all other documents in connection herewith 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 the first day of October 2010.

DULY PASSED AND APPROVED the 11th day of October, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

AGREEMENT BETWEEN THE CITY OF PLANO AND THE CITY OF PARKER FOR FIRE AND EMERGENCY MEDICAL DISPATCH SERVICES

This Agreement is made between the CITY OF PLANO, TEXAS, a municipal corporation (hereinafter referred to as "Plano"), and the CITY OF PARKER, TEXAS, a general-law municipality (hereinafter referred to as "Parker"), as follows:

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

WHEREAS, Plano and Parker are political subdivisions within the State of Texas and are all engaged in the provision of governmental services for the benefit of their citizens; and

WHEREAS, the parties desire to enter into an agreement under which Plano will provide dispatch services as herein described to Parker at a fee; and

WHEREAS, Plano and Parker have current funds available to satisfy any fees and costs required pursuant to this Agreement.

NOW THEREFORE, Plano and Parker, for and in consideration of the recitals set forth above and terms and conditions below, agree as follows:

I. TERM

The term of this Agreement is for a period of three (3) years, beginning on the 1st day of October, 2010, and ending on the 30th day of September, 2015, with an optional three (3) year automatic renewal, unless terminated earlier by either party in accordance with the terms of this Agreement. Unless terminated by either Plano or Parker, as set forth hereafter, this agreement shall automatically renew yearly without further action until its automatic termination on the 30th day of September 2018.

II. OBLIGATIONS OF PLANO

- 2.01 Upon transfer of fire and Emergency Medical Services (EMS) calls from the Collin County Sheriff's Office, Plano shall:
- (a) dispatch Parker fire calls via radio and alpha-numeric pager, or in the event of radio malfunction, dispatch via any other method available; and
 - (b) provide pre-arrival EMS instructions when necessary and appropriate, and notify an EMS Provider designated by Parker when necessary and appropriate.

III. OBLIGATIONS OF PARKER

- 3.01 The primary Public Safety Answering Point (PSAP) for the City of Parker shall be the Collin County Sheriff's Office (CCSO). CCSO shall transfer all fire and EMS calls to the Plano Public Safety Communications (PSC) Center. Parker shall be responsible for maintaining a PSAP for all calls dispatched by Plano under this agreement and shall promptly notify Plano if the PSAP changes.

- 3.02 Parker shall identify the phone lines and all equipment necessary to accommodate the transfer of calls from its primary PSAP to Plano PSC.
- 3.03 Parker shall at all times provide Plano with current and accurate street maps of the entire City of Parker, including all areas that are served by fire, medical and other emergency personnel. This shall be in ESRI Shapefile format as specified by Plano.
- 3.04 Parker shall provide a current and accurate listing of all types of apparatus in its possession and shall provide current and accurate response information.
- 3.05 Parker shall designate and identify its EMS Provider, and shall provide all information necessary for Plano to contact the Parker EMS Provider. Such information shall always be kept current and accurate.
- 3.06 Parker shall provide all other information that is unique to Parker Fire Department operations, regardless of the type of information, and shall immediately notify Plano as to changes or modifications of all such information that is reasonably necessary for Plano to provide services under this Agreement.

IV. EMPLOYMENT RIGHTS NOT ABRIDGED

Employment rights of personnel assigned to either Plano or Parker under this Agreement are not abridged by the other agency. Participation in this Agreement by Plano and Parker shall not penalize personnel of either department nor shall it threaten their employment rights, promotional opportunities, training opportunities, or fringe benefits.

V. FEES

- 5.01 The fees to be paid for Fire and Emergency Medical Dispatch Services shall be assessed against Parker. All fees due hereunder shall be paid from current revenues legally available to Parker. Parker agrees to pay Plano according to the following schedule:
 - (a) The annual fee for dispatch services shall be based upon the estimated population for Parker as identified by the annual Population Estimates published by the North Texas Central Council of Governments (NCTGOC).
 - (b) The fees for dispatching services shall be \$5.00 per Parker resident for the first year.
 - (c) The fees will increase two percent (2%) per capita for each remaining year.
 - (d) Fees shall be calculated based upon the most recently available NCTCOG Population Estimates.

VI. PAYMENTS DUE

All payments for expenses incurred as a result of the performance of this Agreement shall be made only from current revenues legally available to each respective party. For the term of the Agreement ending September 30, 2018, Parker agrees to pay Plano the Annual Fees under Article IV within thirty (30) days of the receipt of the invoice.

VII. TERMINATION

7.01 This agreement may be terminated as specified below upon the occurrence of any of the following:

- (a) Either party may terminate this Agreement at any time by giving sixty (60) days advance written notice. Parker shall pay for all fees incurred through the effective date of termination.

VIII. RELEASE AND HOLD HARMLESS

Each party agrees to waive all claims against, to release, and to hold harmless the other party and its respective officials, agents, employees, in both their public and private capacities, from any and all liability, claims, suits, demands, losses, damages, attorney fees, including all expenses of litigation or settlement, or causes of action which may arise by reason or injury to or death of any person or for loss of, damage to, or loss of use of any property arising out of or in connection with this Agreement. In the event that a claim is filed, each party shall be responsible for its proportionate share of liability.

IX. IMMUNITY

In the execution of this Agreement, none of the parties waive, nor shall it be deemed hereby to have waived any immunity or any legal or equitable defense otherwise available against claims arising in the exercise of governmental powers or functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth herein, and this Agreement does not create any rights in parties who are not signatories to this Agreement.

X. ASSIGNMENT AND SUBLETTING

Parker agrees to retain control and to give full attention to the fulfillment of this Agreement, that this Agreement will not be assigned or sublet without the prior written consent of Plano and Parker, and that no part or feature of the work will be sublet to anyone objectionable to Plano. Parker further agrees that the performance of this Agreement shall not relieve Parker from its full obligations to Plano as provided by this Agreement.

XI. ENTIRE AGREEMENT

This Agreement represents the entire and integrated agreement between Plano and Parker and supersedes all prior negotiations, representations, and/or agreements, either written or oral. This Agreement may be amended only by written instrument signed by Plano and Parker.

XII. NOTICES

Unless notified otherwise in writing, all notices are required to be given to either party in writing and delivered in person or send via certified mail to the other party at the following respective addresses:

Plano Representative:
CITY OF PLANO
Director of Public Safety Communications
1520 K Avenue, Suite 010
Plano, TX 75074
972-941-7931

Parker Representative:
CITY OF PARKER
City Administrator
5700 East Parker Road
Parker, TX 75002
972-442-6811

XIII. AUTHORITY TO SIGN/CITY COUNCIL AUTHORIZATION

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

XIV. SEVERABILITY

The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held to be contract 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 Agreement. However, upon occurrence of such event, either party may terminate this Agreement by giving the other party thirty (30) days written notice.

XV. VENUE

This agreement and any of its terms or provisions, as well as the rights and duties of the parties hereto, shall be governed by the laws of the State of Texas. The parties agree that this Agreement shall be enforceable in Collin County, Texas, and if legal and necessary, exclusive venue shall lie in Collin County, Texas.

XVI. INTERPRETATION OF AGREEMENT

Although this Agreement is drafted by Plano, this is a negotiated document. Should any part of this Agreement be in dispute, the parties agree that the Agreement shall not be constructed more favorably for either party.

XVII. REMEDIES

No right or remedy granted herein or reserved to the parties is exclusive of any right or remedy granted by law or equity; but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this Agreement may be waived without the express written consent of the parties. It is further agreed that one (1) or more instance of forbearance by either party in the exercise of its respective rights under this Agreement shall in no way constitute a waiver thereof.

XVIII. SUCCESSORS AND ASSIGNS

The parties each bind themselves, their respective successors, executors, administrators, and assigns to the other party to this contract. Neither party will assign, sublet, subcontract or transfer any interest in this Agreement without prior written consent of the other

party. No assignment, delegation of duties or subcontract under this Agreement will be effective without the written consent of all parties.

EXECUTED on the dates indicated below:

CITY OF PARKER, TEXAS

BY: _____
Joe Cordina, MAYOR

APPROVED AS TO FORM:

City Attorney

CITY OF PLANO, TEXAS

BY: _____
Thomas H. Muehlenbeck, CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, City Attorney



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY	
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory	
Council Meeting Date:	10/11/10
Department:	Public Safety Communications
Department Head	Ronald Timmons
Agenda Coordinator (include phone #): Trang Tran x7930	

CAPTION

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Interlocal Agreement by and between the City of Plano, Texas and the Plano Independent School District for the Plano Independent School District's use of the Radio Communications System owned by the Cities of Allen and Plano; authorizing its execution by the City Manager, or his authorized designee; and providing an effective date.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
2010-2011, 2011-2012, 2012-2013, 2013-2014, 2014-2015				
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	51,006	204,024	255,030
BALANCE	0	51,006	204,024	255,030

FUND(s): **INTERGOVERNMENTAL RADIO FUND (017.237)**

COMMENTS: Approval of this item will result in total estimated revenues of \$382,545 over a five-year period to the Interlocal Radio System Access Fund. Plano's annual share is projected at \$51,006, or \$255,030 over the contract period. Allen is projected to receive \$25,503 annually, for a total of \$127,515.

STRATEGIC PLAN GOAL: Interlocal agreements for the use of the Allen and Plano Radio Communications System relate to the City's Goal of "Financially Strong City with Service Excellence" and "Partnering for Community Benefit".

SUMMARY OF ITEM

Staff requests Council approval of an Interlocal agreement between the Cities of Allen and Plano and the Plano Independent School District for the use of the Allen and Plano Radio Communications System. This agreement is for a five year period beginning on October 1, 2010 and ending on September 30, 2015.



**CITY OF PLANO
COUNCIL AGENDA ITEM**

List of Supporting Documents: Resolution, Agreement	Other Departments, Boards, Commissions or Agencies

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Interlocal Agreement by and between the City of Plano, Texas and the Plano Independent School District for the Plano Independent School District's use of the Radio Communications System owned by the Cities of Allen and Plano; authorizing its execution by the City Manager, or his authorized designee; and providing an effective date.

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

WHEREAS, the City Council has before it the proposed Interlocal Cooperation Agreement by and between the Cities of Allen and Plano, Texas, and the Plano Independent School District attached hereto as Exhibit "A", providing terms and conditions for the use of the Cities of Plano and Allen's radio communications system by the Plano Independent School District; and

WHEREAS, the proposed Agreement serves a valid public purpose of interest to the City in that the use of the radio system allows emergency personnel to communicate thereby protecting the health, safety and welfare of residents; 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 of the Agreement should be approved, and that the City Manager or his authorized designee 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, are hereby in all things approved.

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

Section III. This Resolution shall become effective the first day of October 2010.

DULY PASSED AND APPROVED the 11th day of October, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

AGREEMENT BETWEEN THE CITIES OF ALLEN AND PLANO AND THE PLANO INDEPENDENT SCHOOL DISTRICT FOR THE USE OF THE ALLEN AND PLANO RADIO COMMUNICATIONS SYSTEM

The CITIES OF PLANO, TEXAS AND ALLEN, TEXAS, both municipal corporations, (hereinafter referred to as "Cities") and the PLANO INDEPENDENT SCHOOL DISTRICT, a school district formed under the laws of the State of Texas, (hereinafter referred to as "PISD"), agree as follows:

WHEREAS, the Cities and PISD are political subdivisions within the State of Texas, each of which engages in the provision of governmental services for the benefit of their citizens; and

WHEREAS, the Interlocal Cooperation Act under Chapter 791 of the Texas Government Code (the "Act") provides authority for local governments of the State of Texas to enter into Interlocal agreements with each other regarding governmental functions and services as set forth in the Act; and

WHEREAS, the cities of Allen and Plano jointly own, operate, and maintain the radio communications system exclusive of the radios owned individually by each city (hereinafter referred to as "System") for the purpose of providing radio communications in support of its governmental operations; and

WHEREAS, PISD wishes to use certain portions of the System for its governmental operations; and

WHEREAS, the use of the System in the provision of governmental services benefits the public health and welfare, promotes efficiency and effectiveness of local governments, and is of mutual concern to the contracting parties; and

WHEREAS, PISD and the Cities have current funds available to satisfy any fees and costs required pursuant to this Agreement.

NOW, THEREFORE, the Cities and PISD, for and in consideration of the recitals set forth above and terms and conditions below, agree as follows:

I. TERM

The term of this Agreement is for a period of five (5) years, beginning on the 1st day of October 2010, and ending on the 30th day of September 2015, with an optional three (3) year automatic renewal, unless terminated earlier by either party in accordance with the terms of this Agreement. Unless terminated by the Cities or PISD, as set forth hereafter, this agreement shall automatically renew yearly without further action until its automatic termination on the 30th day of September, 2018.

II. OBLIGATIONS OF PISD

2.01 PISD shall use the System in accordance with this Agreement to provide integration of communications by PISD between its users on the System for governmental operations.

2.02 When using the System, PISD shall abide by all applicable federal and state laws and regulations, including any regulations of the Allen and Plano Radio System. When PISD uses the System for interoperability with Talkgroups other than those provided by this Agreement, PISD will also abide by the user rules of those Talkgroups.

2.03 PISD must provide a written request to the Plano System Manager to activate radios on the System. Such request must include the model and serial number of the radio, the name of the user, and identifying Talkgroups required in the radio.

2.04 PISD is responsible for furnishing all its radios, which are compatible with the P-25 Digital system, and for the maintenance of the same.

III. OBLIGATIONS OF CITIES

3.01 The Cities will lease to PISD **nine (9)** Talkgroups, which are a primary level of communication for users on the System (hereinafter referred to as "Talkgroup"), comparable to a channel on a conventional radio system, for the exclusive use of PISD. Talkgroups will be established for PISD by Plano.

3.02 The Plano System Manager will not activate radios on PISD Talkgroups nor make changes to PISD radios without first receiving authorization from the designated representative of PISD, unless in the opinion of Plano, such action is necessary to eliminate harmful interference.

3.03 Plano is also responsible for:

- (1) Coordinating Talkgroups among system users;
- (2) Grouping of Talkgroups to allow transmitting and receiving on all associated Talkgroups as required by PISD;
- (3) The operation, maintenance, and control of the System.

IV. FEES

The fees assessed against PISD and due annually for services and use of the System are as follows:

(1)	Lease radio airtime (per radio, per month)	\$ 8.56
(2)	Lease Talkgroup (per Talkgroup, per month)	\$62.97
(3)	Administrative and Technical fee (per month)	\$1,374.95

None of the charges listed above include the cost of maintenance of mobiles, portables, or control stations/points.

The Cities may increase these fees at the beginning of each fiscal year by an amount not to exceed seven percent (7%) of the previous year's fees. The Cities will provide 120 days notice to PISD before increasing the fees.

Total Fees for Annual Service

Based on the fees set out above, the Cities will calculate the annual fee due based upon the total number of radios and Talkgroups and submit an invoice to PISD on or before October 1st of each year. This amount is subject to change when PISD adds or deletes the number of radios and/or Talkgroups in service. PISD must notify the Plano System Manager in writing of any addition or deletion of radios and/or Talkgroups. The amount owed for annual fees for additions of radio/Talkgroups will be prorated for the year added, invoiced immediately, and amounts will be due within 30 days of receipt of the invoice for the addition(s). The amount owed for annual fees will be adjusted for deletions the next contract year. No refunds will be given for payments made for radios/Talkgroups deleted after annual payment until the next contract year.

V. PAYMENT DUE

PISD agrees to pay the Cities the annual fees specified under Article IV within thirty (30) days of the receipt of the invoice. Should PISD add radios or Talkgroups to the service within a term, PISD agrees to pay the additional fee(s) due within thirty (30) days of invoice. All payments for expenses incurred as a result of the performance of this Agreement shall be made only from current revenues legally available to each respective party.

VI. TERMINATION

6.01 Termination of this Agreement may occur by any of the following:

- (1) Either party may terminate this Agreement at any time by giving sixty (60) days advance written notice. PISD shall pay for all fees incurred through the effective date of termination.
- (2) If the Cities permanently discontinue the operation of its System, this Agreement shall terminate on the date of discontinuance without further notice, and no fees will be reimbursed by the Cities to PISD.
- (3) In the event of any default of any term, either party may forfeit this Agreement at its discretion if the default is not cured within ten (10) days of written notice.

VII. RELEASE AND HOLD HARMLESS

Each party does hereby agree to waive all claims against, release, and hold harmless the other party and its respective officials, officers, agents, employees, in both their public and private capacities, from any and all liability, claims, suits, demands, losses, damages, attorneys fees, including all expenses of litigation or settlement, or causes of action which may arise by reason of injury to or death of any person or for loss of, damage to, or loss of use of any property arising out of or in connection with this Agreement. In the event that a claim is filed, each party is responsible for its proportionate share of liability.

VIII. IMMUNITY

In the execution of this Agreement, none of the parties waive, nor shall be deemed hereby to have waived, its sovereign immunity or any legal or equitable defense

to any form of liability. The parties by entering into this Agreement do not create any obligations, express or implied, other than those set forth herein, and this Agreement shall not create any rights in parties not signatories hereto.

IX. ASSIGNMENT

PISD agrees to retain control and to give full attention to the fulfillment of this Agreement; PISD cannot assign or sublet this Agreement without the prior written consent of the Cities. Further, PISD cannot sublet any part or feature of the work to anyone objectionable to the Cities. PISD also agrees that the subletting of any portion or feature of the work, or materials required in the performance of this Agreement, does not relieve PISD from its full obligations to the Cities as provided by this Agreement.

X. ENTIRE AGREEMENT

This Agreement represents the entire and integrated agreement between the Cities and PISD, and supersedes all prior negotiations, representations and/or agreements, either written or oral. The parties may amend this Agreement only by written instrument signed by PISD and the Cities, except that execution of an amendment for assignment or subletting only requires the signature of the Cities.

XI. NOTICES

Unless notified otherwise in writing, all notices are required to be given to either party in writing and delivered in person or send via certified mail to the other party at the following respective addresses:

PISD Representative:

Daniel Wine
Energy Manager
Plano Independent School District
6600 Alma Drive
Plano, TX 75023-2806
972-519-8282

Plano Representative:

Director, Public Safety Communications
City of Plano
1520 K Avenue
Plano, Texas 75074
972-941-7931

Allen Representative:

Police Chief
City of Allen
205 W. McDermott
Allen, Texas 75013
214-509-4200

XII. AUTHORITY TO SIGN/CITY COUNCIL AUTHORIZATION

The undersigned officer and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto. Cities have executed this Agreement pursuant to duly authorized action of the City Council of Plano on _____, 2010, and the City

of Allen on _____, 2010. PISD has executed this Agreement pursuant to duly authorized City Council Resolution No. _____, dated _____, 2010.

XIII. SEVERABILITY

The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement 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 Agreement. However, upon the occurrence of such event, either party may terminate this Agreement by giving the other party thirty (30) days written notice.

XIV. VENUE

This Agreement and any of its terms or provisions, as well as the rights and duties of the parties hereto, shall be governed by the laws of the State of Texas. The parties agree that this Agreement shall be enforceable in Collin County, Texas, and, if legal action is necessary, exclusive venue shall lie in Collin County, Texas.

XV. INTERPRETATION OF AGREEMENT

Although this Agreement is drafted by the Cities, this is a negotiated document. Should any part of this Agreement be in dispute, the parties agree that the Agreement shall not be construed more favorably for either party.

XVI. REMEDIES

No right or remedy granted herein or reserved to the parties is exclusive of any right or remedy granted by law or equity; but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this Agreement may be waived without the express written consent of the parties. It is further agreed that one (1) or more instances of forbearance by either party in the exercise of its respective rights under this Agreement shall in no way constitute a waiver thereof.

XVII. SUCCESSORS AND ASSIGNS

The parties each bind themselves, their respective successors, executors, administrators and assigns to the other party to this contract. Neither party will assign, sublet, subcontract or transfer any interest in this Agreement without the prior written consent of the other party. No assignment, delegation of duties or subcontract under this Agreement will be effective without the written consent of all parties.

EXECUTED on the dates indicated below:

PLANO INDEPENDENT SCHOOL DISTRICT

BY: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

School District Attorney

CITY OF PLANO, TEXAS

BY: _____

Thomas H. Muehlenbeck
City Manager

APPROVED AS TO FORM:

Diane C. Wetherbee, City Attorney

CITY OF ALLEN, TEXAS

BY: _____

Peter H. Vargas, City Manager

APPROVED AS TO FORM:

Peter G. Smith, City Attorney

ACKNOWLEDGEMENTS

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2010, by _____, **PLANO INDEPENDENT SCHOOL DISTRICT**, a Texas Public School on behalf of such entity.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2010, by **THOMAS H. MUEHLENBECK**, City Manager of the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, on behalf of such municipal corporation.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2010, by **PETER H. VARGAS**, City Manager of the **CITY OF ALLEN, TEXAS**, a home-rule municipality, on behalf of such municipality.

Notary Public, State of Texas



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular <input type="checkbox"/> Statutory
Council Meeting Date:	10/11/10
Department:	Public Safety Communications
Department Head	Ronald Timmons
Agenda Coordinator (include phone #): Trang Tran x7930	

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 and the Texas Health Center for Diagnostics and Surgery for the use of the Radio Communications System owned by the Cities of Allen and Plano; authorizing its execution by the City Manager, or his authorized designee; and providing an effective date.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR: 2010-2011, 2011-2012, 2012-2013, 2013-2014, 2014-2015	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	1,822	7,288	9,110
BALANCE	0	1,822	7,288	9,110

FUND(s): INTERGOVERNMENTAL RADIO FUND (017.237)

COMMENTS: Approval of this item will result in total estimated revenues of \$13,665 over a five-year period to the Interlocal Radio System Access Fund. Plano's annual share is projected at \$1,822, or \$9,110 over the contract period. Allen is projected to receive \$911 annually, for a total of \$4,555.

STRATEGIC PLAN GOAL: Interlocal agreements for the use of the Allen and Plano Radio Communications System relate to the City's Goal of "Financially Strong City with Service Excellence" and "Partnering for Community Benefit".

SUMMARY OF ITEM

Staff requests Council approval of an Agreement between the Cities of Allen and Plano and the Texas Health Center for Diagnostics and Surgery for the use of the Allen and Plano Radio Communications System. This agreement is for a five year period beginning on October 1, 2010 and ending on September 30, 2015.



**CITY OF PLANO
COUNCIL AGENDA ITEM**

List of Supporting Documents: Resolution, Agreement	Other Departments, Boards, Commissions or Agencies

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Agreement by and between the City of Plano, Texas and the Texas Health Center for Diagnostics and Surgery for the use of the Radio Communications System owned by the Cities of Allen and Plano; authorizing its execution by the City Manager, or his authorized designee; and providing an effective date.

WHEREAS, the City Council has before it the proposed Agreement by and between the Cities of Allen and Plano, Texas, and the Texas Health Center for Diagnostics and Surgery attached hereto as Exhibit "A", providing terms and conditions for the use of the Cities of Plano and Allen's radio communications system by the Texas Health Center for Diagnostics and Surgery; and

WHEREAS, the proposed Agreement serves a valid public purpose of interest to the City in that the use of the radio system allows emergency personnel to communicate thereby protecting the health, safety and welfare of residents; 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 of the Agreement should be approved, and that the City Manager or his authorized designee 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, are hereby in all things approved.

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

Section III. This Resolution shall become effective the first day of October 2010.

DULY PASSED AND APPROVED the 11th day of October, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

AGREEMENT BETWEEN THE CITIES OF ALLEN AND PLANO AND THE TEXAS HEALTH CENTER FOR DIAGNOSTICS AND SURGERY FOR USE OF THE ALLEN AND PLANO RADIO COMMUNICATIONS SYSTEM

The CITIES OF PLANO, TEXAS AND ALLEN, TEXAS both municipal corporations, (hereinafter referred to as "Cities"), and the TEXAS HEALTH CENTER FOR DIAGNOSTICS AND SURGERY a hospital for-profit corporation (hereinafter referred to as "THCDS"), agree as follows:

WHEREAS, The Cities of Allen, and Plano jointly own, operate, and maintain an 800 MHz trunked communications system (hereinafter referred to as "System") for the purpose of providing radio communications in support of its governmental operations; and

WHEREAS, THCDS wishes to use the Cities System to provide Communications with-in THCDS, Buildings and/or Facilities on a day-to-day basis and will have the ability to coordinate with Plano Dispatch in time of emergency.

WHEREAS, the Cities hereby consent to such use of the System by THCDS, and recognizes that such use benefits THCDS, and the public health and welfare.

NOW, THEREFORE, the Cities and THCDS, for and in consideration of the recitals set forth above and terms and conditions below, agree as follows:

I. TERM

The term of this Agreement is for a period of five (5) years, beginning on the 1st day of October 2010, and ending on the 30th day of September 2015, with an optional three (3) year automatic renewal, unless terminated earlier by either party in accordance with the terms of this Agreement. Unless terminated by either the Cities or THCDS, as set forth hereafter, this agreement shall automatically renew yearly without further action until its automatic termination on the 30th day of September 2018.

II. OBLIGATIONS OF PARTIES

2.01 Plano shall provide THCDS with radio identification numbers (aliases). and/or Radio Talkgroups (channels) on the Plano system.

2.02 THCDS shall use the System in accordance with this Agreement to provide interoperability of communications to Plano Dispatch in an emergency and THCDS and its users on the System only for conducting day-to-day operations specifically identified herein.

2.03 When using the System, THCDS shall abide by all applicable federal, state, and local laws, rules, and regulations, including any rules and regulations of the Allen and Plano Radio System. When THCDS is using the System for interoperability with Talkgroups other than those provided for by this Agreement, THCDS shall also abide by the rules for such Talkgroups.

2.04 THCDS must make written requests to the Plano System Manager for the activation of radios on the System, which must include the model and serial number of the radio, the name of the user, and the required Talkgroups.

2.05 THCDS shall be responsible for furnishing/purchasing its own radios. Radio Manager must approve radio type and model.

2.06 THCDS programming of additional units will be performed by the City of Plano Radio shop.

2.07 THCDS may operate no more than two (2) mobile/portable units on their Talkgroup at any one time.

2.08 THCDS shall operate on Allen and Plano system ONLY for purposes related to their provision of emergency and day-to-day services. Any other use by THCDS is prohibited.

III. FEES

3.01 The fees assessed against THCDS and due annually for the services and use of the System are as follows:

(1)	Lease radio airtime (per month, per radio)	\$ 8.56
(2)	Lease Talkgroup (per month, per Talkgroup)	\$ 62.97
(3)	Contract services (per month)	\$ 96.30

None of the charges listed above include the cost of maintenance of mobiles, portables, or control stations/points.

The Cities may increase these fees at the beginning of each renewal period by an amount not to exceed seven percent (7%) of the previous year's fees. The Cities will provide 120 days notice to THCDS before increasing the fees.

Total Fees for Annual Service

Based on the fees set out above, the Cities will calculate the annual fee due based upon the total number of radios and Talkgroups and submit an invoice to THCDS on or before October 1st of each year. This amount is subject to change when THCDS adds or deletes the number of radios and/or Talkgroups in service. THCDS must notify the Plano System Manager in writing of any addition or deletion of radios and/or Talkgroups.

The amount owed for annual fees for additions of radio/Talkgroups will be prorated for the year added, invoiced immediately, and amounts will be due within 30 days of receipt of the invoice for the addition(s). The amount owed for annual fees will be adjusted for deletions the next contract year. No refunds will be given for payments made for radios/Talkgroups deleted after annual payment until the next contract year.

IV. PAYMENT DUE

THCDS agrees to pay the Cities the annual fees specified under Article III. Within thirty (30) days of the receipt of the invoice. Should THCDS add radios or Talkgroups to the service within a term, THCDS agrees to pay the additional fees(s) due within thirty (30) days of invoice.

V. TERMINATION

5.01 Termination of this Agreement may occur by any of the following:

- (a) Either party may terminate this Agreement at any time by giving sixty (60) days advance written notice. THCDS shall pay for all fees incurred through the effective date of termination.
- (b) If the Cities permanently discontinue operation of the System, this Agreement shall terminate on the date of discontinuance without further notice, and no fees will be reimbursed by the Cities to THCDS.

VI. INDEMNIFICATION

THE CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONTRACTOR'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE CONTRACTOR IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS. THE CITY DOES NOT WAIVE ANY

GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

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

VII. ASSIGNMENT AND SUBLETTING

THCDS agrees to retain control and to give full attention to the fulfillment of this Agreement; THCDS cannot assign or sublet this Agreement without the prior written consent of a majority of the Cities. Further, THCDS cannot sublet any part or feature of the work to anyone objectionable to the Cities. THCDS also agrees that the subletting of any portion or feature of the work, or materials required in the performance of this Agreement, does not relieve THCDS from its full obligations to the Cities as provided by this Agreement.

VIII. ENTIRE AGREEMENT

This Agreement represents the entire and integrated agreement between the Cities and THCDS and supersedes all prior negotiations, representations, and/or agreements, either written or oral. The parties may amend this Agreement only by written instrument signed by THCDS and the Cities, except that execution of an amendment for assignment or subletting only requires the signature of a majority of the Cities.

IX. NOTICES

Unless notified otherwise in writing, all notices required to be given to either party shall be in writing and delivered in person or sent by certified mail to the respective parties at the following addresses:

THCDS Representative:

Randy J. Hostettler
Facilities Director
Texas Health Center for Diagnostics
and Surgery
6020 West Parker Road
Plano, Texas 75093
(972) 403-2823

Plano Representative:

Director of Public Safety Communications
City of Plano
1520 K Avenue
Plano, TX 75074
(972) 941-7931

Allen Representative:

Police Chief
City of Allen
205 W. McDermott
Allen, Texas 75013
(214) 509-4200

X. AUTHORITY TO SIGN/CITY COUNCIL AUTHORIZATION

The undersigned officer and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto. Cities have executed this Agreement pursuant to duly authorized action of the City Council of Plano on _____, 2010, and the City of Allen on _____, 2010. THCDS has executed this Agreement on _____, 2010.

XI. SEVERABILITY

The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement 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 Agreement. However, upon the occurrence of such event, either party may terminate this Agreement by giving the other party thirty (30) days written notice.

XII. VENUE

This Agreement and any of its terms or provisions, as well as the rights and duties of the parties hereto, shall be governed by the laws of the State of Texas. The parties agree that this Agreement shall be enforceable in Collin County, Texas, and, if legal action is necessary, exclusive venue shall lie in Collin County, Texas.

XIII. INTERPRETATION OF AGREEMENT

Although this Agreement is drafted by the Cities, this is a negotiated document. Should any part of this Agreement be in dispute, the parties agree that the Agreement shall not be construed more favorably for either party.

XIV. REMEDIES

No right or remedy granted herein or reserved to the parties is exclusive of any right or remedy granted by law or equity; but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this Agreement may be waived without the express written consent of the parties. It is further agreed that one (1) or more instances of forbearance by either party in the exercise of its respective rights under this Agreement shall in no way constitute a waiver thereof.

XV. SUCCESSORS AND ASSIGNS

The parties each bind themselves, their respective successors, executors, administrators and assigns to the other party to this contract. Neither party will assign, sublet, subcontract or transfer any interest in this Agreement without the prior written consent of the other party. No assignment, delegation of duties or subcontract under this Agreement will be effective without the written consent of both parties.

EXECUTED on the dates indicated below:

TEXAS HEALTH CENTER FOR DIAGNOSTICS AND SURGERY

BY: _____
Name: _____
Title: _____

CITY OF PLANO, TEXAS

BY: _____
Thomas H. Muehlenbeck
City Manager

APPROVED AS TO FORM:

Diane C. Wetherbee, City Attorney

CITY OF ALLEN, TEXAS

BY: _____
Peter H. Vargas, City Manager

APPROVED AS TO FORM:

Peter G. Smith, City Attorney

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2010, by _____, _____, of **TEXAS HEALTH CENTER FOR DIAGNOSTICS AND SURGERY**, a hospital for-profit corporation, on behalf of such corporation.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the ____ day of _____, 2010, by **THOMAS H. MUEHLENBECK**, City Manager of the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, on behalf of such municipal corporation.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2010, by **PETER VARGAS**, City Manager, of the **CITY OF ALLEN, TEXAS**, a home-rule municipality, on behalf of such municipality.

Notary Public, State of Texas



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		10/11/10		
Department:		Legal		
Department Head		Diane Wetherbee		
Agenda Coordinator (include phone #): Lynne Jones - 7109				
CAPTION				
A Resolution of the City Council of the City of Plano, Texas, approving the hiring of an Assistant City Attorney by the City Attorney; and providing an effective date.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	2010-2011	Prior Year (CIP Only)	Current Year	Future Years
		TOTALS		
Budget		0	87,548	0
Encumbered/Expended Amount		0	0	0
This Item		0	-87,548	0
BALANCE		0	0	0
FUND(S): GENERAL FUND				
<p>COMMENTS: This item in the amount of \$87,548 is included in the approved 2010-2011 Budget. This position does not increase the number of authorized positions in Legal. City Charter authorizes the hiring of attorneys with the approval of the City Council.</p> <p>STRATEGIC PLAN GOAL: The hiring of an Assistant City Attorney meets the City's goal of "Financially Strong City with Service Excellence."</p>				
SUMMARY OF ITEM				
<p>City Charter authorizes the hiring of attorneys with the approval of the City Council. It is my recommendation that Susan Keller be hired as an assistant city attorney for my office. Ms. Keller will fill the vacancy created by Rodney Patten's promotion. The filling of this position does not increase the number of authorized positions. Legal has had a vacancy in the office since January 30, 2010. Ms. Keller is currently a prosecutor in Carrollton, and, if approved, will begin on October 18, 2010. Ms. Keller graduated from Southern Methodist University and was licensed to practice in 1997. She has worked as a prosecutor in Carrollton for the last 8 years.</p>				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
n/a			n/a	

A Resolution of the City Council of the City of Plano, Texas, approving the hiring of an Assistant City Attorney by the City Attorney; and providing an effective date.

WHEREAS, Section 4.05 of the City Charter of the City of Plano gives the City Attorney the authority to select attorneys, with the approval of the City Council, to represent the City in all litigation; and

WHEREAS, the City Attorney has hired Assistant City Attorneys to represent the City in litigation and to advise the City officials and departments.

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 Attorney of Susan Keller as Assistant City Attorney, such approval to be effective with the date of her employment and compliance with all prescreening requirements.

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

DULY PASSED AND APPROVED this the 11th day of October, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY					
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory					
Council Meeting Date:		October 11, 2010			
Department:		Library Administration			
Department Head		Cathy Ziegler			
Agenda Coordinator (include phone #): Mary Ann Dunnivant (4208)					
CAPTION					
<p>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 \$75,857 from Collin County; approving its execution by the City Manager or his authorized designee; and providing an effective date.</p>					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input checked="" type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	FY 2010-11	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	0	0	0
Encumbered/Expended Amount		0	0	0	0
This Item		0	75,857	0	75,857
BALANCE		0	75,857	0	75,857
FUND(S): GENERAL FUND					
<p>COMMENTS: Approval of this item will result in \$75,857 in revenue from the Collin County Interlocal Cooperative Library Agreement. Funds received from this agreement will be used by the City of Plano – Plano Public Library System – to provide full library services for the residents of Collin County.</p> <p>STRATEGIC PLAN GOAL: Providing Interlocal library services relates to a “Financially Strong City with Service Excellence.”</p>					
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 \$75,857 from Collin County.					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		
1. Interlocal Cooperation Agreement for Library Services is attached as Exhibit “A” to the Resolution.					

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 \$75,857 from Collin County; approving its execution by the City Manager or his authorized designee; and providing an effective date.

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

WHEREAS, the City Council has been presented a proposed 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 \$75,857; 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.

DULY PASSED AND APPROVED THIS THE 11th DAY OF OCTOBER 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

Exhibit "A"

THE STATE OF TEXAS

COUNTY OF COLLIN

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

I.

Pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, this Interlocal Agreement ("Agreement") is made and entered into by and between **Collin County**, a political subdivision of the State of Texas, hereinafter referred to as the "**COUNTY**" and **City of Plano**, a municipality of Collin County, Texas, hereinafter referred to as the "**MUNICIPALITY**".

II.

COUNTY and **MUNICIPALITY** agree as follows:

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.

MUNICIPALITY is a home-rule municipal corporation that provides library services as one of its governmental functions.

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.

COUNTY agrees to fund the **MUNICIPALITY** in the amount of \$75,857.47 for the 2011 fiscal year (October 2010 through September 2011) of the **COUNTY**, under the conditions and terms set out herein. **COUNTY** has current revenues available to satisfy its fees and/or expenses incurred pursuant to this Agreement.

In exchange for said funds provided by the **COUNTY**, **MUNICIPALITY** will provide the following services to the citizens of Collin County for the fiscal year of 2011:

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.

MUNICIPALITY shall perform such other functions and duties as may be required of it by law or 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 persons being served.

All funds provided to the **MUNICIPALITY** by the **COUNTY** shall be used solely for library services to the public. The **MUNICIPALITY** shall diligently prepare and keep accurate and current records of its expenditures and shall permit inspection and copying of said records 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 officially recognized holidays).

MUNICIPALITY shall comply with the Texas Public Information 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 **MUNICIPALITY**, **COUNTY** agrees to pay **MUNICIPALITY** for the full performance of this agreement: the sum of \$75,857.47 with equal payments of \$18,964.37 to be made on a quarterly basis. **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 waives 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. **MUNICIPALITY** is not given authority by this contract to place **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. **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 the rights and duties of the parties hereto, shall be governed by the laws of the State of Texas.

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 _____, 2010.

COUNTY

BY: _____
Name: _____
Title: _____
Dated: _____

MUNICIPALITY

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

Plano City Council Meeting

Dated: _____

ATTEST:

By: _____
City Secretary

APPROVED AS TO FORM:

City Attorney

APPROVED AS TO CONTENT:

Cathy Ziegler, Director of Libraries
Plano Public Library System



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		October 11, 2010 0		
Department:		Public Information		
Department Head		Dana Conklin - 7321		
Agenda Coordinator (include phone #): Kimberly Simmons - 7307				
CAPTION				
An Ordinance of the City of Plano, Texas repealing Ordinance NO. 80-8-17 codified as Section 2-1 Official Logo of Article I in General, of Chapter 2 Administration of the Code of Ordinances of the City of Plano, Texas and adopting a new Section 2-1 to set forth guidelines for the use of the City of Plano logo; providing a severability clause, a repealer clause, a savings clause, a publication clause and an effective date.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S):				
COMMENTS: This item has no fiscal impact				
SUMMARY OF ITEM				
With widespread use of the official logo by contractors and vendors of the City there is a need to insure proper, authorized licensing for the use of the logo. This revision provides an administrative procedure for licensing the use of the logo to non-profit agencies receiving City grant funds and contractors providing goods, services or materials to the City				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Memo				
Ordinance				
Exhibit "A"				



Memorandum

Date: September 27, 2010

To: Tom Muehlenbeck, City Manager

From: Dana Conklin, Director of Public Information

Subject: **City of Plano Logo – Ordinance Revision**

The City of Plano logo has served as our graphic identity since it was adopted in 1980. This identity is characterized by dedicated professional staff providing service excellence for the residents of our community. It has come to serve as a point of community pride and recognition, and deserves the same care and protection of any of our assets.

The City of Plano Code of Ordinances requires the logo to be used on “equipment, materials, supplies and flags” of the City. Any other use of the copyrighted logo requires written application to the City Council.

With widespread use of the official logo by contractors and vendors of the City there is a need to insure proper, authorized licensing for the use of the logo in demonstrating such relationships. For example, we have seen the logo used on construction signs, consultant display materials, and by grant recipients. While this is under the coordination of the appropriate department with whom contracts have been let, formal Council approval has not been completed. In addition, with the logo now more available electronically via publications and pages on our website, we are seeing increased unauthorized use of the logo. Each of these uses violates the current ordinance and does not protect the valuable image of the City.

To strengthen and protect the use of our graphic identity investigation into the proper use of the logo has revealed the need for a licensing process without requiring each use be brought before the Council. In the absence of such an alternative, it is estimated that half of the contract approval agenda items would be accompanied by an additional approval for use of the logo. Since every contract does not incorporate the possibility of using the logo it is not feasible to place blanket language in all contract documents approved by Council.

Working in coordination with City staff, an application process has been developed and can be implemented to better insure authorized and proper use of the identifying graphic for the City.

I am recommending a revision of the logo ordinance which will provide for authorization by specific users to be managed by the Public Information Department. Attached is a copy of the Application for Use of the City of Plano Logo packet developed in support of this recommendation.

attachment

An Ordinance of the City of Plano, Texas repealing Ordinance No. 80-8-17 codified as Section 2-1 Official Logo of Article I in General, of Chapter 2 Administration of the Code of Ordinances of the City of Plano, Texas and adopting a new Section 2-1 to set forth guidelines for the use of the city of Plano logo; providing a severability clause, a repealer clause, a savings clause, a publication clause and an effective date.

WHEREAS, the City Council adopted the official City of Plano logo by Ordinance No. 80-8-17 on August 25, 1980; and

WHEREAS, currently the official City logo is limited to City use unless otherwise approved by the City Council; and

WHEREAS, the City Council wishes to allow non-profit agencies receiving City grant funds and contractors providing goods, services or materials to the City to use the logo on City projects with approval of the Director of Public Information; and

WHEREAS, the City Council desires to repeal this Ordinance and adopt a new Ordinance setting forth guidelines for the use of the logo.

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

Section I. Ordinance No. 80-8-17 codified as Section 2-1 Official Logo, of Article I. In General, of Chapter 2 Administration, is hereby repealed and a new ordinance is adopted to read in its entirety as follows:

"Sec. 2-1

(a) The Logo approved by the City Council of the City of Plano on August 25, 1980 is the official Logo of the City of Plano. This official Logo shall be used by the City of Plano on all its equipment, materials, supplies and flags from this day forward, until further order of the City Council.

(b) Except as set out in subsection (c) below, no person, firm, organization, or corporation other than the City of Plano, shall adopt, use, display, incorporate, or appropriate the official Logo of the City of Plano as any part of any material, equipment, or other matter of such person, firm, organization or corporation, without written application to and approval of the City Council.

(c) Non-profit agencies receiving City grant funds and contractors providing goods, services or materials to the City may use the official Logo in conjunction with City projects or official City business for the duration of their City contract with written approval from the Director of Public Information or his/her designee.

Section II. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable, and if any phrase, clause, sentence, or section of this Ordinance shall be declared unconstitutional or invalid by any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any other remaining phrase, clause, sentence, paragraph or section of this Ordinance.

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

Section IV. Any person, firm or corporation found to be violating any term or provision of this Ordinance, shall be subject to a fine in accordance with Section 1-4(b) of the City Code of Ordinances for each offense. Every day a violation continues shall constitute a separate offense.

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

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

DULY PASSED AND APPROVED this the 11th day of October, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY



Application for Use of the City of Plano Logo

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

Name of Organization: _____

Contact: _____

Address: _____

Phone: (office) _____ (cell) _____

Fax: _____

E-mail address: _____

Type of Organization: _____

(non-profit, commercial, private individual, etc)

Are you a recipient of City grant funds? (circle one)

Yes No If yes, please attach a copy of page 1 of your contract.

Are you a contractor providing goods, services, or materials to the City? (circle one)

Yes No If yes, please attach a copy of page 1 of your contract.

Indicate the City project, event or business associated with the use of the logo.

Provide contact information for the City of Plano staff member with which you are working

Name: _____

Department: _____

Phone: _____

E-Mail address: _____

Length / Term of Usage (limits of contract with the City of Plano)

Commencing: (xx/xx/xxxx) _____

Ending: (xx/xx/xxxx) _____

Type of product/signage logo is to be used upon: _____

(attach a sample/photo/drawing depicting the proposed usage of the logo to this application and explain each example if there is more than one)

Quantity to be printed: _____

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

If so, where, how and by whom? _____

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

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



Use of the City of Plano Logo

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

APPROVAL

The City of Plano Public Information Department has reviewed the application for Use of the City of Plano logo, has verified the applicant is a non-profit agency receiving City of Plano grant funds or is a contractor providing goods, services, or materials to the City; and that the outline of intended use(s) meets with City of Plano objectives for use of the City logo.

The applicant _____

is hereby approved for use of the City of Plano per this application. This approval is valid

from _____ to _____ for

purposes explained in this application.

Any uses of the logo outside this application must be approved by the Public Information Department, or City Council, prior to use.

CITY OF PLANO

By: _____
Signature

Print Name: _____

Title: _____

Date: _____



Specific Guidelines for City Logo Use by Non-City Entities

Purpose

The City of Plano's logo was adopted by the City Council in 1980 as the City's graphic identity. The City of Plano's identity is characterized by dedicated elected officials, a professional staff and excellence in delivery of public services, all united graphically by the City Logo. The City Logo deserves the same care and protection that is provided any municipal asset. These guidelines are to ensure that the City Logo is accurately and consistently expressed wherever it appears. The official logo shall be used by the City on official City projects and official City business.

The official logo may also be used by non-profit agencies receiving City grant funds and contractors providing goods, services or materials to the City in conjunction with City projects or official City business for the duration of their City contract with written approval from the Director of Public Information or his/her designee. All other uses must be approved by City Council.

The guidelines within this document establish acceptable use of the official logo by non-profit agencies receiving City grant funds and contractors providing goods, services or materials to the City in conjunction with City projects or official City business pursuant to 130.000 II. C. of the City of Plano Policies and Procedures. Use of the City Logo by non-City entities must comply with the herein specific usage guidelines.

Failure to strictly adhere to the guidelines within this document shall result in immediate revocation of authorization to use the logo.

Usage Requirements

1. The Director of Public Information must give written authorization prior to any use of the logo.
2. Users shall obtain written authorization for logo use by submitting a memorandum to the Director of Public Information explicitly specifying the logo uses, including intended media (print, signs, web, etc.).

3. The logo shall not be used for the following:
 - a. in political campaign messages or other materials of a partisan nature;
 - b. in a manner that is misleading, defamatory, libelous, obscene, or sexually suggestive;
 - c. in a manner that would disparage or damage the image of the City of Plano;
 - d. in a manner that suggests that editorial content has been authored by, or represents the views or opinions of the City of Plano;
 - e. on food items, health-related items, or alcoholic beverages;
 - f. in connection with any material that infringes the trademark, copyright or any other rights of any third party;
 - g. in advertisements, marketing or endorsements of any product, service or business other than the City of Plano; or
 - h. in a manner that infringes, derogates, dilutes, or impairs the rights of the City of Plano in such logo.

5. Alteration of the logo in any way is strictly prohibited. Examples of alteration include changing any of the constituent colors, adding additional text or other graphic elements, removing, relocating or modifying any element of the design, disproportionately scaling any element of the design, tilting at an angle, or adding borders around the logo or elements of the design, or applying other effects and filters .

6. The City of Plano logo shall remain the exclusive property of the City of Plano.

7. Any uses associated with the logo shall be in compliance with any applicable local, state, or federal law.

8. Users agree that all uses of the City of Plano logo will inure to the benefit of the City of Plano.

9. Users shall not register any City of Plano logo that is identical to or confusingly similar to the City of Plano logos in any jurisdiction, domestic or foreign.

10. The City of Plano may modify these guidelines from time and time and Users will be bound to comply with the material contained in the updated guidelines immediately upon receipt of, or posting of, the new guidelines.

CITY OF PLANO POLICIES AND PROCEDURES

130.000

Department Name: Public Information
Procedure: City of Plano Official Logo Use

Effective Date: 12/29/2009

Revision Date(s): 3/31/2010

I. Purpose

To establish a uniform policy for use of the official City of Plano logo in accordance with city ordinance.

II. Policy and Procedure

- A. The official City of Plano logo shall be used on all official City of Plano materials, equipment, flags and supplies as designated by city ordinance.
- B. The official City of Plano logo should not be used by another person, firm or organization without written application and approval of the City Council.
- C. The official logo may also be used by non-profit agencies receiving City grant funds and contractors providing goods, services or materials to the City in conjunction with City projects or official City business for the duration of their City contract with written approval from the Director of Public Information or his/her designee. All other uses must be approved by City Council. Non-profit and/or contractor logo use is subject to specific guidelines that can be obtained from the City of Plano Public Information Department.
- D. City departments should use the City logo with the All America City logo included in some form where possible.
- E. City departments should use the logo as much as possible when producing City of Plano materials including publications, internal and external communications such as letter and memos, advertisements, etc. Exceptions to this include legal and court documents, including but not limited to: municipal court orders and judgments; contracts; ordinances; resolutions, and; documents pertaining to lawsuits.
- F. The use of individual department/educational logos, slogans, program brands or any created program identifiers cannot be utilized or substituted for the City of Plano logo without the review and approval of the Director of Public Information or his/her designee.

III. Specifications

- A. The official logo colors are PMS 300 (blue) and PMS 185 (red). In CMYK those colors are 100/44/0/0 (blue) and 0/91/76/0 (red).

CITY OF PLANO POLICIES AND PROCEDURES

130.000

Department Name: Public Information

Procedure: City of Plano Official Logo Use

Effective Date: 12/29/2009

Revision Date(s): 3/31/2010

- B. Any change or alteration of the logo is prohibited without the approval of the City Council.
- C. Official versions of the City logo are available through the Public Information Department. Requests should include the file format, resolution and medium needed.

IV. Appendices

- A. Graphics Standard Official City Logo
- B. Graphics Standard All-America City Logo

GRAPHICS STANDARD

City of Plano Official Logo



Bauhaus Md BT Bold
10 pt tracking
PMS 300 or CMYK 100/44/0/0
PMS 185 or CMYK 0/91/76/0

Placement - The lowercase letters of the word "plano" should fill the height of the lower triangle of the star exactly as is indicated with the black lines above.



Black



Reverse in White

These are the only color options. Do not alter the proportion of the elements within the logo. Do not add or change the typeface of the logo. Do not use the "P" without "plano."



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular <input type="checkbox"/> Statutory
Council Meeting Date:	10/11/10
Department:	Parks and Recreation
Department Head	Amy Fortenberry
Agenda Coordinator (include phone #): Susan Berger (7255)	

CAPTION

An Ordinance of the City of Plano, Texas amending Section 11-349, Police Protection, of Article VIII, Special Events, of Chapter 11, Licenses and Business Regulations of the Code of Ordinances of the City of Plano, Texas to provide for the recovery of all police protection costs incurred while providing security at special events; and providing a severability clause, a savings clause, and an effective date.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR: 2010-11	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0

FUND(s): N/A

COMMENTS: The proposed changes to the Special Events Ordinance are strictly informational and do not affect operational revenues or expenditures to the City of Plano.
STRATEGIC PLAN GOAL: Requiring full reimbursement of public safety costs associated with Special Events relates to the City's Goal of a "Financially Strong City with Service Excellence."

SUMMARY OF ITEM

This item amends the Special Events Ordinance to specifically identify that police benefits and vehicle costs are included in reimbursement required for special permit applicants. The cost for city provided police personnel shall be the actual cost for the services provided. Actual cost shall include salary, overtime (when applicable), benefits, and any vehicle usage cost. There is a minimum two (2) hour cost per individual. All costs must be provided to the City before the date the permit is issued.

An Ordinance of the City of Plano, Texas amending Section 11-349, Police Protection, of Article VIII, Special Events, of Chapter 11, Licenses and Business Regulations of the Code of Ordinances of the City of Plano, Texas to provide for the recovery of all police protection costs incurred while providing security at special events; and providing a severability clause, a savings clause, and an effective date.

WHEREAS, activities that require the issuance of a special events permit may also require the presence of police officers to ensure security; and

WHEREAS, currently Section 11-349 of the Code of Ordinances for the City of Plano requires the event applicant to pay for the costs of city provided police personnel at one and one-half times the salary for each assigned person;

WHEREAS, the current language of Section 11-349 of the Code of Ordinances of the City of Plano may not adequately cover all expenses necessary to provide city police personnel; and

WHEREAS, the City Council of the City of Plano, Texas, has determined that it is in the best interest of the public health, safety and welfare to amend Section 11-349 to allow for the full recovery of all expenses incurred by the city in providing police security for special events.

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

Section I. Section 11-349, Police protection, of Article VIII, Special Events, of Chapter 11, Licenses and Business Regulations of the Code of Ordinances of the City of Plano Texas, is hereby amended to read in its entirety as follows:

“Section 11-349. Police protection.

When the presence of law enforcement officers is necessary for special events, the applicant shall be responsible for reimbursing the city for the cost of providing police personnel. The cost for city provided police personnel shall be the actual cost for the services provided. Actual cost shall include salary, overtime (when applicable), benefits, and any vehicle usage cost. There is a minimum two (2) hour cost per individual. All costs must be provided to the City before the date the permit is issued.

The objective standards used to determine the number of law enforcement officers shall be as follows:

General traffic conditions in the area requested, both vehicular and pedestrian;

Route to be taken if the event is a parade or other moving event;

Duration of the event;

Whether all or any portion of a roadway will be closed;

The estimated number of people who will attend;

Uses adjacent to the event such as residential or commercial areas;

Time and date of event;

Alcoholic beverages available for consumption at the event;

Fireworks at the event;

Wild or undomesticated animals at the event;

Need for safety zones (fireworks launch area, balloon/helicopter launch or landing area, etc.);

In no event will content of the event or the potential or anticipated reaction to the content by others be considered as factors in the number of officers needed. All reasonable alternative routes, times and locations will be considered so as to offer the applicant the option that will provide the lowest costs consistent with the general public health, safety and welfare. The cost of providing police personnel to meet these guidelines will be waived by the city upon a showing that the applicant is financially unable to provide the required costs.”

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

Section IV. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable, and if any phrase, clause, sentence, or section of this Ordinance shall be declared unconstitutional or invalid by any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any other remaining phrase, clause, sentence, paragraph or section 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 11th day of October, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		10/11/10		
Department:		City Secretary		
Department Head		Di Zucco		
Agenda Coordinator (include phone #): Di Zucco - x7551				
CAPTION				
Arts of Collin County Quarterly Report				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(s):				
COMMENTS: This item has no fiscal impact				
SUMMARY OF ITEM				
Quarterly report regarding the Arts of Collin County from Mike Simpson				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		10-11-10		
Department:		Deputy City Manager		
Department Head		LaShon Ross		
Agenda Coordinator (include phone #): Zucco - x7515				
CAPTION				
City Manager Search Process				
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: This item has no fiscal impact.				
SUMMARY OF ITEM				
Presentation by Scott Reilly, Search Consultant and President of Affion Public.				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY	
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory	
Council Meeting Date:	10/11/10
Department:	Public Works & Engineering
Department Head:	Alan L. Upchurch
Agenda Coordinator (include phone #): Irene Pegues (7198) Project No. 5987.1	

CAPTION

Approval of an Engineering Services Contract by and between the City of Plano and Graham Associates, Inc. in the amount of \$239,970.00 for Independence Parkway Corridor and authorizing the City Manager to execute all necessary documents.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR: 2010-11	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	22,380	680,620	1,069,000	1,772,000
Encumbered/Expended Amount	-22,380	0	0	-22,380
This Item	0	-239,970	0	-239,970
BALANCE	0	440,650	1,069,000	1,509,650

FUND(s): STREET IMPROVEMENT CIP

COMMENTS: Funds are included in the 2010-11 Street Improvement CIP. This item, in the amount of \$239,970, will leave a current year balance of \$440,650 for the Independence Parkway Corridor Improvements project.

STRATEGIC PLAN GOAL: Engineering design services relate to the City's Goal of Financially Strong City with Service Excellence.

SUMMARY OF ITEM

This agreement with Graham Associates is for engineering design for Independence Parkway Corridor to include preparation of plans and specifications for the construction of improvements and reconstruction of three (3) intersections along the Independence Parkway corridor at 15th Street, Park Boulevard and Parker Road. The work at the three locations will include modifications to the pavement, drainage systems, traffic signals, pavement markings, street lighting, subsurface utility exploration, surveying services and design of temporary traffic control plans.

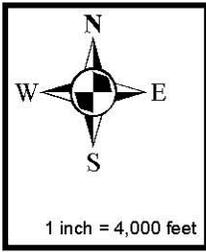
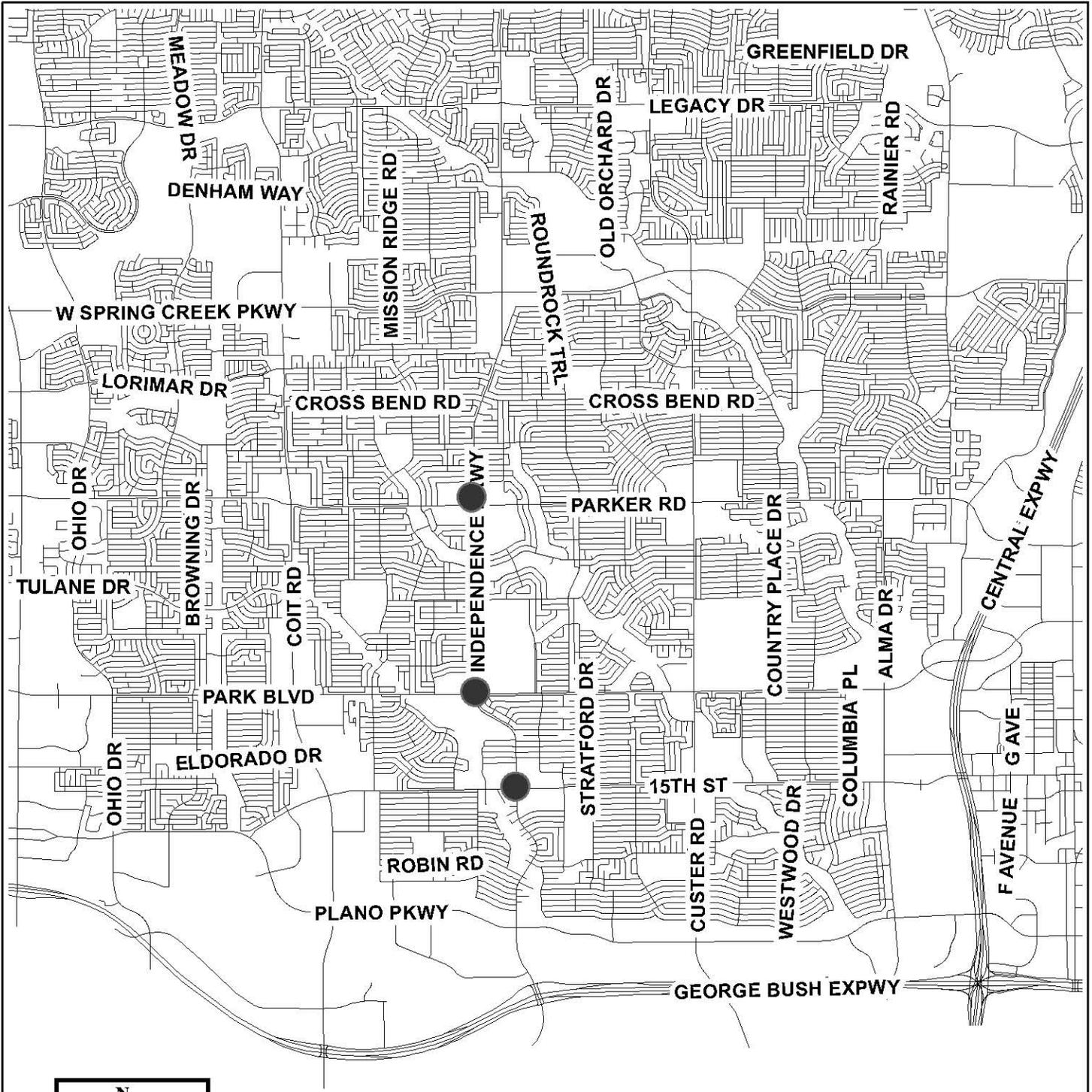
The contract fee is for \$239,970.00 and is detailed as follows:

Research and Data Collection	\$4,500.00
Design Survey	\$24,500.00
Right-of-Way & Easement Requirements	\$1,500.00
Subsurface Utility Exploration	\$24,000.00
Preliminary Design	\$41,020.00
Final Design	\$106,400.00
Bid Phase Services	\$5,000.00



**CITY OF PLANO
COUNCIL AGENDA ITEM**

Construction Administration	\$5,000.00
Construction Control Survey	\$3,250.00
TOTAL BASIC SERVICES FEE	\$215,170.00
SPECIAL SERVICES:	
Right-of-Way/Easement Surveying (\$800 X 8 tracts)	\$6,400.00
Temporary Construction Easement Surveying (\$800 X 23 tracts)	\$18,400.00
SPECIAL SERVICES FEE:	\$24,800.00
TOTAL	\$239,970.00
Funding is available from the 2010-2011 Community Investment Program. Staff feels the fee is reasonable for this project estimated to cost \$2,410,552.00.	
List of Supporting Documents: Location Map; Engineering Services Agreement	Other Departments, Boards, Commissions or Agencies N/A



LOCATION PLAN
INDEPENDENCE PARKWAY CORRIDOR
(15TH STREET TO PARKER)
PROJECT NUMBER 5987.1
CIP NUMBER 33-37749

INDEPENDENCE PARKWAY CORRIDOR

PROJECT NO. 5987.1

ENGINEERING SERVICES AGREEMENT

THIS AGREEMENT is made and entered by and between the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, hereinafter referred to as "City", and **GRAHAM ASSOCIATES, 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 **INDEPENDENCE PARKWAY CORRIDOR** project located in the City of Plano, Collin County, Texas, hereinafter referred to as the "Project"; and

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

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

I. Employment of the Engineer

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

II. Scope of Services

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

III. Schedule of Work

The Engineer agrees to commence work immediately upon execution of this Agreement, and to proceed diligently with said work, except for delays beyond the

reasonable control of Engineer, to completion as described in the Completion Schedule, attached hereto as Exhibit "B" and thereby made a part of this Agreement.

IV. Compensation and Method of Payment

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

V. Information to be Provided by the City

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

VI. Insurance

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

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

VII. INDEMNITY

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

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

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

VIII. Independent Contractor

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

IX. Assignment and Subletting

The Engineer agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of the City. The Engineer further agrees that the assignment or subletting of any portion or feature of

the work or materials required in the performance of this Agreement shall not relieve the Engineer from its full obligations to the City as provided by this Agreement.

X. Audits and Records/Prohibited Interest

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

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

XI. Contract Termination

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

XII. Engineer's Opinion of Probable Construction Costs

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

XIII. Ownership of Documents

Original drawings and specifications are the property of the Engineer; however, the Project is the property of the City and Engineer may not use the drawings and specifications therefor for any purpose not relating to the Project without City's consent.

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

XIV. Complete Contract

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

XV. Mailing of Notices

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

City of Plano
Public Works & 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:

Graham Associates, Inc.
600 Six Flags Drive, Suite 500
Arlington, TX 76011
Attn: Brian Avirett

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

XVI. Miscellaneous

A. Paragraph Headings:

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

B. Contract Interpretation:

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

C. Venue/Governing Law:

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

D. Successors and Assigns:

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

E. Severability:

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

F. Effective Date:

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

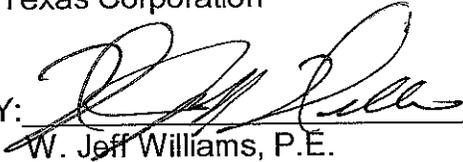
SIGNED on the date indicated below.

XVII. Authority to Sign

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

GRAHAM ASSOCIATES, INC.
A Texas Corporation

DATE: 9/22/10

BY: 
W. Jeff Williams, P.E.
PRESIDENT

CITY OF PLANO, TEXAS

DATE: _____

BY: _____
Thomas H. Muehlenbeck
CITY MANAGER

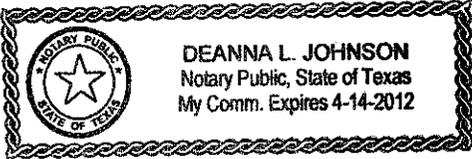
APPROVED AS TO FORM:

Diane C. Wetherbee
CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF TARRANT §

This instrument was acknowledged before me on the 22 day of SEPTEMBER, 2010, by **W. JEFF WILLIAMS, P.E., PRESIDENT**, of **GRAHAM ASSOCIATES, INC.**, a **TEXAS** corporation, on behalf of said corporation.



Deanna L. Johnson
Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2010, 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

**EXHIBIT A
SCOPE OF SERVICES**

**INDEPENDENCE PARKWAY CORRIDOR DESIGN
PROJECT NUMBER 5987.1
CIP NUMBER 33-37749**

PROJECT DESCRIPTION:

The project includes the preparation of plans and specifications for the construction of improvements and reconstruction of three (3) intersections along the Independence Parkway corridor from 15th street to Parker Road. The work at the three locations will include modifications to the pavement, drainage systems, traffic signals, pavement markings, street lighting, subsurface utility explorations, surveying services and design of temporary traffic control plans.

The proposed improvements will comply with the approved schematic plans completed and approved under a prior contract for these intersections. A summary of the proposed improvements at the three intersections are as follows:

1. Independence Parkway @ 15th Street
 - A. Add NB right turn lane by shifting main lanes
 - B. Add SB right turn lane by shifting main lanes
 - C. Paving Improvements to remove offset in horizontal alignment
2. Independence Parkway @ Park Boulevard
 - A. Add NB double left turn lane by shifting main lanes
 - B. Add SB double left and SB right turn lane by shifting main lanes
 - C. Add EB right turn lane by adding to outside of Park Boulevard
 - D. Paving Improvements to remove offset in horizontal alignment
3. Independence Parkway @ Parker Road
 - A. Add NB double left turn lane and NB right/straight lane by shifting mainlanes
 - B. Add SB double left turn lane by shifting mainlanes
 - C. Add WB right turn lane by adding to outside of Parker Road
 - D. Paving Improvements to remove offset in horizontal alignment

BASIC SERVICES:

A. Design Standards

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

City of Plano:

- Geodetic Monumentation Manual
- Manual for Right-of-Way Management

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- Storm Drainage Design Manual
- Stream Bank Stabilization Manual
- Erosion & Sediment Control Manual
- Thoroughfare Standards Rules & Regulations
- Manual for the Design of Water & Sanitary Sewer Lines
- Standard Construction Details
- Special Provisions to Standard Specifications for Public Works Construction, 1997
- Sample Plan Set
- Parks Department Standard Details for Landscaping & Irrigation

NCTCOG:

- Standard Specifications for Public Works Construction, 1998 Amendment

ASCE:

- Publication CI/ASCE 38-02 (Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data)

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 engineering staff for a project kickoff meeting and to obtain design criteria, pertinent utility plans, street plans, plats and right-of-way maps, existing easement information, and other information available for the project areas.

C. Design Survey –

1. Establish a horizontal and vertical control network and project control baseline for the project areas as determined by the approved schematic plans. The network and baseline are to be tied into the existing City of Plano control network.
2. Establish horizontal and vertical project control monumentation for each intersection.
3. Tie right-of-way lines and corners, property lines and corners, buildings, fence lines, trees 4-inches in diameter and 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. Oncor Electric, Verizon Telephone, Atmos Energy 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.
The following areas will be surveyed:

Independence Parkway @ 15th Street.

1. Approximately 600 feet along Independence Parkway, north and south of 15th Street measured from the centerline of the intersection
2. Approximately 200 along 15th Street, east and west of Independence Parkway measured from the centerline of the intersection

Independence Parkway @ Park Boulevard

1. Approximately 650 feet along Independence Parkway, north of Park Boulevard measured from the centerline of the intersection
2. Approximately 500 feet along Independence Parkway, south of Park Boulevard measured from the centerline of the intersection
3. Approximately 500 feet along Park Boulevard, west of Independence Parkway measured from the centerline of the intersection

Independence Parkway @ Parker Road

1. Approximately 600 feet along Independence Parkway, north of Parker Road measured from the centerline of the intersection
2. Approximately 600 feet along Independence Parkway, south of Parker Road measured from the centerline of the intersection
3. Approximately 500 feet along Parker Road, east of Independence Parkway measured from the centerline of the intersection

5. Provide roadway cross sections at a fifty-foot (50') interval relative to the project baseline. Cross-sections are for project design review and quantity takeoffs and may not be a part of the final construction plan set.
6. When underground utilities are exposed, tie to project control baseline.
7. Identify the street address of all adjacent properties to the proposed construction and show on drawings.

D. Right-of-way and Easement Requirements –

1. Meet with the City of Plano Staff as soon as field survey work has been completed and plotted to determine easement and right-of-way requirements for preparation of field notes and exhibits.
2. Submit street easement and right-of-way exhibits as soon as possible to allow the City to start negotiations with property owners.

E. Subsurface Utility Exploration –

1. The Subsurface Utility Engineering (SUE) work required for this project will be performed in general accordance with the recommended

practices and procedures described in ASCE Publication CI/ASCE 38-02.

2. The Quality Level from the designated ASCE Publication to be utilized on this project are is as follows:
Quality Level A (QL"A") – Also known as "locating", this quality level provides precise three dimensional (x,y,z) information at critical locations by exposing specific utilities. Non-destructive vacuum excavation equipment is used to expose the utilities at specific points which are then tied down by survey.
3. The Consultant will utilize a vacuum excavation truck to excavate trenches for the purpose of exposing utilities that may be present at 20 locations at the three designated intersections. Consultant will complete approximately 200 linear feet of trenching from the existing back of curb to the existing property line at the approved locations, 1 foot wide and 4 feet deep. These trenches are assumed to be in soil, not rock. Access may be via adjacent parking lots or parking alongside the roadway with no lane closures. If lane closure is necessary, it will only be performed between the hours of 9:00 AM and 4:00 PM, Monday through Saturday. Lane closure, if necessary will require a permit with the City's Engineering Department with an approved traffic control plan.
4. Produce a field sketch depicting the existing utilities, labeled with current owner information, discovered during the trenching process. The line size and depth from existing grade will also be presented on the SUE field sketch. Base maps/topographic files prepared for this project in AutoCAD format shall be used in preparing the SUE field sketch. All discovered and any unidentifiable utilities discovered during the trenching activities will be depicted on the construction plan sheets.
5. The SUE field work shall be done in coordination with the site field surveying to allow the utilities' horizontal and vertical locations to be tied to the existing back & top of curb.

F. Preliminary Design –

1. Prepare preliminary construction plans. Prepare the following sheets at the engineering scale indicated:
 - Cover sheet
 - Quantity and General Notes sheet. Quantities shall be broken out per sheet and per intersection with a project total.
 - Typical sections and detail sheets.
 - Project layout control sheets showing control for each intersection. Scale 1"= 50'.
 - Construction phasing and temporary traffic control sheets, not including temporary traffic signals. Scale 1"= 40'.

- Paving plan & grading sheets for intersection improvements. Horizontal Scale 1"= 20'. Contour interval shall be adequate for showing gutter drainage.
- Mid-intersection pavement repair paving and grading plans. Horizontal Scale 1"= 10'.
- Storm sewer improvement plan & profile sheets. Scale 1"= 20'.
- SWPPP Narrative sheet and erosion control sheets meeting TCEQ and City of Plano requirements. Scale 1"= 40'.
- Final buttoning and signage plan sheets. Scale 1"= 20'.
- Parking lot improvements and re-stripping plans. Scale 1"=40'.
- Traffic signal plans. Scale 1"= 40'.
- Cross sections

Information required can be combined on sheets if the information can be clearly shown and is approved by the City of Plano project manager.

2. Coordinate with affected utilities such as water, gas, telephone, cable TV and electric to obtain accurate information for the location of their facilities.
3. Prepare a list of any special technical specifications needed for the project (if any).
4. Prepare an estimate of construction quantities and develop the preliminary statement of probable construction cost. Estimates shall be broken out per intersection.
5. Submit five (5) sets of preliminary plans, a list of special technical specifications and a preliminary statement of probable construction cost to the City for review.
 - Engineering
 - Public Works
 - Inspectors
 - Transportation
 - Parks
 - Other
6. Meet with City of Plano staff to discuss City comments on preliminary plans, specifications and cost estimates.
7. Provide ten half size (11" x 17") utility coordination sets of drawings to the City for distribution to the franchise utility companies affected by the construction. Utility coordination sets shall include the cover sheet, typical sections, paving sheets, cross sections and SUE field sketches.

G. Final Design –

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1. Revise preliminary plans incorporating comments from the City of Plano.
2. Incorporate comments from the utility companies.
3. Show location of street light bases, pull boxes and conduit on paving plans based on City design.
4. Finalize construction plans for proposed improvements.
5. Finalize special technical specifications and special conditions (if any).
6. Incorporate standard details into the construction plans and prepare additional details as required.
7. Take off final construction quantities and prepare final construction cost estimates.
8. Submit five (5) sets of pre-final plans, special technical specifications, draft bid schedule and final statement of probable construction cost to the City for review.
9. Incorporate City final comments into the plans and bid documents.
10. Provide ten half size (11" x 17") utility coordination sets of drawings to the City for distribution to the franchise utility companies affected by the construction. Utility coordination sets shall include the cover sheet, typical sections, paving sheets, cross sections and SUE field sketches.
11. Submit three sets of final blackline prints, three bound copies of the bid documents and one unbound original bid document set to the City of Plano.

H. Bid Phase Services –

1. Assist the City staff in advertising for bids.
2. Submit a CD-ROM disk of the bid set plans in a PDF format.
3. Furnish plans and specifications to interested contractors for bidding. Cost for these to be recouped by non-refundable deposit from contractors. Maintain a list of plan holders.
4. Furnish plans and bid documents for up to five plan review rooms if requested by plan rooms that are on the approved list provided by the City. These documents are to be furnished at no cost to the plan review rooms.
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 a bid tabulation to the City of Plano within four working days of the bid letting. Include the engineer's estimated unit costs and the average unit cost for all submitted bids for comparison.
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 and provide a set of typed meeting minutes summarizing issues discussed and decisions made at the meeting.

10. Furnish thirteen sets of final construction plans and three sets of the contract documents manual to the City for construction.

I. Construction Administration –

1. Provide written responses to requests for information or clarifications on plans and specifications.
2. Prepare construction "Record Drawings" based upon mark-ups and information provided by the construction contractor(s). Submit one blackline set to the City and 2 CD-ROM disks 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 at each intersection, or a minimum of one at each end of each intersection work area.

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 right-of-way on a per tract basis. Deliver three (3) reviewed and approved originals to the City. Fee shall be based upon two (2) tracts.
2. Prepare a metes and bounds description and an 8-1/2" x 11" exhibit for street easements on a per tract basis. Deliver three (3) reviewed and approved originals to the City. Fee shall be based upon ten (10) tracts.
3. 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. Fee shall be based upon four (4) tracts.
4. Prepared exhibits with the field notes on the first page and drawings on the second.
5. Set new iron pins at all new corners, PC's and PT's of new right-of-way and street easements.

EXHIBIT B

CIVIL DESIGN SCHEDULE

INDEPENDENCE PARKWAY CORRIDOR

Activity	Duration (Working Days)	Accumulated Time (Working Days)	Projected Date	Actual Date
Notice to Proceed	0	0		
Design Survey/ Subsurface Utility Exploration	30	30		
City Right-of-Way & Easement Review	10	40		
Preliminary Design	25	65		
City Preliminary Design Review	20	85		
Final Design & Prepare Bid Documents & Technical Specs.	30	115		
City Final Design Review	20	135		
Revise Final Plans & Specifications	20	155		
Receive Completed Plans & Bid Documents	0	155		
Assemble Bid Documents	10	165		
Advertise for Bids	15	180		
Receive Bids	15	195		
Recommendation	2	197		
Prepare Council Agenda	5	202		
Council Award	10	212		
Prepare/Execute Contract	25	237		
Schedule Pre-Construction	10	247		
Notice to Proceed	10	257		
Construction	180	437		

* A working day is defined as Monday through Friday excluding City holidays.

EXHIBIT C

PAYMENT SCHEDULE

(All fees T & M not to exceed without prior approval)

**INDEPENDENCE PARKWAY CORRIDOR
(15TH STREET TO PARKER)
PROJECT NUMBER 5987.1
CIP NUMBER 33-37749**

BASIC SERVICES:

A. Research and Data Collection	=	\$ 4,500.00
B. Design Survey	=	\$ 24,500.00
C. Right-of-Way & Easement Requirements	=	\$ 1,500.00
D. Subsurface Utility Exploration	=	\$ 24,000.00
E. Preliminary Design	=	\$ 41,020.00
F. Final Design	=	\$106,400.00
H. Bid Phase Services	=	\$ 5,000.00
I. Construction Administration	=	\$ 5,000.00
J. Construction Control Survey	=	\$ 3,250.00

TOTAL BASIC SERVICES FEE \$215,170.00

SPECIAL SERVICES:

A. Right-of-Way/Easement Surveying (\$ 800 x 8 tracts)	=	\$ 6,400.00
B. Temporary Construction Easement Surveying (\$ 800 x 23 tracts)	=	\$ 18,400.00

SPECIAL SERVICES FEE \$ 24,800.00

TOTAL \$ 239,970.00

EXHIBIT C (Continued)

GRAHAM ASSOCIATES, INC.
ESTABLISHED HOURLY RATES
JANUARY 2008

PRINCIPAL	\$150.00
SENIOR ENGINEER	\$125.00
REGISTERED PUBLIC SURVEYOR	\$125.00
SENIOR HYDROLOGIST	\$125.00
REGISTERED ENGINEER	\$100.00
GRADUATE ENGINEER	\$90.00
GRADUATE HYDROLOGIST	\$95.00
TECHNICIAN IV	\$90.00
TECHNICIAN III	\$75.00
TECHNICIAN II	\$60.00
TECHNICIAN I	\$40.00
GPS SURVEY CREW	\$130.00
3 MAN SURVEY CREW	\$140.00
2 MAN SURVEY CREW	\$120.00
CLERICAL	\$35.00
CADD STATION	\$25.00

EXHIBIT C (Continued)

**Lee Engineering
Terms and Conditions
December 15, 2008**

Additional services authorized by you will be performed at the following rates:

Principal	\$225.00/per hour
Senior Engineer	\$175.00/per hour
Project Manager	\$170.00/per hour
ITS System Designer	\$150.00/per hour
Project Engineer	\$135.00/per hour
Sr. Engineering Designer	\$125.00/per hour
Engineering Designer	\$95.00/per hour
Technician	\$85.00/per hour
Administrative Assistant	\$60.00/per hour
Secretarial	\$50.00/per hour
Highway travel	IRS Allowable Rate
Meals, lodging, air fares	out-of-pocket costs
Other Direct Expenses	at cost

TERMS AND CONDITIONS:

1. Invoices will be submitted monthly.
2. Invoices are due and payable when received.
3. Interest at the rate of 1.5% per month will be applied to invoices not paid within 30 days of initial billing date.
4. We reserve the right to cease work on delinquent accounts.
5. Contracting party is responsible for paying all fees and expenses associated with all activities related to an engagement. Credit will be given for payments received directly from clients of the contracting party or from others.
6. The retainer fee will be credited against fee with the final invoice.
7. In addition to invoices rendered and interest thereon, contracting party agrees to pay any and all legal fees and costs incurred in collecting overdue accounts.
8. Rates are subject to change annually. Work performed in subsequent years will be charged at the adjusted rates.
9. Extra copies of reports will be billed at \$10.00 per copy.
10. All contracts shall be subject to the laws of the State of Arizona.

EXHIBIT C (Continued)

**Gorronдона & Associates, Inc. – Utility Division
Rate Sheet**

Description	Rate	Unit
Personnel		
Principal/QAQC	\$158.65	hour
Sr. Project Manager	\$147.84	hour
Project Manager	\$115.38	hour
Project Engineer	\$137.02	hour
Engineer in Training (EIT)	\$93.75	hour
Sr. Utility Coordinator	\$115.38	hour
Utility Coordinator	\$86.54	hour
Inspector	\$79.33	hour
SUE Manager	\$98.08	hour
SUE Supervisor	\$70.00	hour
SUE Technician II	\$59.50	hour
SUE Technician I	\$42.00	hour
CADD Technician	\$93.75	hour
Technical Support	\$55.25	hour
Crew Rates		
QL "B" Crew	\$285.00	hour
QL "A" Crew	\$370.00	hour
Equipment		
Vacuum Excavation Truck/Trailer	\$80.00	hour
Designating Truck	\$17.00	hour

1. When out of town travel is required, per diem will be charged at \$36.00 per man per day.
2. When out of town travel with overnight stay is required, lodging (dbl occ.) will be charged at \$85.00 per room per night.
3. Surveying, when required will be negotiated on a project specific basis.
4. Overtime for field personnel will be charged at 1.5 times the above listed rates.
5. The above-listed hourly rates apply to travel time to and from project site from nearest GAI office.
6. Crew rates include management, field labor, field equipment, and office support. Crew rates **do not include survey**.

EXHIBIT "D"
ENGINEERING

INSURANCE

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

1. General Insurance Requirements:

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

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

- 1.3 No acceptance and/or approval of any insurance by the City shall be construed as relieving or excusing the Engineer from any liability or obligation imposed upon the provisions of the Contract.
- 1.4 The City of Plano (including its elected and appointed officials, agents, volunteers, and employees) is to be named as an additional insured under Engineer's General Liability Policy, and the certificate of insurance, or the certified policy, if requested, must so state. Coverage afforded under this paragraph shall be primary as respects the City, its elected and appointed officials, agents and employees.
- 1.4.1 The following definition of the term "City" applies to all policies issued under the contract:
- The City Council of the City of Plano and any affiliated or subsidiary Board, Commission Authority, Committee, or Independent Agency (including those newly constituted), provided that such affiliated or subsidiary Board Commission, Authority, Committee, or Independent Agency is either a Body Politic created by the City Council of the City of Plano, or one in which controlling interest is vested in the City of Plano; and City of Plano Constitutional Officers.
- 1.5 The Engineer shall provide insurance as specified in the "Insurance Checklist" (Checklist) found on the last page of the bid or proposal form. Full limits of insurance required in the Checklist of this agreement shall be available for claims arising out of this agreement with the City of Plano.

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

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

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

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

3.0 Engineer's Insurance – Claims Made

Professional Errors and Omissions

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

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

ENGINEERING

City of Plano - Insurance Checklist

("X" means the coverage is required.)

Coverages Required

Limits (Figures Denote Minimums)

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

ADDITIONAL REMARKS SCHEDULE

AGENCY Allied Insurance Agency, Inc.		NAMED INSURED Kasper/Graham Associates, Inc. DBA Graham Associates Arlington, TX 76011	
POLICY NUMBER		EFFECTIVE DATE:	
CARRIER	NAIC CODE		

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
 FORM NUMBER: 25 FORM TITLE: **ACORD Certificate of Liability Insurance**

Garage Liability

INSR ADD'L LTR INSRD	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$

Automobile Liability

INSR ADD'L LTR INSRD	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
B				

Excess/Umbrella Liability

INSR ADD'L LTR INSRD	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A				\$

Other Liability

INSR LTR	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
D				

EXHIBIT "E"

AFFIDAVIT OF NO PROHIBITED INTEREST

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

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

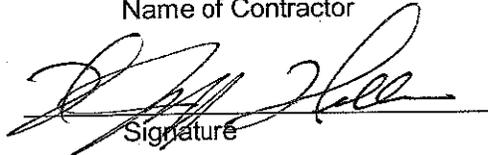
"No officer or employee of the city shall have a financial interest, direct or indirect, in any contract with the city, nor shall be financially interested, directly or indirectly, in the sale to the city of any land, or rights or interest in any land, materials, supplies or service. The above provision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

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

GRAHAM ASSOCIATES, INC.

Name of Contractor

By:


Signature

W. JEFF WILLIAMS

Print Name

PRESIDENT

Title

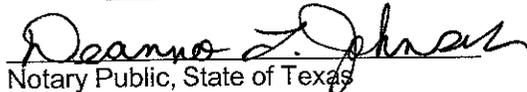
9/22/2010

Date

STATE OF TEXAS §

COUNTY OF TARRANT §

SUBSCRIBED AND SWORN TO before me this 22 day of SEPTEMBER, 2010.


Notary Public, State of Texas

DATE: September 21, 2010
TO: Honorable Mayor & City Council
FROM: James Duggan, Chairman, Planning & Zoning Commission
SUBJECT: Results of Planning & Zoning Commission Meeting of September 20 2010

**AGENDA ITEM NO. 6 - PUBLIC HEARING
ZONING CASE 2010-05
APPLICANT: CITY OF PLANO**

Request to amend Section 1.600 (Definitions) of Article 1 (General Regulations), Subsection 2.502 (Schedule of Permitted Uses) of Section 2.500 (Permitted Uses) of Article 2 (Zoning Districts and Uses), and Subsection 3.1107 (Schedule of Off-Street Parking) of Section 3.1100 (Off-Street Parking and Loading) of Article 3 (Supplementary Regulations), and related sections of the Zoning Ordinance regarding data centers.

APPROVED: 7-0 **DENIED:** _____ **TABLED:** _____

STIPULATIONS:

RECOMMENDATION:

Recommended for approval subject to the following: (Additions are indicated in underlined text)

Amend Section 1.600 (Definitions) of Article 1 (General Regulations) to include the following definition for data center use:

Data Center

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

Amend Subsection 2.502 (Schedule of Permitted Uses) of Article 2 (Zoning Districts and Uses) to allow data centers by right or with specific use permit as follows:

Nonresidential Zoning Districts

Permitted Uses	Category													
		O-1 - Neighborhood Office												
		O-2 - General Office	P											
		R - Retail												
		BG - Downtown Business/Government												
		LC - Light Commercial	P											
		CE - Commercial Employment	P											
		CB-1 - Central Business-1	S											
		LI-1 - Light Industrial-1	P											
		LI-2 - Light Industrial-2	P											
		RE - Regional Employment	P											
		RC - Regional Commercial	S											
		RT - Research/Technology Center	P											
		CC - Corridor Commercial	S											
<u>Data Center</u>	Service													

Amend Subsection 3.1107 (Schedule of Off-Street Parking) of Section 3.1100 (Off-Street Parking and Loading) of Article 3 (Supplementary Regulations) to establish the following parking ratio requirement for data center use:

One space for each 1,000 square feet

FOR CITY COUNCIL MEETING OF: October 11, 2010 (To view the agenda for this meeting, see www.planotx.org)

PUBLIC HEARING - ORDINANCE

BM/ts

MEMO

October 1, 2010

TO: Mr. Tom Muehlenbeck, City Manager
Mr. Frank Turner, Deputy City Manager

FROM: Tina M. Firgens, Planning Manager

RE: Zoning Case 2010-05

After further review of the proposed definition for data centers, and concerns raised by the City Attorney, Planning staff recommends that the definition be modified to read as follows (deletions shown as strikethrough, and additions shown as underlined):

Data Center

A facility whose primary service is data processing and is used to house computer systems and associated components, such as telecommunications and storage systems, including but not limited to web hosting organizations, ~~large enterprises or any other~~ and internet service organizations. A server farm, telecom hotel, carrier hotel, telco hotel, telehouse co-location center, or any other term applicable to facilities which are used for these specified purposes shall be deemed to be a data center. (This definition shall only apply to data center as a primary use.)

Staff believes that this is not a substantive change to the definition, and that the proposed definition is in keeping with the Planning & Zoning Commission's action regarding this zoning case.

Staff recommends the City Council approve Zoning Case 2010-05 subject to removal of the words "large enterprises or any other" within the proposed definition for data centers, and modify the adopting ordinance accordingly.

Phyllis Jarrell, Director of Planning, and I will be present at the City Council meeting to address any questions regarding this item.

CITY OF PLANO
PLANNING & ZONING COMMISSION

September 20, 2010

Agenda Item No. 6

Public Hearing: Zoning Case 2010-05

Applicant: City of Plano

DESCRIPTION:

Request to amend Section 1.600 (Definitions) of Article 1 (General Regulations), Subsection 2.502 (Schedule of Permitted Uses) of Section 2.500 (Permitted Uses) of Article 2 (Zoning Districts and Uses), and Subsection 3.1107 (Schedule of Off-Street Parking) of Section 3.1100 (Off-Street Parking and Loading) of Article 3 (Supplementary Regulations), and related sections of the Zoning Ordinance regarding data centers.

REMARKS:

On February 15, 2010, the Planning & Zoning Commission called a public hearing to consider amendments to the Zoning Ordinance regarding data centers, including establishing a definition, supplementary regulations where necessary, and amend the schedule of permitted uses (use charts) to determine appropriate districts in which to allow the use.

Currently, the Zoning Ordinance does not contain regulations specific to data centers. A data center is comprised of one or more buildings that houses telecommunication equipment with very few employees and it generally includes redundant or backup power supplies and data communications connections. They can be a primary use in a building, or be an accessory use to a larger office development for example. Due to several inquiries on data centers over the past year, staff is proposing amendments that would define the data center use and establish appropriate regulations for the use.

Surrounding Cities Research Results

Staff researched cities within the Metroplex to get input on how these cities define data centers, how they classify the use, parking ratios, and the permitted zoning districts. The table below summarizes the research results from these cities:

<u>City</u>	<u>Definition</u>	<u>Classification</u>	<u>Zoning Districts</u>	<u>Parking (space per square foot)</u>
Garland	Not defined	General Office	General Office	1/300
Frisco	Not defined	General Office	General Office	1/300
Irving	Not defined	General Office	Site Plan Zoning	1/5000
Farmer's Branch	Not defined	General Office	General Office	1/300
Richardson	Not defined	General Office	General Office	1/1000 – 3000 (based on individual cases, no formal ratio)
McKinney	Not defined	General Office and Warehouse	Office Warehouse	1/300 for office and 1/4,000 for warehouse
Carrollton	Not defined	Computer System Design	Office, Local Retail and Commercial districts	1/350
Allen	Not defined	Planned Development	Planned Development	1/4200

Staff found that neighboring cities do not have a definition for data centers, and that the cities classify data centers as general office uses. Generally, these cities permit data centers in general office zoning districts, and use general office and warehouse parking requirements for the office and warehouse components of the data centers.

Given the lack of data center specific information available from surrounding cities, staff also consulted with the Planners Advisory Service affiliated with the American Planning Association for additional information regarding data centers. This information is incorporated within this report for consideration.

Definitions of Data Center Use

Research from different cities throughout the nation resulted in several examples for consideration of a data center definition, including the following:

1. "Data Center means a location housing one or more large computer systems and related equipment, concerned with building, maintaining or processing data and providing other data processing services. Data Center is also commonly known as a telecom hotel or carrier hotel." Peoria, Arizona

2. "Data Center" also called a 'Server Farm', means a facility used to house computer systems and associated components, such as telecommunications and storage systems. It may be comprised of one or more buildings and generally includes redundant or backup power supplies, redundant data communications connections, environmental controls (e.g., air conditioning, fire suppression) and security devices." Lincoln County, Nevada
3. "Electronic equipment facility defined as: "A building where more than fifty (50) percent of the floor area is devoted to electronic equipment. These facilities are also known as, but not limited to, the following: server farm, routing facility, data center, telco hotel, carrier hotel, and switching station." Redwood, California
4. "A data center is a use whose primary purpose is to house computer servers or telecommunications switching facilities or internet nodes for entities, including but not limited to web hosting organizations, large enterprises or any other internet service organizations and whose gross floor area exceeds fifteen hundred (1,500) square feet. A server farm, telecom hotel, carrier hotel, darkened datacenter, co-location center or any other term applicable to facilities which are used for these specified purposes shall be deemed to be a data center." Santa Ana, California
5. "Computer data center is a facility in which the primary service is data processing. The facility is primarily devoted to computers with minimal employment required for monitoring and servicing." Winston-Salem, North Carolina

From the above definitions, staff recommends that the Planning & Zoning Commission consider a combination of portions of Lincoln County, Nevada and Santa Ana, California's definitions for a proposed definition that reads:

"A facility used to house computer systems and associated components, such as telecommunications and storage systems, including but not limited to web hosting organizations, large enterprises, or any other internet service organizations. A server farm, telecom hotel, carrier hotel, telco hotel, telehouse co-location center, or any other term applicable to facilities which are used for these specified purposes shall be deemed to be a data center." This definition shall only apply to data centers as a primary use.

Zoning Districts

The City of Plano has been regulating data centers as an office-showroom/warehouse use and has allowed the use in zoning districts where office-showroom/warehouse uses are permitted. Other cities throughout the nation allow data centers in commercial, manufacturing, industrial and special purpose zoning districts.

Based on the compatibility with existing uses that are allowed in the following zoning districts, staff recommends that data centers be allowed by right in the Commercial Employment (CE), Light Industrial-1 and 2 (LI-1, LI-2), Regional Employment (RE), Light

Commercial (LC), General Office (O-2) and Research/Technology Center (RT) districts, and be allowed with specific use permit (SUP) in Regional Commercial (RC), Central Business-1 (CB-1) and Corridor Commercial (CC) districts.

Staff recommends the SUP be required for data centers in the RC, CB-1 and CC districts since not all properties in these districts may be appropriate to have data centers. The SUP requirement will provide the city an opportunity to evaluate each property and determine its' appropriateness.

Parking

The office-showroom/warehouse parking ratio of one space per 1,000 square feet of warehouse area and one space per 300 square feet of office area that the city of Plano has been using is generally consistent with the parking requirement of other cities for data centers. The parking ratio requirement from the researched cities ranges from one space per 500 square feet to one space per 6,000 square feet with most cities using the one space per 1,000 square feet parking ratio. Staff recommends a parking ratio of one space per 1,000 square feet for data centers.

Since data center buildings are constructed to higher quality construction standards with dual power supply sources and access to fiber-optic infrastructure, these building have the potential to experience future changes in use that will require higher parking requirements than a data center use. Therefore, staff recommends that proposed data center sites be required to have adequate acreage that will accommodate minimum parking requirements for office development should data center buildings be converted to future office uses. Staff recommends that site plans include sufficient land area to provide parking for general office use for 50% of the gross floor area of the building. Requiring additional land initially to accommodate future parking needs will be beneficial for long term reuse of the building, particularly should the site become restricted by surrounding development.

Consistence with Approved Projects

The city has approved two data centers in recent years. The Plano Parkway/190 Business Center, located at the northwest corner of Plano Parkway and Stewart Avenue within the LI-1 zoning district, provided parking at a ratio of one space per 300 square feet for office and one space per 1,000 square feet for computer/warehouse space. The Private Data Center development located on the south side of Headquarters Drive, west of Dominion Parkway is within the CE zoning district with parking provided at a ratio of one space per 300 square feet for office and one space per 1,000 square feet for computer/warehouse space.

The proposed permitted zoning districts and the parking ratio requirements staff is recommending are consistent with the recently approved site plans for data centers. However, the approved data centers do not meet the recommended additional land requirement to accommodate minimum parking requirements for office development should data center buildings be converted to office uses.

RECOMMENDATION:

Recommended for approval subject to the following: (Additions are indicated in underlined text)

Amend Section 1.600 (Definitions) of Article 1 (General Regulations) to include the following definition for data center use:

Data Center

A facility used to house computer systems and associated components, such as telecommunications and storage systems, including but not limited to web hosting organizations, large enterprises or any other internet service organizations. A server farm, telecom hotel, carrier hotel, telco hotel, telehouse co-location center, or any other term applicable to facilities which are used for these specified purposes shall be deemed to be a data center. (This definition shall only apply to data center as a primary use.)

Amend Subsection 2.502 (Schedule of Permitted Uses) of Article 2 (Zoning Districts and Uses) to allow data centers by right or with specific use permit as follows:

Nonresidential Zoning Districts

Permitted Uses	Category													
		O-1 - Neighborhood Office			BG - Downtown Business/Government									
		O-2 - General Office	1P			LC - Light Commercial								
		R - Retail				CE - Commercial Employment								
						CB-1 - Central Business-1	1S							
						LI-1 - Light Industrial-1	1P							
						LI-2 - Light Industrial-2	1P							
						RE - Regional Employment	1P							
						RC - Regional Commercial	1S							
						RT - Research/Technology Center	1P							
						CC - Corridor Commercial	1S							
<u>Data Center</u>	Service													

Amend Subsection 3.1107 (Schedule of Off-Street Parking) of Section 3.1100 (Off-Street Parking and Loading) of Article 3 (Supplementary Regulations) to establish the following parking ratio requirement for data center use:

One space for each 1,000 square feet

In order to accommodate future changes in use, approved site plans shall include adequate land area to increase parking to the minimum requirements for general office use for 50% of the gross floor area of any building.

Zoning Case 2010-05

An Ordinance of the City of Plano, Texas, amending Section 1.600 (Definitions) of Article 1 (General Regulations), Subsection 2.502 (Schedule of Permitted Uses) of Section 2.500 (Permitted Uses) of Article 2 (Zoning Districts and Uses), and Subsection 3.1107 (Schedule of Off-Street Parking) of Section 3.1100 (Off-Street Parking and Loading) of Article 3 (Supplementary Regulations), and related sections of the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, regarding data centers; and providing a publication clause, a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date.

WHEREAS, the City Secretary of Plano, Texas, directed that notices of a hearing be issued, as required by the Zoning Ordinance of the City of Plano and laws of the State of Texas, at a meeting of the City Council, to be held on the 11th day of October, 2010, for the purpose of considering a change in the Zoning Ordinance; and

WHEREAS, the City Secretary of the said City accordingly caused to be issued and published the notices required by its Zoning Ordinance and laws of the State of Texas applicable thereto, the same having been published in a paper of general circulation in the City of Plano, Texas, at least fifteen (15) days prior to the time set for such hearing; and

WHEREAS, the City Council of said City, pursuant to such notice, held its public hearing and heard all persons wishing to be heard both for and against the aforesaid change in the Zoning Ordinance, on the 11th day of October, 2010; and

WHEREAS, the City Council is of the opinion and finds that such change would not be detrimental to the public health, safety, or general welfare, and will promote the best and most orderly development of the properties affected thereby, and to be affected thereby, in the City of Plano, and as well, the owners and occupants thereof, and the City generally.

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

Section I. Section 1.600 (Definitions) of Article 1 (General Regulations) of the Comprehensive Zoning Ordinance No. 2006-4-24, as the same has been heretofore amended, is hereby further amended to include the following definition for data center use, such portion of the section to read as follows:

Section III. Subsection 3.1107 (Schedule of Off-Street Parking) of Section 3.1100 (Off-Street Parking and Loading) of Article 3 (Supplementary Regulations) of the Comprehensive Zoning Ordinance No. 2006-4-24, as the same has been heretofore amended, is hereby further amended to establish the following parking ratio requirement for data center use, such portion of the subsection to read as follows:

Section 3.1100 Off-Street Parking and Loading

Subsection 3.1107 Schedule of Off-Street Parking

Data Center: One space for each 1,000 square feet.

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

Section V. The repeal of any ordinance or part of ordinances 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 ordinance at the time of passage of this Ordinance.

Section VI. Any person, firm or corporation found to be violating any term or provision of this Ordinance, shall be subject to a fine in accordance with Section 1-4(a) of the City Code of Ordinances for each offense. Every day a violation continues shall constitute a separate offense.

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

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

PASSED AND APPROVED THIS THE 11TH DAY OF OCTOBER, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY