

PLANO CITY COUNCIL

WILL CONVENE INTO EXECUTIVE SESSION AT 5:00 P.M. ON NOVEMBER 13, 2006, FOLLOWED BY PRELIMINARY OPEN MEETING IMMEDIATELY THEREAFTER, IN THE PLANO MUNICIPAL BUILDING, 1520 K AVENUE, IN COMPLIANCE WITH VERNON'S TEXAS CODES ANNOTATED, GOVERNMENT CODE CHAPTER 551 (OPEN MEETINGS ACT), AS FOLLOWS:

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

EXECUTIVE SESSION

- | | | | |
|------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|---------|
| I. | Legal Advice | Wetherbee | 5 min. |
| | A. Respond to questions and receive legal advice on agenda items | | |
| II. | Litigation | Spencer | 10 min. |
| | A. Linda Sanders-Burns, individually and as an heir to the Estate of Anthony DeMille Sanders, Deceased v. City of Plano and Police Officer Joseph Cabezuela | | |
| III. | Personnel | Council | 15 min. |
| | A. DART Board Appointment | | |
| | B. Evaluation of Council Appointees | | |

PRELIMINARY OPEN MEETING

- | | | | |
|------|--------------------------------------------------------------------------------------------------------------|----------------|---------|
| I. | Consideration and action resulting from Executive Session discussion: Personnel DART Board Appointment | Council | 5 min. |
| II. | Discussion and Direction re Indigent Health Care Proposal | Richard Dodson | 10 min. |
| III. | Discussion and Direction re NLC Voting Delegate and Alternate | Council | 10 min. |
| IV. | Discussion and Direction re Employee Health Clinic Feasibility | Rod Hogan | 15 min. |
| V. | Discussion and Direction re Updated City of Plano Logo | Susan Helt | 10 min. |

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| VI. | Council items for discussion/action on future agendas | Council | 5 min. |
| VII. | Consent and Regular Agenda | Council | 5 min. |
| VIII. | Council Reports | Council | 5 min. |
| | A. Council May Receive Information, discuss and provide direction on the following reports: | | |
| | B. Council may receive reports from its other members who serve as liaisons to boards, commissions, and committees | | |

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

Municipal Center is wheelchair accessible. A sloped curb entry is available at the main entrance facing Avenue L, with specially marked parking spaces nearby. Access and special parking are also available on the north side of building. The Council Chamber is accessible by elevator to the lower level. Requests for sign interpreters or special services must be received forty-eight (48) hours prior to the meeting time by calling the City Secretary at 972-941-7120.



CITY COUNCIL

1520 AVENUE K

DATE: November 13, 2006

CALL TO ORDER: 7:00 p.m.

INVOCATION: Father Leo Almazan
John Paul II High School

PLEDGE OF ALLEGIANCE: Honor Guard w/Plano American Legion Post
and Cub Scout Pack 280, Wolf Den 7

| ITEM NO. | EXPLANATION | ACTION TAKEN |
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| | <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>Plano Housing Authority</u> Paul Gephart</p> <p><u>PROCLAMATIONS AND SPECIAL RECOGNITION</u></p> <p>Proclamation: Veterans' Day</p> <p>Proclamation: National Adoption Month - 2006</p> <p>Proclamation: American Cancer Society: Great American Smokeout Day</p> <p>Proclamation: Animal Shelter Appreciation Week</p> <p><u>THE CITY SECRETARY RECEIVES SPEAKER CARDS AT THE BEGINNING OF THE MEETING</u></p> <p><u>COMMENTS OF PUBLIC INTEREST</u></p> <p><u>This portion of the meeting is to allow up to five (5) minutes per speaker with thirty (30) total minutes on items of interest or concern and not on items that are on the current agenda. The Council may not discuss these items, but may respond with factual or policy information. The Council may choose to place the item on a future agenda.</u></p> | |

| ITEM NO. | EXPLANATION | ACTION TAKEN |
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| | <p><u>CONSENT AGENDA</u></p> <p><u>The Consent Agenda will be acted upon in one motion and contains items which are routine and typically noncontroversial. Items may be removed from this agenda for individual discussion by a Council Member, the City Manager or any citizen. Citizens are limited to two (2) items and discussion time of three (3) minutes each.</u></p> <p>(a) <u>Approval of Minutes</u> October 23, 2006</p> <p><u>Approval of Expenditures</u></p> <p>Award/Rejection of Bid/Proposal: (Purchase of products/services through formal procurement process by this agency)</p> <p>(b) Bid No. 2006-217-B for Municipal Center Roof Replacement to Supreme Systems, Inc. in the amount of \$226,500</p> <p>(c) Bid No. 2006-154-C to establish an annual fixed price contract for Employee Benefit Professional Services with Hay Group Inc. in the annual amount of \$85,000 with Special Projects in 2006-2007 totaling \$80,000.</p> <p>(d) Bid No. 2006-234-B for Plano Parkway – Tollroad to Park Boulevard and West Plano Quiet Zone Improvements project, to Tiseo Paving Company in the amount of \$2,342,664 for the base bid. The project consists of the widening from four lanes to six lanes of Plano Parkway from the Tollroad to Park Boulevard and the completion of the southbound lanes from International Parkway to Park Boulevard and improvements to Parker Road at the west City limits for a future quiet zone.</p> <p>Purchase from Existing Contract/Agreement: (Purchase of products/services through Cooperative Purchasing Interlocal Contract with another governmental/quasi-governmental agency or an additional purchase from current City of Plano annual purchase agreement).</p> <p>(e) To authorize the purchase of Gartner Membership Seats in the amount of \$32,878 from Gartner through a Department of Information Resources (DIR) Contract, and authorizing the City Manager to execute all necessary documents. (DIR-SDD-204)</p> <p>(f) To authorize the purchase of Microsoft server and desktop software in the amount of \$512,588 from SHI-GS through a Department of Information Resources (DIR) Contract, and authorizing the City Manager to execute all necessary documents. (DIR#SDD-198)</p> <p>(g) To authorize the purchase of maintenance support for network infrastructure switches in the amount of \$148,722 from Internetwork Experts through a Department of Information Resources (DIR) Contract, and authorizing the City Manager to execute all necessary documents. (DIR-SDD-239)</p> <p>(h) To authorize the purchase of new office furniture, in the amount of \$53,065 from Plano Office Supply through an existing contract/agreement with Collin County, and authorizing the City Manager to execute all necessary documents. (Collin County IFB No. 0307-011 / City of Plano Tracking No. 2004-45-I).</p> | |

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| | <p>Approval of Contract: (Purchase of products/services exempt from State of Texas Competitive Bid Laws)</p> <p>(i) To approve an Architectural Professional Services Agreement by and between the City and PSA-Dewberry, Inc., in the amount of \$123,000 for architectural services for Haggard Library Basement and Harrington Library Renovations, Design Phase, and authorizing the City Manager to execute all necessary documents.</p> <p>(j) To approve and authorize a contract with Newman, Jackson, Bieberstein, Inc. to provide Landscape Architectural Services for master planning and conceptual planning for Chisholm Trail North: Park Boulevard to Legacy Drive in an amount not to exceed \$30,701 and authorizing the City Manager to execute any and all documents necessary to effectuate the contract.</p> <p>(k) To approve and authorize a contract with Newman, Jackson, Bieberstein, Inc. to provide Landscape Architectural Services for master planning and conceptual planning for Chisholm Trail South: Park Boulevard to President George Bush Turnpike in an amount not to exceed \$29,071 and authorizing the City Manager to execute any and all documents necessary to effectuate the contract.</p> <p>Change Order: (Change to current City of Plano contract allowable under State law)</p> <p>(l) To approve a change order to the contract with Motorola, Inc. increasing the contract by \$69,630 for additional Wireless Backhaul Canopy Coverage, Change Order #2. Contract #RA01-06 (HGAC)</p> <p>Approval of Assignment</p> <p>(m) To approve Assignment and Consent from Global Data Systems to Calence, LLC.; and authorizing the City Manager to execute all necessary documents. (Quote #09072006-003 and Purchase Order #362889)</p> <p><u>Adoption of Resolutions</u></p> <p>(n) To approve an Agreement between the City of Plano and SunGard H.T.E., Inc., a sole source vendor, for the maintenance and support of H.T.E. software applications in the amount of \$100,536; authorizing their execution by the City Manager; and providing an effective date.</p> <p>(o) To approve the terms and conditions of an agreement by and between CommVault Systems, Inc. and the City of Plano; authorizing its execution by the City Manager; and providing an effective date. This maintenance is for a one-year term for a total price of \$51,490.</p> <p>(p) To ratify the terms and conditions of an Agreement by and between Database Technologies Inc. and the City of Plano for needs assessment/evaluation report of Collin County’s public safety resources ability to respond to a chemical, biological, radiological or nuclear event; approving its execution by the City Manager; and providing an effective date.</p> | |

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| (q) | To authorize the purchase of a Service Agreement from 3M Library Systems, suppliers of maintenance for 3M equipment in the amount of \$44,734 for the Plano Public Library System; authorizing the City Manager to take such action and execute such documents as necessary to effectuate the purchase approved herein; and providing an effective date. | |
| (r) | To approve and authorize the refunds of property tax overpayments; and providing an effective date. | |
| (s) | To amend the ICMA-RC Deferred Compensation Plan as originally adopted by Resolution No. 2005-8-12(R) to amend Section IV and allow the plan to permit loans to participants; and providing an effective date. | |
| (t) | To approve the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano and Collin County, Texas, providing terms and conditions for the widening of Plano Parkway from Dallas North Tollroad to Park Boulevard; authorizing its execution by the City Manager; and providing an effective date. | |
| (u) | To approve the terms and conditions of a Local Transportation Project Advance Funding Agreement between the State and the City of Plano for Windhaven Parkway from West Plano City Limits to Spring Creek Parkway; authorizing its execution by the City Manager; and providing an effective date. | |
| (v) | To approve the terms and conditions of an Interlocal Agreement by and between the City of Plano and University of Texas at Dallas for educational services at a fee not to exceed eight thousand nine hundred ninety-five dollars (\$8,995); authorizing its execution by the City Manager; and providing an effective date. | |
| (w) | To approve the terms and conditions of an Agreement between the City of Plano, Texas, and Helmick + Schechter, Inc., a qualified professional artist corporation comprised of Ralph Helmick and Stuart Schechter, for the design, fabrication and delivery and installation of an artwork for the Visitor Center of the Oak Point Park and Nature Preserve in the amount of \$185,000; authorizing the City Manager to execute such agreement with Helmick + Schechter, Inc.; and providing an effective date. | |
| (x) | To approve the purchase of E Team Incident Management Software in the amount of sixty thousand dollars (\$60,000) from NC4 Public Sector LLC, the sole source vendor of such software, equipment and services; authorizing the City Manager to take such action and execute such documents as necessary to effectuate the purchase; and providing an effective date. | |
| (y) | To approve the terms and conditions of a Local Transportation Project Advance Funding Agreement between the State of Texas and the City of Plano for bicycle, pedestrian and vehicular enhancements along 15 th Street from Avenue G to Chisholm Trail in the City of Plano; authorizing its execution by the City Manager; and providing an effective date. | |

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| (z) | <p><u>Adoption of Ordinances</u></p> <p>To amend Section 12-101 Prohibited on certain streets at all times in Article V, Stopping, Standing, and Parking, Chapter 12, Motor Vehicles and Traffic, of the Plano Code of Ordinances to modify parking restrictions along and upon specified portions of 18th Street and G Avenue within the City limits of the City of Plano, declaring it unlawful and a misdemeanor to stop, stand, or park motor vehicles at all times along and upon the specified portions of 18th Street and G Avenue listed in Section 12-101, providing a fine for criminal penalties not to exceed \$200 for each offense; and providing a repealer clause, a severability clause, a savings clause, and an effective date.</p> | |
| (aa) | <p>To abandon all right, title and interest of the City, in and to that certain five foot (5') water main easement being situated in the Joseph Klepper Survey, Abstract Number 213, being part of the Plano Savings Addition, an addition to the City of Plano, as recorded in Volume G, Page 298 of the Collin County Map Records; which is located within the City limits of Plano, Collin County, Texas; quitclaiming all right, title and interest of the City in such right-of-way to the abutting property owner, Mary and Ruben Garza Family Partnership, to the extent of its interest; authorizing the City Manager to execute any documents deemed necessary; and providing an effective date.</p> <p><u>ITEMS FOR INDIVIDUAL CONSIDERATION:</u></p> <p><u>Public Hearing Items: Applicants are limited to fifteen (15) minutes presentation time with a five (5) minute rebuttal, if needed. Remaining speakers are limited to thirty (30) total minutes of testimony time, with three (3) minutes assigned per speaker. The presiding officer may extend these times as deemed necessary.</u></p> <p><u>Non-Public Hearing Items: The Presiding Officer may permit limited public comment for items on the agenda not posted for a Public Hearing. The Presiding Officer will establish time limits based upon the number of speaker requests, length of the agenda, and to ensure meeting efficiency, and may include a cumulative time limit. Speakers will be called in the order cards are received until the cumulative time is exhausted.</u></p> | |
| (1) | <p>An ordinance to amend existing franchise Ordinance No. 2006-8-17 between the City of Plano and TXU Electric Delivery Company, a Texas Corporation, its successors and assigns, to correct an error in the date that final payment under the franchise will be made; providing for TXU Electric Delivery acceptance; finding and determining that the meeting at which this ordinance is passed is open to the public as required by law; and providing a repealer clause, a severability clause and an effective date. Second Reading - First Reading held and approved 09-25-06</p> | |
| (2) | <p>Public Hearing and consideration of an ordinance to establish and designate a certain area within the City of Plano as Reinvestment Zone No. 101 for a tax abatement consisting of a 0.6247 acre tract of land located west of Chase Oaks at its intersection with Wagner Way in the City of Plano; establishing the boundaries of such zone; ordaining other matters relating thereto; and providing an effective date.</p> | |

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| (3) | <p>A resolution to approve the terms and conditions of an agreement by and between the City of Plano, Texas, the County of Collin, Texas, the Collin County Community College District, Santo Paschal, LLC, a Texas Limited Liability Company, and PASCO Brokerage, Inc., a Texas Corporation and providing for a business personal property and real property tax abatement, and authorizing its execution by the City Manager; and providing an effective date.</p> | |
| (4) | <p>Public Hearing and consideration of an ordinance to repeal Ordinance No. 2006-5-23 in its entirety, which was codified as Chapter 21, Article II, Division 4, Drought Contingency Plan, of the Code of Ordinances of the City of Plano; adopting a new Drought Contingency Plan to be codified as Chapter 21, Article II, Division 4 of the Code of Ordinances of the City of Plano; establishing procedures and criteria for declaring a water emergency and implementing and terminating drought response stages; establishing restrictions on certain water uses during drought response stages; establishing administrative remedies and fees and criminal penalties for violating the restrictions and provisions for enforcement of these restrictions; and providing a repealer clause, a severability clause, a savings clause, an effective date and providing for the publication of the caption hereof.</p> | |
| (5) | <p>A resolution to adopt a 2007 State Legislative Program for the City of Plano; directing the City Manager to act with regard to the City’s Legislative Program; and providing an effective date.</p> <p><u>Municipal Center is wheelchair accessible. A sloped curb entry is available at the main entrance facing Municipal Avenue, with specially marked parking spaces nearby. Access and special parking are also available on the north side of the building. Training Room A/Building Inspections Training Room are located on the first floor. Requests for sign interpreters or special services must be received forty-eight (48) hours prior to the meeting time by calling the City Secretary at 972-941-7120.</u></p> | |



Pat Evans
Mayor

Scott Johnson
Mayor Pro Tem

Sally Magnuson
Deputy Mayor Pro Tem

Shep Stahel
Place 1

Loretta Ellerbe
Place 3

Harry LaRosiliere
Place 5

Jean Callison
Place 7

Lee Dunlap
Place 8

Thomas H. Muehlenbeck
City Manager

November 8, 2006

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

Honorable Mayor and City Council:

We will begin Monday evening in Executive Session where we will receive advice from the City Attorney along with a briefing of the Sanders-Burns lawsuit. One personnel appointment will be considered during Executive Session, for the DART Board. There is also an opportunity allotted to proceed with the evaluation of Council appointees.

The Preliminary Open Meeting agenda consists of discussion and direction regarding the selection of Council's National League of Cities voting delegate. We will also hear a presentation regarding the feasibility of an employee health clinic and shall continue discussion and provide direction regarding an updated City of Plano logo.

I look forward to seeing you Monday.

Sincerely yours,

Thomas H. Muehlenbeck
City Manager

THM/cp

MEMO

DATE: November 7, 2006

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

FROM: Di Zucco, Assistant City Secretary 

RE: Personnel Appointments/Reappointments
Executive and Worksession Meetings

The following personnel appointments/reappointments will be considered at the November 13, 2006 Council Meeting.

| <u>Executive Session</u> | <u>Worksession Meeting</u> |
|------------------------------------------------------------------------------------------------------------------------|----------------------------|
| DART Board of Directors (Resignation of Robert Pope, City of Plano Representative – Interim Term Expires 7-1-08) | No Items to Consider |

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Preliminary Open Meeting Agenda Item II.

Richard Dodson

POM
II

To strengthen
and promote
cities as centers
of opportunity,
leadership, and
governance.

October 24, 2006

MEMORANDUM

TO: Direct Member Cities
FROM: Donald J. Borut, Executive Director
SUBJECT: Congress of Cities Voting Delegates

The National League of Cities Annual Business Meeting will be held on Saturday, December 9, 2006, at the conclusion of the Congress of Cities and Exposition in Reno, Nevada. As a direct member city, your city is entitled to vote at this meeting. Based on population, each member city casts between one and twenty votes. The number of votes for each population range can be found on the table on the reverse of this memorandum.

To be eligible to cast a city's vote(s), a voting delegate and alternate must be officially designated by the city using the attached credentials form. This form will be forwarded to NLC's Credentials Committee. NLC bylaws expressly prohibit voting by proxy.

At the Congress of Cities, the voting delegate must pick up the city's voting card at the credentials booth before the Annual Business Meeting and must be present at the Annual Business Meeting to cast the city's vote(s). Alternates should visit the credentials booth before the meeting to pick up their stickers which identify them as alternate voting delegates. The credentials booth will be open throughout the Congress of Cities.

City elected officials should be made aware of this request so that decisions can be made as to who will be the voting delegate and alternate(s). **Please return the completed form to NLC by fax at 202-626-3043 on or before November 15, 2006, and keep the original for your own files.** If you have any questions or concerns, contact Ken Rosenfeld, NLC policy manager, at rosenfeld@nlc.org or 202-626-3194.

Thank you.

POM III a

Past Presidents: Clarence E. Anthony, Mayor, South Bay, Florida • John DeStefano, Jr., Mayor, New Haven, Connecticut • William H. Hudnut, III, Mayor, Town of Chevy Chase, Maryland • Sharpe James, Mayor, Newark, New Jersey • Brian J. O'Neill, Councilman, Philadelphia, Pennsylvania • **Directors:** R. Michael Amyx, Executive Director, Virginia Municipal League • Tommy Baker, Alderman, Osceola, Arkansas • Vicki Barnett, Mayor, Farmington Hills, Michigan • Thomas Bredeweg, Executive Director, Iowa League of Cities • Nora Campos, Councilmember, San Jose, California • Thomas Carlson, Mayor, Springfield, Missouri • James Condos, Council Chair, South Burlington, Vermont • Joseph Donaldson, Mayor, Flagstaff, Arizona • Ted Ellis, Mayor, Bluffton, Indiana • Makia Epie, Council Member, Cedar Hill, Texas • Margaret Finlay, Mayor, Duarte, California • Eddy Ford, Mayor, Farragut, Tennessee • Danny George, Executive Director, Oklahoma Municipal League, Inc. • Gary Graham, Mayor, O'Fallon, Illinois • Matthew Greller, Executive Director, Indiana Association of Cities and Towns • Jim Higdon, Executive Director, Georgia Municipal Association • Charles Hughes, Council President, Gary, Indiana • Steven Jeffrey, Executive Director, Vermont League of Cities and Towns • Martin Jones, Council Member, Conyers, Georgia • Ronald Loveridge, Mayor, Riverside, California • Cynthia Mangini, Councilman-At-Large, Enfield, Connecticut • Marcia Marcoux, Councilmember, Rochester, Minnesota • Michael McGlynn, Mayor, Medford, Massachusetts • James Mitchell, Jr., Council Member, Charlotte, North Carolina • Darryl Moss, Mayor, Creedmoor, North Carolina • Ed Oakley, Councilmember, Dallas, Texas • James Perkins, Jr., Mayor, Selma, Alabama • Richard Radcliffe, Councilman, Greenacres, Florida • Dottie Reeder, Mayor, Seminole, Florida • Julie Aberg Robison, Council Member At-Large, Cary, North Carolina • Ron Schmitt, Council Member, Sparks, Nevada • Shirley Scott, Council Member, Tucson, Arizona • Anne Sinclair, Council Member, Columbia, South Carolina • Walter Skowron, Council Member, Loveland, Colorado • Connie Spryczynatyk, Executive Director, North Dakota League of Cities • Ken Strobeck, Executive Director, League of Arizona Cities and Towns • Charleta Tavares, Council Member, Columbus, Ohio • Lynne Whalen, Council Woman, Casper, Wyoming • Jacques Wigginton, Council Member, Lexington, Kentucky • Evelyn Woodson, Councilor, Columbus, Georgia



**National League
of Cities**

1301 Pennsylvania Ave., N.W.
Washington, DC 20004-1763

202-626-3000

Fax: 202-626-3043

www.nlc.org

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Councilmember

Clarksburg, West Virginia

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Donald J. Borut

NATIONAL LEAGUE OF CITIES

2006 CONGRESS OF CITIES
RENO, NEVADA

Number of Votes – Annual Business Meeting

Direct Member Cities

Article IV, Section 2 of the National League of Cities bylaws specifies the number of votes that each NLC direct member city is entitled to cast at the Annual Business Meeting at the Congress of Cities. Member cities are required by the bylaws to cast unanimous votes.

| CITY POPULATION (per 2000 Census) | NUMBER OF VOTES |
|-----------------------------------|-----------------|
| Under 50,000 | 1 vote |
| 50,000 – 99,999 | 2 votes |
| 100,000 – 199,999 | 4 votes |
| 200,000 – 299,999 | 6 votes |
| 300,000 – 399,999 | 8 votes |
| 400,000 – 499,999 | 10 votes |
| 500,000 – 599,999 | 12 votes |
| 600,000 – 699,999 | 14 votes |
| 700,000 – 799,999 | 16 votes |
| 800,000 – 899,999 | 18 votes |
| 900,000 and above | 20 votes |

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NATIONAL LEAGUE OF CITIES CREDENTIALS FORM
2006 CONGRESS OF CITIES · RENO, NEVADA

At the Annual Business Meeting on Saturday, December 9, 2006, each direct member city of NLC is entitled to cast from one to 20 votes based upon the city's population per the 2000 census, through its designated voting delegate. Please indicate below your city and state, voting delegate and alternate(s), and sign and date the form. The form should be faxed to NLC at 202-626-3043, by the November 15, 2006 deadline.

The official voting delegate and alternate(s) for the city/town of:

_____ (type or print the name of your city/town and state)

VOTING DELEGATE:

1. NAME _____
TITLE _____

ALTERNATE VOTING DELEGATE(S):

2. NAME _____ TITLE _____
3. NAME _____ TITLE _____

| |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>FOR OFFICE USE ONLY (DO NOT WRITE IN THIS SPACE)</p> <p>Voting card issued to: _____</p> <p>(signature) _____</p> <p>Votes: _____</p> <p>1 _____ 2 _____ 3 _____</p> |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

PLEASE SIGN AND FAX THIS FORM TO NLC BY NOVEMBER 15, 2006.
FAX: 202-626-3043; ATTENTION: ERIKA HAMILTON, POLICY ASSISTANT

Signature (city representative): _____

Title: _____ Date: _____

W
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City of Plano

Employee Health Clinic Feasibility Study City Council Summary November 13, 2006



Prepared by:
Practiva Health
Gijs van Oort PhD
PO Box 2235, Boerne TX
78006

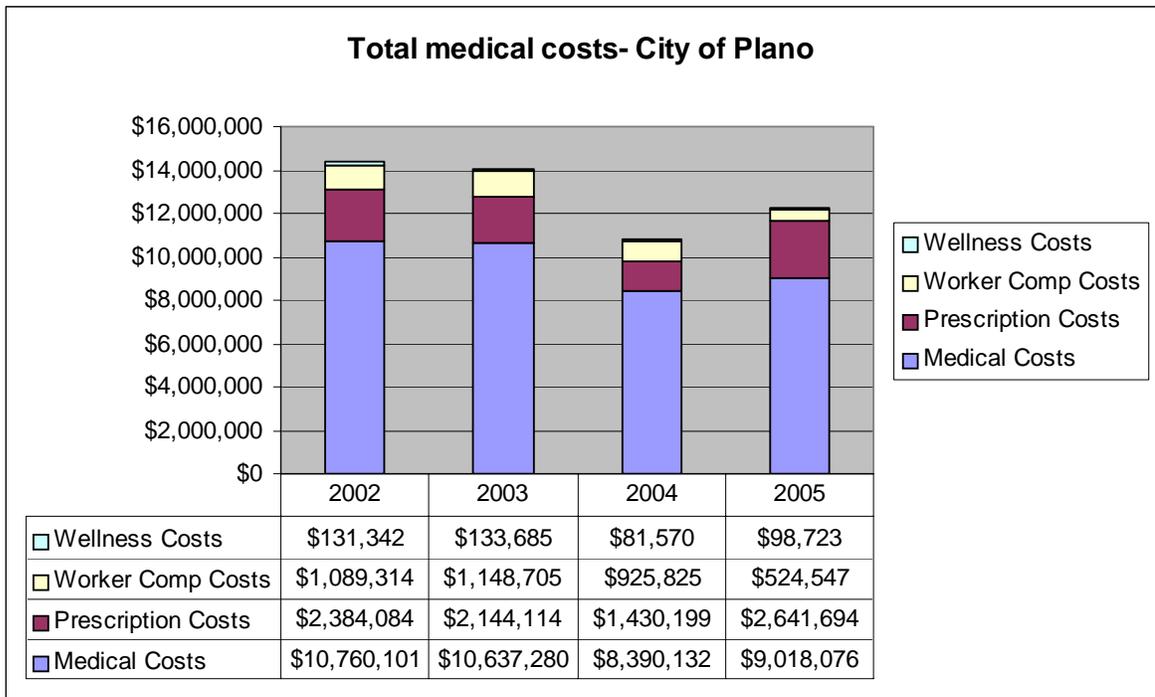
City of Plano On-site Health Clinic Feasibility Study- City Council Summary- November 13, 2006

Objective

The City of Plano commissioned Practiva Health to study the feasibility for the development of an employee health clinic for its employees and dependents.

Rationale

Reasons for consideration were a) a potential cost savings to the rising costs of the medical plan and worker compensation costs, b) a leveling off in the City's tax revenues, requiring the ever increasing need for cost control c) successful implementation of clinics in other municipalities, d) improved employee productivity, and e) the ability to provide better services to employees at a reduced rate.



Approach

Practiva Health pursued an approach that addressed the needs of the users (employees), payer (City of Plano) and the providers (local medical groups). Specifically, the following components were included in the analysis:

- Review of past medical, Workers Compensation and wellness costs to identify opportunities for cost savings from a clinic concept
- Review of nine operating clinics for municipalities of similar size
- Five focus groups with randomly selected employees
- Interviews of key management staff at Medical Center of Plano, Presbyterian Hospital, Collin County. Attempts to contact the PISD were unsuccessful.
- Discussions with medical group and existing clinics for opportunities to partner



- Identification of Management companies for clinic management
- Review of legal implications for a City owned clinic

From the collected information, three scenarios were created, each supported with a 3-year financial projection: a clinic that is owned and managed by the City, a clinic in partnership with an existing community health clinic, and a clinic managed by a commercial management company. Each scenario was evaluated based on potential cost savings to the City by comparing the cost of the services that are delivered through current 'outside' sources to these same services being delivered within a clinic concept. The cost difference was considered the savings to the City. In all scenarios, a fully loaded pro-forma was developed to allow for comparisons at market rates.

Findings

1. Medical and Workers Comp cost profile indicates opportunities to re-direct medical care to a clinic concept.

Chronic disease conditions, including heart disease, diabetes, back & neck, high blood pressure, were found to contribute 42-45% to annual medical costs. The drug costs associated with such conditions made up 1/3rd of annual Rx costs. The management of these conditions, emphasizing medical compliance and lifestyle changes, is a primary target for an on-site medical clinic.

2. 84% Of employees surveyed will use clinic if offered at lower or no co-pay.

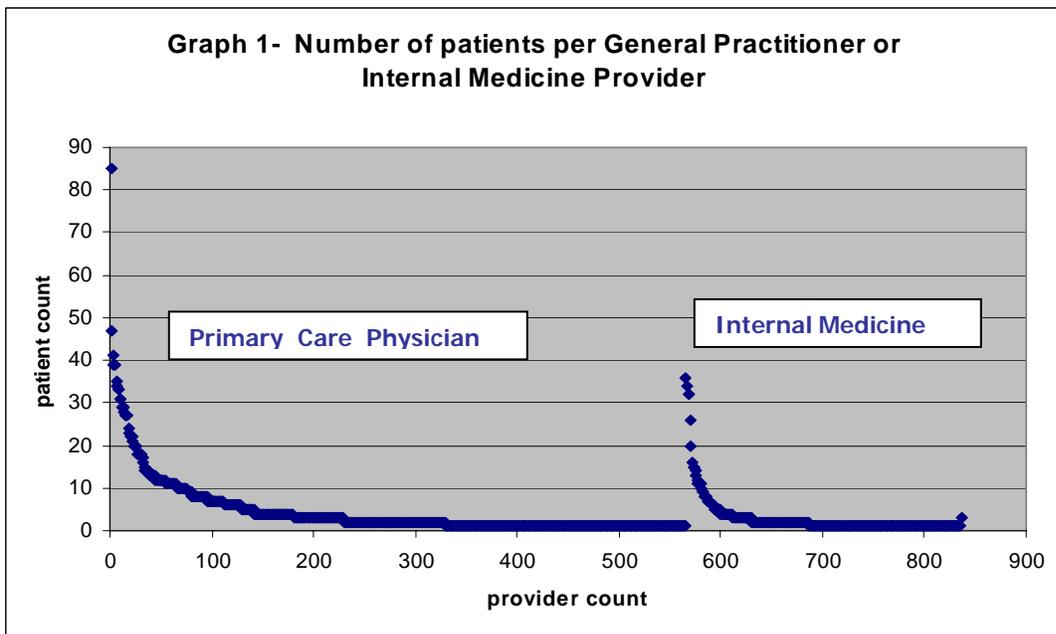
Employees are receptive the concept for reasons of convenience and cost savings. The receptivity of spouses and children was less clear since they were not interviewed. A conservative enrollment percentage was adopted for clinic utilization purposes.

3. Clinic concept is supported by community providers.

Both medical centers interviewed reacted positively to an employee health clinic initiative.

4. Clinic concept does not significantly impact providers.

An analysis of employee choice for primary physician and internal medicine showed use of extensive provider network. Only one physician had proportional large capture of City employees.



Recommended Core Services

Based on the study findings, the peer clinic experiences and the community positioning, the following medical and health components are identified to be blended into an employee health clinic approach:

- Minor medical occurrences
- On-the-job injury assessment
- Wellness assessment and risk management
- Pre-employment physical assessments
- Chronic disease management and monitoring
- Out referrals for in-depth diagnostics and treatment
- Pharmacy services not considered at this time

With a fixed population to manage and a reduced pressure to generate procedures, the medical staff can provide high quality care to employees with a focus on the individual rather than the symptoms. Integration of lifestyle recommendations with medical treatment in a cost-effective environment can optimally ensure employee and dependent health

Opportunities to Impact Current costs

A suggested clinic concept for employees and spouses should be voluntary but with a strong incentive for use. Having the clinic become the first point of contact for seeking medical care can provide the following opportunities for long-term cost control to the City:

1. Provide services at lower cost than 'purchased' under current system:
Using a fully loaded financial model the clinic can provide high quality medical care at unit costs lower than what is currently received through traditional venues
2. Reduced time-away from work for medical treatment:
Based on focus group responses, time away from work for medical services is estimated to be reduced by 47%
3. First stop assessment of on-the-job injuries:
Analysis of the workers compensations trends and incidences since 2003, show a high prevalence of sprains and strains. By making the clinic the first stop for non-emergency care for job-related incidents, better management and guidance for these incidents will result in quicker return to work.
4. Integrate pre-employment physicals with medical care:
Routine employment screenings are currently outsourced on an as needed basis. By integrating these physicals with medical care and lifestyle recommendations, the impact of these assessments will better support its intended use. Any need for out-referrals can be initiated and managed for optimal benefit to the employee and City.
5. Coordinate and integrate total employee & dependent health:
Whole-person medical care versus episode treatment provides continuity of services and avoids duplication of services
6. Direct use of Prescription drugs:
First-stop medical care provides for drug prescription that is in line with City's medical plan; attention can be paid to most appropriate and most cost-effective drug regimen. Additional cost impacts can be addressed through in-house dispensing.
7. Medical cost control provides future leverage for insurance rates:
By actively impacting employee medical care, costs will be impacted and with lower than market escalations, future premium rates can be negotiated.



Cost Impact estimates -considering cost savings items 1-3 only- were calculated based on realistic assumptions:

| Clinic Capture (based on 2006 YTD data) | Year 1 | Year 2 | Year 3 |
|--------------------------------------------------------------------|------------------|------------------|------------------|
| Percent of Medical Office visits captured by clinic | 24% | 43% | 45% |
| Re-directed revenue from Medical Office visit capture | 180,000 | 384,120 | 487,872 |
| Percent of Lab procedures captured by clinic | 24% | 43% | 45% |
| Re-directed revenue from Lab from Lab capture | 109,800 | 234,313 | 297,602 |
| Worker Comp office visits captured by clinic *) | 100% | 100% | 100% |
| Re-directed revenue from WC office visit capture | 65,280 | 65,280 | 65,280 |
| Pre-employment and related Physicals captured by clinic *) | 80% | 80% | 80% |
| Re-directed from Employment physicals capture | 10,080 | 10,080 | 10,080 |
| Total re-directed costs from traditional approach to clinic | \$365,160 | \$693,793 | \$860,834 |
| <hr/> | | | |
| Clinic operating cost (excl. wellness services) **) | \$499,943 | \$632,912 | \$712,291 |
| Impact of absenteeism reduction | \$35,521 | \$68,911 | \$79,567 |
| Levying of \$5 co-pay | \$15,000 | \$29,100 | \$33,600 |
| | | | |
| Net system gain for Clinic | -\$84,262 | \$158,892 | \$261,710 |
| ROI- (system gain/ clinic costs) | -16.9% | 25.1% | 36.7% |
| *) assume re-directed by City protocol | | | |
| **) adjustment for MD to 1/2FTE in year 3 from original pro-forma | | | |



Clinic Implementation Options

The results indicate multiple options for the City to implement a clinic:

- Self managed option:
 - Preferred by peer clinics
 - Most cost effective
 - Ability to integrate clinic with other health initiatives
 - Attract expertise for management
- Partnering with existing clinic:
 - CCAC option evaluated but not feasible at this time
 - Physician practice integration not feasible due to more expanded needs for City employees
- Commercially managed facility:
 - Management and staffing expertise provided
 - Management fees add to operating costs
 - Clinic integration with other City health services may be impacted by conflicting objectives

The study includes a three-year detailed pro-forma for each scenario. While the self-managed approach appears most cost-effective, the management option will need to be further explored as well.

Recommendation

The study findings support the implementation of an employee health clinic for the City of Plano for cost effectiveness and employee interest. Given that existing cost commitments from medical plan, wellness, and workers compensation budgets can be re-directed to support the development and implementation of the clinic, no additional budgeting is necessary.

Next Steps

With Council approval, the following steps are recommended to move forward:

- Obtain Council Approval for the distribution of an RFP for Clinic Management Services to decide to outsource or manage in-house
- Evaluate RFP responses and develop final implementation plan & timeline
- Determine the extent to which current Medical Fund dollars can be re-directed to start and manage the clinic (clinic funding source)
- Obtain final Council Approval to proceed



City of Plano- Employee Health Clinic

Presentation for City Council Meeting
November 13, 2006



Practiva Health
Gijs van Oort PhD

Objective

- Determine the feasibility of an employee health clinic to favorably impact costs related to the medical plan, workers compensation, wellness programming and pre-employment physicals



Rationale

- Medical Costs for City of Plano employees and dependents continue to increase annually
- Growth of City's tax base is slowing, requiring ever greater need for cost containment
- Clinic concept has been successfully implemented in other municipalities



Approach Taken

Address all stakeholders in the health care arena; payer, provider and user

- Review claims history and health programs to identify opportunities for cost savings
- Survey employees about interest
- Determine regional provider interest and provider impact
- Peer review of existing clinics
- Review of management service providers



Findings

- Medical and WC cost profiles provide opportunities to re-direct services to clinic environment
- 84% Of employees surveyed will use clinic if offered at lower or no co-pay
- Clinic concept is supported by community providers
- Clinic does not significantly impact any one medical provider
- Peer clinics are perceived positively by employees and dependents



Recommended Core Services

- Minor medical occurrences
- On-the-job injury assessment
- Wellness assessment and risk management
- Pre-employment physical assessments
- Chronic disease management and monitoring
- Out referrals for in-depth diagnostics and treatment
- Pharmacy services not considered at this time



Cost Reduction Opportunities

1. Provide services at lower cost than 'purchased' under current system
2. Reduced time-away from work for medical treatment
3. First stop assessment of on-the-job injuries
4. Integrate pre-employment physicals with medical records
5. Coordinate and integrate total employee & dependent health
6. Direct use of Prescription drugs
7. Medical cost control provides future leverage for insurance rates



Clinic Implementation Options

- Self managed option:
 - Preferred by peer clinics
 - Most cost effective
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- Commercially managed facility:
 - Management and staffing expertise provided
 - Management fees add to operating costs
 - Clinic integration with other City health services may be impacted by conflicting objectives



Next Steps

- Obtain Council Approval to proceed with RFP for Clinic management services in order to decide to outsource or operate in-house
- Evaluate RFP responses and develop final implementation plan & timeline
- Determine the extent to which current Medical Fund dollars can be re-directed to start and manage the clinic (clinic funding source)
- Obtain final Council Approval to proceed



Preliminary Open Meeting Agenda Item IV

Presentation re Updated City of Plano Logo
(Insertion) Helt

pom
va

Presented are four choices for the City's Logo:

Top Row: (left to right; red color on left; blue on right)

- 1. Current City Logo**
- 2. Non-Tilted Star with Trail in Current P**
- 3. Non-Tilted Star with Trail in New P, with Red line**
- 4. Non-Tilted Star with Trail in New P**

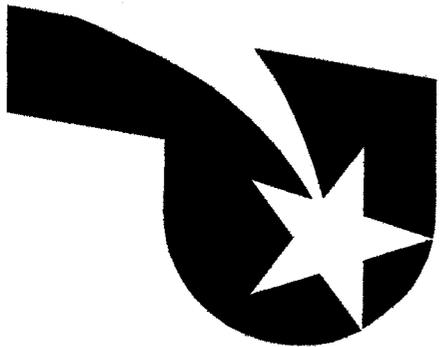
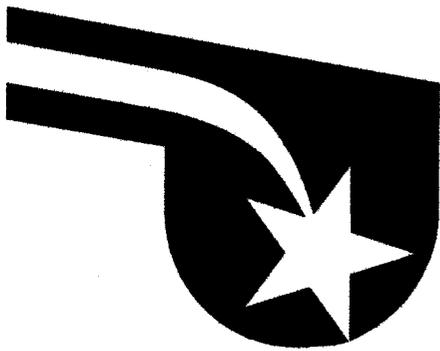
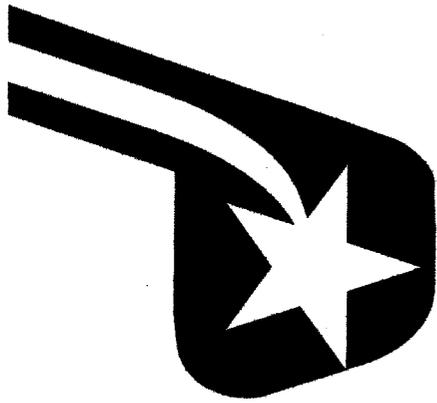
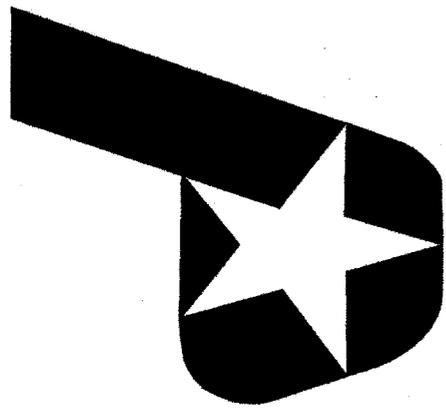
Bottom Row: (left to right: blue color on left: red on right)

- 5. Current City Logo**
- 6. Tilted Star with Trail in Current P**
- 7. Tilted Star with Trail in New P, with Blue line**
- 8. Tilted Star with Trail in New P**

Logo presented in Black/White and in smaller size, as requested.

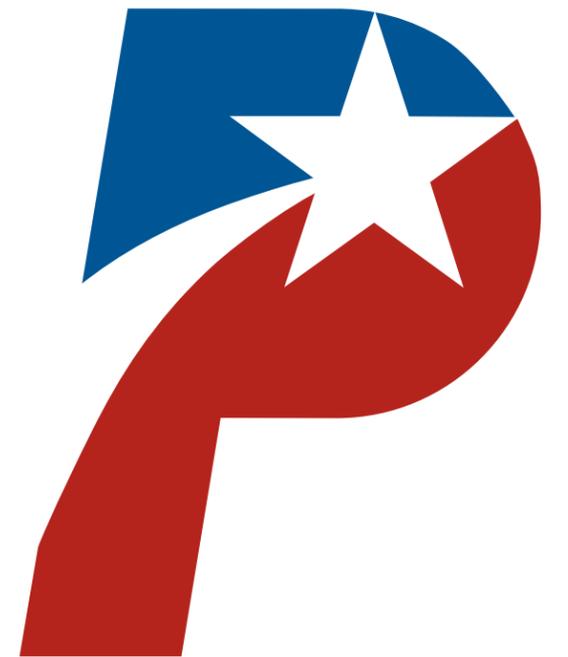
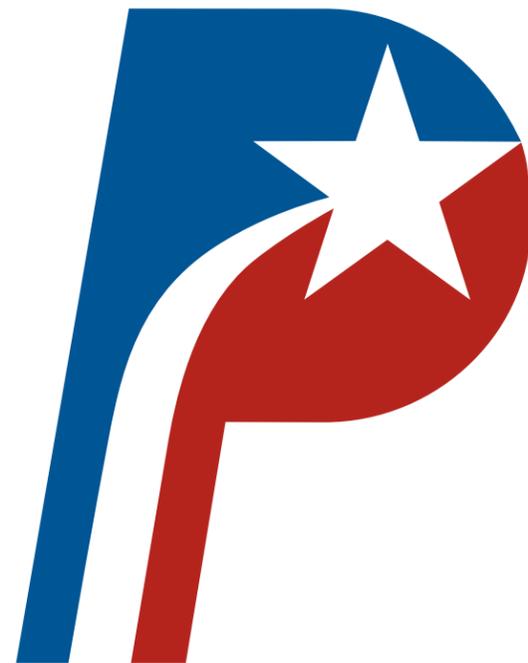
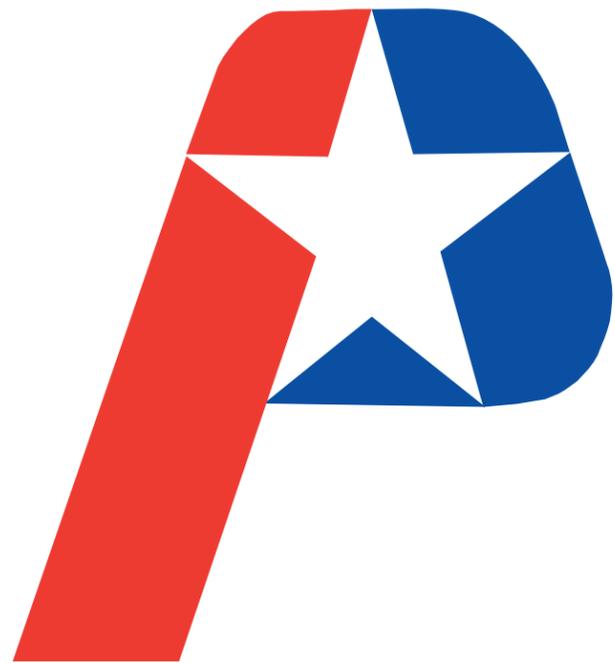
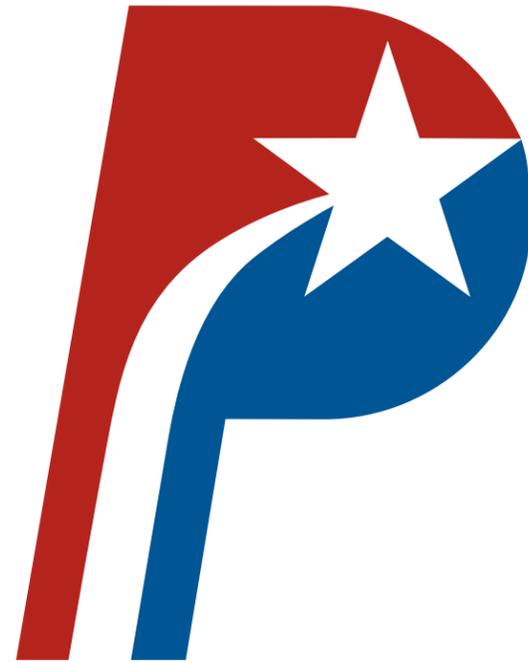
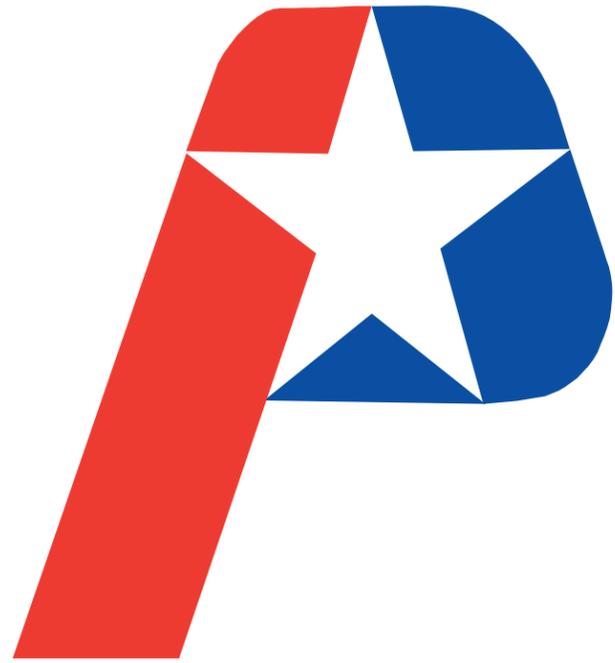
Attachments (2)

POM
VB



POM
VC





Discussion/Action Items for Future Council Agendas

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

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

November 23, 24 – Thanksgiving Holidays

November 27

Mobility Report

DART Report

Comprehensive Monthly Financial Report

Public Hearing: Zoning Case 2006-21 - Request to amend Planned Development-65-Central Business-1 on 168.1± acres located north and south of Legacy Drive between the Dallas North Tollway and Parkwood Boulevard. **Applicant: City of Plano**

Public Hearing: Zoning Case 2006-23 - Request to rezone 17.6± acres located on the west side of Des Moines Drive, 1,590± feet north of Spring Creek Parkway from Light Commercial to Patio Home. Zoned Light Commercial. Tabled 10/03/06. **Applicant: FTL Associates, Ltd.**

Public Hearing: Transportation Element Amendment of the Comprehensive Plan - Request to amend the Transportation Element of the Comprehensive Plan regarding Des Moines Drive. This amendment proposes to remove the portion of Des Moines Drive north of Leatherwood Drive to K Avenue, and to decrease the capacity of the remaining portion of Des Moines Drive (between Spring Creek Parkway and Leatherwood Drive) from a Type E, four-lane, secondary thoroughfare street to a Type F, two-lane collector street. **Applicant: City of Plano**

Public Hearing: Zoning Case 2006-24 - Request for a Specific Use Permit for an 80-foot Antenna Support Structure on 2.2± acres located on the east side of Jupiter Road, 245± feet south of Park Boulevard. Zoned Retail. **Applicant: P.I.S.D.**

Public Hearing: Zoning Case 2006-26 - Request for a Specific Use Permit for Day Care Center on 0.4± acre located on the south side of 14th Street, 177± feet east of M Avenue. Zoned Retail. Tabled 10/16/06. **Applicant: Maria Folmar**

Public Hearing: Zoning Case 2006-28 - Request for an amendment to the Heritage Resource Designation #16 on one lot on 2.8± acres located at the southwest corner of Coit Road and Lorimar Drive. Zoned Agricultural with Heritage Resource Designation #16. **Applicant: Richard Wells**

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

December 11

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

December 19
Mobility Report
DART Report
Comprehensive Monthly Financial Report

December 22 & 25 - Christmas Holidays

2007

January 1 – New Year Holiday

January 8
Library Advisory Board

January 15 – MLK Holiday

January 22
Senior Citizens Advisory Board
Mobility Report
DART Report
Comprehensive Monthly Financial Report

February 1 – District 1 Neighborhood Roundtable, Plano Centre, 7 p.m.

February 12
Animal Shelter Advisory Committee

February 9 – 12, AMCC Conference, Austin

February 26
Keep Plano Beautiful Commission
Mobility Report
DART Report
Comprehensive Monthly Financial Report

March 5 – 9, PISD Spring Break

March 10 – 14, NLC Congressional Cities

V-B

March 20
Transportation Advisory Committee

March 26
Cultural Affairs Commission
Mobility Report
DART Report
Comprehensive Monthly Financial Report

April 9
Public Arts Committee

April 23
Community Relations Commission
Mobility Report
DART Report
Comprehensive Monthly Financial Report

May 14
Heritage Commission

May 24 – District 3 Neighborhood Roundtable, PSA StarCenter, 7 p.m.

May 28 – Memorial Day

May 29
Planning and Zoning Commission
Mobility Report
DART Report
Comprehensive Monthly Financial Report

June 11
Transition & Revitalization Commission

June 21 – 24, TCMA Conference, San Antonio

June 25
Board of Adjustment
Mobility Report
DART Report

VI-C

Comprehensive Monthly Financial Report

July 4 – Independence Day

July 23

Building Standards Commission
Mobility Report
DART Report
Comprehensive Monthly Financial Report

July 25

(Budget Session)

August 13

Retirement Security Plan Committee

August 23 – District 4 Neighborhood Roundtable, PSA StarCenter, 7 p.m.

August 27

Parks and Recreation Planning Board
Mobility Report
DART Report
Comprehensive Monthly Financial Report

September 3 – Labor Day

September 10

Self Sufficiency Committee

September 24

Plano Housing Authority
Mobility Report
DART Report
Comprehensive Monthly Financial Report

October 7 – 10, ICMA Conference, Pittsburgh

October 8

W.D



**CITY OF PLANO
COUNCIL AGENDA ITEM**

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|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|----------------------------------------------------|------------------------------|----------------------------------------------------|
| CITY SECRETARY'S USE ONLY | | Reviewed by Purchasing | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Not Applicable |
| <input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory | | Reviewed by Budget | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Not Applicable |
| Council Meeting Date: | 11/13/06 | Reviewed by Legal | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Not Applicable |
| Department: | City Manager's Office | Initials | Date | |
| Department Head | Tom Muehlenbeck | Executive Director | | |
| Dept Signature: | | City Manager | <i>[Signature]</i> | <i>11.07.06</i> |
| Agenda Coordinator (include phone #): | | Sharon Wright ext. 7107 | | |
| ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input checked="" type="checkbox"/> OTHER | | | | |
| CAPTION | | | | |
| Proclamation: Veterans Day | | | | |
| 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 |
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| BALANCE | 0 | 0 | 0 | 0 |
| FUND(s): | | | | |
| COMMENTS: | | | | |
| SUMMARY OF ITEM | | | | |
| List of Supporting Documents: | | Other Departments, Boards, Commissions or Agencies | | |
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CITY OF PLANO COUNCIL AGENDA ITEM

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| CITY SECRETARY'S USE ONLY | | Reviewed by Purchasing | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Not Applicable |
| <input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory | | Reviewed by Budget | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Not Applicable |
| Council Meeting Date: | 11/13/06 | Reviewed by Legal | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Not Applicable |
| Department: | City Manager's Office | Initials | Date | |
| Department Head | Tom Muehlenbeck | Executive Director | | |
| Dept Signature: | | City Manager | <i>JM</i> | <i>11/13/06</i> |
| Agenda Coordinator (include phone #): Sharon Wright ext. 7107 | | | | |
| ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input checked="" type="checkbox"/> OTHER | | | | |
| CAPTION | | | | |
| Proclamation: National Adoption Month - 2006 | | | | |
| 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 |
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| BALANCE | 0 | 0 | 0 | 0 |
| FUND(S): | | | | |
| COMMENTS: | | | | |
| SUMMARY OF ITEM | | | | |
| List of Supporting Documents: | | Other Departments, Boards, Commissions or Agencies | | |
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**CITY OF PLANO
COUNCIL AGENDA ITEM**

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| CITY SECRETARY'S USE ONLY | | | Reviewed by Purchasing | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Not Applicable |
| <input type="checkbox"/> Consent | <input type="checkbox"/> Regular | <input type="checkbox"/> Statutory | Reviewed by Budget | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Not Applicable |
| Council Meeting Date: | | 11/13/06 | Reviewed by Legal | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Not Applicable |
| Department: | City Manager's Office | | | Initials | Date |
| Department Head | Tom Muehlenbeck | | Executive Director | <i>[Signature]</i> | |
| Dept Signature: | | | City Manager | <i>[Signature]</i> | 11.6.06 |
| Agenda Coordinator (include phone #): Sharon Wright ext. 7107 | | | | | |
| ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input checked="" type="checkbox"/> OTHER | | | | | |
| CAPTION | | | | | |
| Proclamation: American Cancer Society: Great American Smokeout Day | | | | | |
| 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 | |
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| BALANCE | 0 | 0 | 0 | 0 | |
| FUND(S): | | | | | |
| COMMENTS: | | | | | |
| SUMMARY OF ITEM | | | | | |
| List of Supporting Documents: | | | Other Departments, Boards, Commissions or Agencies | | |
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**CITY OF PLANO
COUNCIL AGENDA ITEM**

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| Department: | City Manager's Office | | Initials | Date |
| Department Head | Tom Muehlenbeck | Executive Director | | |
| Dept Signature: | | City Manager | <i>[Signature]</i> | <i>[Signature]</i> |
| Agenda Coordinator (include phone #): Sharon Wright ext. 7107 | | | | |
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| CAPTION | | | | |
| Proclamation: Animal Shelter Appreciation Week | | | | |
| FINANCIAL SUMMARY | | | | |
| <input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP | | | | |
| FISCAL YEAR: | Prior Year (CIP Only) | Current Year | Future Years | TOTALS |
| Budget | 0 | 0 | 0 | 0 |
| Encumbered/Expended Amount | 0 | 0 | 0 | 0 |
| This Item | 0 | 0 | 0 | 0 |
| BALANCE | 0 | 0 | 0 | 0 |
| FUND(s): | | | | |
| COMMENTS: | | | | |
| SUMMARY OF ITEM | | | | |
| List of Supporting Documents: | | Other Departments, Boards, Commissions or Agencies | | |
| | | | | |

**PLANO CITY COUNCIL
PRELIMINARY OPEN MEETING
October 23, 2006**

COUNCIL MEMBERS

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

STAFF

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

Mayor Evans called the meeting to order at 5:11 p.m., Monday, October 23, 2006, in Training Room A of the Municipal Center, 1520 K Avenue. All Council Members were present. Council Member Callison arrived at 5:13 p.m. Mayor Evans then stated that the Council would retire into Executive Session in compliance with Chapter 551, Government Code, Vernon's Texas Codes, Annotated, in order to consult with an attorney and receive Legal Advice, Section 551.071, and to discuss Personnel, Section 551.074 for which a certified agenda will be kept in the office of the City Secretary for a period of two years as required.

Mayor Evans reconvened the meeting back into the Preliminary Open Meeting at 6:40 p.m. in the Council Chambers where the following matters were discussed:

Consideration and Action Resulting From Executive Session Discussion

Personnel Appointments

Planning & Zoning Commission

Upon a motion made by Mayor Pro Tem Johnson and a second by Council Member Ellerbe, the Council voted 8-0 to appoint Laura Williamson.

Personnel/Appointments/Reappointments

Plano Housing Authority

Upon a motion made by Mayor Evans and a second by Council Member Dunlap, the Council voted 8-0 to reappoint Linda Hester and Paul Gephart, and further confirmed Paul Gephart as Chair.

Discussion and Direction Regarding a Proposed Fountain in the Shops at Legacy

Fehmi Karahan of The Shops at Legacy spoke regarding the proposal for a public/private partnership with the City to build a fountain in Legacy Town Center. He spoke to the fountain incorporating a destination point theme, to the overall vision of the Center, dollars added to the tax base and retail sales generated, and establishing a benchmark. Mr. Karahan spoke to the location of the proposed fountain at Legacy Circle in the northern portion of Legacy Town Center and to future dollars generated upon completion. He requested assistance from the City in building a special place.

Nadine Schelbert, WET Design team member, spoke to the development of three fountain designs to be considered and provided an overview of the water landscape of each design. She spoke to this being a contribution of a lively and exciting urban environment at The Shops at Legacy.

Lewis Shaw of Jackson-Shaw Company spoke to the importance of the proposed fountain, benefits that will be realized by the City as a participant, and to the future hotel being a beneficiary as well.

Dave Noble of Trammell Crow spoke to confidence in locating the fountain at The Shops at Legacy.

Mr. Karahan responded to the Council regarding good roadway access, the size of the fountain, and to water measurements. Ms. Schelbert responded to the Council regarding wind sensors being incorporated into the water features. Mr. Karahan spoke to meeting with the Public Art Committee, stated that costs range from \$2.5 million to \$4.5 million with the cost of the second option being around \$3 million. He spoke to creating a meaningful partnership.

Council Member Stahel spoke to the differentials in cost, the viewing by the Public Art Committee, and to \$3 million in costs. Mr. Karahan spoke to his budget being around \$800,000 with remaining funding of approximately \$2.2 million requested from the City. He responded to the Council that all maintenance costs and necessary training to operate the fountain will be assumed by The Shops at Legacy. Mr. Karahan further responded regarding the fall of 2007 as being the estimated time frame for the fountain to be in place.

City Manager Muehlenbeck spoke to determining the persuasion of the Council before beginning any funding discussions, stated that after this is determined and if interest is found to be there, discussions could then take place with the Budget Department with a possible recommendation of funding brought back to the Council for consideration.

Deputy Mayor Pro Tem Magnuson stated that she is interested in pursuing the request. Council Member Stahel stated that he is not interested in funding participation at this level as a matter of public policy and spoke to the question of what benefits the citizens might realize. He spoke to the fountain not generating either benefits or revenue. Council Member LaRosiliere spoke to pursuing the request in terms of understanding the level of commitment that might be required and stated that it is his belief that this would benefit the citizens and spoke to creating a sense of place to gather. Council Member Ellerbe spoke to working something out but not at the \$2.2 million level, and recommended obtaining additional information. Mayor Pro Tem Johnson spoke to the idea being a good one and representative of a sense of place, and to pursuing further discussion.

Mayor Evans spoke to the fountain being a gathering place and a great attraction for visitors, and to realizing future economic benefits. Ms. Magnuson spoke to the fountain as "building" on existing highlights such as the cattle drive sculptures, previous discussions of forming public private partnerships, and to learning more about the proposal. Council Member Dunlap spoke to being willing to listen, not necessarily supporting the project, and spoke to looking further at fountain design components. Council Member Callison spoke to being in favor of the proposed fountain but with conservative funding participation. Mayor Evans recommended that the City Manager come back with a recommendation to the Council of a level of funding participation. Mr. Stahel recommended that this come back as a discussion item on the regular agenda and that public comment be received.

There was no further discussion. Remaining Preliminary items were discussed during the Regular Meeting. Mayor Evans recessed the meeting at 7:31 p.m.

Pat Evans, Mayor

ATTEST:

Elaine Bealke, City Secretary

PLANO CITY COUNCIL
October 23, 2006

COUNCIL MEMBERS

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

STAFF

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

Mayor Evans convened the Council into the Regular Session on Monday, October 23, 2006, at 7:40 p.m. in the Council Chamber of the Plano Municipal Center, 1520 K Avenue. All Council members were present.

The invocation was led by Rev. Dr. Ronald D. Henderson, Sr. Pastor of Custer Road United Methodist Church.

The Pledge of Allegiance was led by the Younger Generation Chorus.

Mayor Evans read a proclamation recognizing Arbor Day, November 4, 2006 and received a presentation to the City of Plano by the National Society of the Sons of the American Revolution.

Mayor Evans presented certificates of appreciation to outgoing board and commission members in recognition of their service to the City.

The Council resumed discussion of Preliminary Agenda Items.

DART Status Report

DART Board of Directors member Pope spoke regarding consideration of the 2030 Plan and a resolution of the City of Dallas which contained differences from the plan. He spoke to the Dallas resolution calling for about twice the funding projected to be available and asking for the Cotton Belt line to be built as light rail and to the DART recommendation of express rail from the City of Plano to DFW airport. He spoke to the Dallas recommendation to place the line in a trench as it passes through residential areas and to have light rail to the City of Carrollton where it would change to commuter rail.

Mr. Pope advised that there is \$1.65 billion available to build all area rail systems and that the plan proposed by Dallas would require \$1.26 billion. He stated that as configured by Dallas, the Cotton Belt line would not qualify for federal funds and that other projects would be passed over. Mr. Pope advised that the City of Dallas has asked their appointees on the board to vote for a tabling of the item.

Mr. Pope spoke to the proposal by DART making the operation as clean or cleaner than light rail is today, making a commitment that noise and vibration do not exceed those resulting from light rail and advised that the current freight line will stay in place. He stated concern regarding the expense of trenching the line and spoke to other items being taken off the list due to the increase in costs. Mr. Pope spoke to the possibility that the DART proposal will be used for regional transportation and to supporting legislation which will provide additional sales tax revenue. He spoke to issues related to operation in the same corridor where a freight track exists and advised that in terms of revenue and size, Dallas represents over 50% of DART with their proportion of track being 60-75%.

Mr. Pope spoke to DART receipt of an AA+ rating, the increase in ridership both in Plano as well as the area and issues of parking at the Parker Road station.

Mobility Report

Transportation Engineering Manager Neal spoke to a proposal to restrict parking on Alliance Boulevard in order to improve emergency vehicle access to Baylor Medical Center. He spoke to upcoming pavement improvements and the need to close a portion of the North Tollway Road. Mr. Neal spoke to designing signal timing to address the goals of reducing delays, improving air quality and reducing the number of stops. He spoke to plans to retime signals, finding scenarios to optimize timing, the use of wireless computer systems and using smaller zones to offer better control. Mr. Neal spoke to savings realized in terms of time, fuel consumption and operation costs and advised he would bring results back to the Council. He spoke to consideration of *adaptive signal control* where data is collected at various times rather than just the peak am/pm times, to developing regional management strategies and data sharing.

Mr. Neal responded to Council Member Dunlap that when an approaching vehicle causes a signal change, it is in sequence to the thoroughfare and responded to Mayor Pro Tem Johnson regarding the benefits and drawbacks of a video detection traffic system.

Comprehensive Monthly Financial Report

Director of Finance McGrane advised that September 2006 represents the preliminary year-end report and stated that year-to-date revenues of most funds were ahead with most expenditures within or slightly behind budget. He spoke to positive balances in the General, Water/Sewer and Municipal Drainage funds, the increase in sales tax revenues, decrease in unemployment, reduction in the inventory of homes on the market and growth in hotel/motel revenues. Mr. McGrane advised that the City's portfolio would not have a significant increase until receipt of property tax revenues and a bond sale in early 2007.

Presentation Regarding Updated City of Plano Logo

Director of Public Information Helt advised that the current logo was created in 1979 as part of a City-sponsored design contest and stated that rather than take a different direction, Staff has developed an updated design. She spoke to the two year project, efforts to avoid confusion with the Plano Centre logo, and use of the logo throughout the City. Ms. Helt spoke to principles of flag design including keeping it simple with two to three colors and presented the updated design which incorporates existing elements but places the star on a rising trail to indicate the City of Plano as the “rising star” of the Metroplex and utilizes slightly darker colors. Ms. Helt spoke to removal of a light blue trail originally proposed, design work done in-house, and receipt of consultant input via a contest entered through the Texas Association of Municipal Information Officers. She spoke to positive feedback received since the design has been implemented on the City’s web site, preserving Plano’s past while adding a contemporary look and projecting the City into the future. Ms. Helt spoke to implementation and logos updated by other municipalities.

Mayor Evans spoke regarding keeping the lighter blue in the design and Deputy Mayor Pro Tem Magnuson spoke to making the trail more narrow. Ms. Helt responded to Council Member Stahel that the change was made to update the design and make it more contemporary. Council Member Callison spoke in favor of the rising star design. Council Member Ellerbe spoke in support of the current logo.

By a narrow consensus, the Council directed staff to move forward.

Council Member Ellerbe spoke in support of the new flag, but stated concern regarding the design when utilized on water towers or fleet vehicles where the “P” may not be easily discerned. Mayor Pro Tem Johnson spoke in support of the current logo with the star in a vertical position and to incorporating brighter colors if that is a concern. Council Member Dunlap stated that he is not necessarily against the change, but not in favor either and advised he would be fine if the majority is in support.

Council Member Callison spoke to this being the right time to make a change, Council Member LaRosilieri spoke to this signifying a new phase in the City, Mayor Evans spoke to phasing in the change over time. Council Member Stahel spoke to outlining the white trail with a thicker line so that the “P” is more defined. Ms. Helt advised that the light blue trail was taken out due to cost concerns and advised that Staff will bring back recommended revisions for further consideration.

Council Items for Discussion/Action on Future Agendas

No items were discussed

Consent and Regular Agendas

Council Member Stahel requested that Consent Agenda Items “C,” purchase of maintenance and support of HP printers and servers and “D,” purchase of IBM i550 be removed for individual consideration and stated that he will be stepping down due to possible conflicts of interest.

Citizen Dwayne Clark requested that Consent Agenda Item “J,” an agreement between the City and the Shops of Legacy, L.P. for funding in part for the Lights of Legacy be removed for individual consideration.

Council Reports

This item was passed over.

COMMENTS OF PUBLIC INTEREST

No one appeared to speak.

BOARD/COMMISSION REPORTS

Youth Advisory Commission Chair Kayla Moore spoke to the board’s mission to be the voice of the Plano teen community by exploring issues and developing activities which will promote positive youth relations with and for the City of Plano. She advised that membership is made up of teens from the three senior high schools, five high schools and the private high school and that members serve two, one-year terms.

Ms. Moore reviewed projects including the annual Christmas parade, mock alcohol-related car crashes before prom and spoke regarding the Emmy won by the Plano Television Network for last year’s coverage of the “crash.” She spoke to development of the *Make a Difference Program* presented to fifth graders at Weatherford and Hedgcoxe Elementary to provide information regarding the transition from elementary to middle school and stated that the program will be expanded to as many schools as possible. Ms. Moore spoke to expanding the program to include parents, assistance with Kid’s Night Out at the Plano Market Square, and attendance at the “Gatekeeper Program” designed to recognize and respond to teens showing signs of crisis. She spoke to members being required to attend one City Council meeting per term on the board, YAC Fest in the spring and Government Day where YAC members visit various departments to learn about City operations and functions.

CONSENT AGENDA

Upon a motion made by Mayor Pro Tem Johnson and seconded by Deputy Mayor Pro Tem Magnuson, 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)]

October 9, 2006
October 10, 2006

Approval of Expenditures

Purchase from Existing Contract/Agreement: (Purchase of products/services through Cooperative Purchasing Interlocal Contract with another governmental/quasi-governmental agency or an additional purchase from current City of Plano annual purchase agreement).

To authorize the purchase of sports field lighting equipment for Enfield Park Ball Field Lighting Improvements, including installation, fixtures, wiring, switch gear, and controls in the amount of \$748,136 from Techline Sports, L.P., through the Texas Association of School Board Purchasing Cooperative Program, Contract #204-04, and authorizing the City Manager to execute any and all documents necessary to effectuate this purchase. [Consent Agenda Item (B)]

To approve a one-time purchase of a Movable Shelving and Storage System for the Police Property and Evidence Unit from Metroplex Office Systems in the amount of \$45,256. [Consent Agenda Item (E)]

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

To approve a Professional Engineering Services Contract by and between the City and Wier & Associates, Inc., in the amount of \$162,300 for the design of Communications Parkway – Parker Road to Spring Creek Parkway and authorizing the City Manager to execute all necessary documents. [Consent Agenda Item (F)]

To approve an Engineering Contract by and between the City and Jones & Carter, Inc. in the amount of \$131,550 for Hayfield Drive, Thunderbird Lane, Morton Vale and Cloverhaven Reconstruction and authorizing the City Manager to execute all necessary documents. [Consent Agenda Item (G)]

To approve an Engineering Contract by and between the City and Jaster-Quintanilla Dallas, LLP in the amount of \$60,555 for design of construction plans and related services for the construction of Headquarters Drive - Parkwood Boulevard to Preston Road and authorizing the City Manager to execute all necessary documents. [Consent Agenda Item (H)]

To approve the terms and conditions of an Engineering Services Contract by and between the City and Alan Plummer Associates, Inc. in the amount of \$104,555 for design of Alma Drive and Parker Road Drainage Improvements and authorizing the City Manager to execute all necessary documents. [Consent Agenda Item (I)]

Subdivision Improvement Agreement

To approve the terms and conditions of a Subdivision Improvement Agreement by and between the City of Plano, Texas, and Newmark Homes, L.P. for off-site paving improvements in Cloverhaven Way and Bright Star Way. [Consent Agenda Item (K)]

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

To Duit Construction Company, Inc., increasing the contract by \$132,949 for the Alma Road Whitetopping Street Resurfacing, Change Order No. 1. (Original Bid No. 2006-112-B). [Consent Agenda Item (L)]

Adoption of Resolutions

Resolution No. 2006-10-14(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 \$544,089; 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 (M)]

Resolution No. 2006-10-15(R): To approve the terms and conditions of the Funding Agreements between the City of Plano, Texas, and six special events in the total amount of \$254,437, authorizing the City Manager to execute such agreements; and providing an effective date. [Consent Agenda Item (N)]

Resolution No. 2006-10-16(R): To approve the terms and conditions of the Funding Agreements between the City of Plano, Texas, and various arts organizations, which all render services that are beneficial to the public and serve a valid public purpose in the total amount of \$601,301; authorizing the City Manager to execute such agreements with these organizations for provision of support of the arts; and providing an effective date. [Consent Agenda Item (O)]

Resolution No. 2006-10-17(R): To approve an annual contract with renewals for the purchase of additional DriveCams and driving feedback systems for implementation on City operated vehicles in an estimated annual amount of two hundred thirty-seven thousand six hundred fifty dollars (\$237,650) from DriveCam Inc., the sole source vendor of such equipment and services; authorizing the City Manager to take such action and execute such documents as necessary to effectuate the contract; and providing an effective date. [Consent Agenda Item (P)]

Resolution No. 2006-10-18(R): To approve the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano, Texas, and the Texas Municipal League for Intergovernmental Insurance Pool; authorizing the City Manager to take such action and execute such documents as necessary to effectuate the agreement; and providing an effective date. [Consent Agenda Item (Q)]

Resolution No. 2006-10-19(R): To approve the terms and conditions of an amendment to Municipal Maintenance Agreement for the furnishing, installing, operation and maintenance of cameras on State Highway Rights-of-Way to monitor compliance with traffic-control signals by and between the State of Texas and the City of Plano; authorizing its execution by the City Manager; and providing an effective date. [Consent Agenda Item (R)]

Adoption of Ordinances

Ordinance No. 2006-10-20: To approve the carrying forward of Fiscal Year 2005-2006 funds to Fiscal Year 2006-2007; and providing an effective date. [Consent Agenda Item (S)]

Ordinance No. 2006-10-21: To abandon all right, title and interest of the City, in and to a portion of those certain easements being a fifteen foot (15') sanitary sewer easement recorded in Volume 4111, Page 2589, a fifteen foot (15') sanitary sewer easement recorded in Volume 4565, Page 0031 and a sixty foot (60') temporary drainage easement recorded in Volume 4111, Page 2605 of the Land Records of Collin County, Texas and being situated in the Collin County School Land Survey No. 7 Survey, Abstract Number 153 and being located north of McDermott Road and east of Ohio Drive; which is located within the City limits of Plano, Collin County, Texas; quitclaiming all right, title and interest of the City in such right-of-way to the abutting property owner, Pasquinelli Portrait Homes–The Enclave at Willow Crest LP, to the extent of its interest; authorizing the City Manager to execute any documents deemed necessary; and providing an effective date. [Consent Agenda Item (T)]

Ordinance No. 2006-10-22: To amend the Plano Code of Ordinances, Chapter 12, Motor Vehicles and Traffic, Article V, Stopping, Standing, and Parking, Section 12-101, Prohibited on certain streets at all times, to prohibit stopping, standing, or parking of motor vehicles on both sides of Alliance Boulevard between Preston Road and Allied Drive within the City limits of the City of Plano; declaring it unlawful and a misdemeanor to stop, stand, or park motor vehicles upon such sections of such roadway within the limits herein defined; providing a fine for criminal penalties not to exceed \$200.00 for each offense; and providing a repealer clause, a severability clause, a savings clause, and an effective date. [Consent Agenda Item (U)]

Ordinance No. 2006-10-23: To repeal Ordinance No. 2003-9-44, codified as Sections 18-32, 18-33, and 18-34 of Article II, Collection Charges, of Chapter 18, Solid Waste of the Code of Ordinances of the City of Plano, Texas; establishing a revised schedule of rates and charges for solid waste disposal and collection applicable to residential and commercial accounts; and providing a repealer clause, a severability clause, and an effective date. [Consent Agenda Item (V)]

END OF CONSENT

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

Purchase from Existing Contract/Agreement: To authorize the purchase of maintenance and support of HP printers and servers in the amount of \$31,371 from Hewlett-Packard Company through a Department of Information Resources (DIR) contract, and authorizing the City Manager to execute all necessary documents. (DIR-BUSOP-178) [Consent Agenda Item (C)]

Purchase from Existing Contract/Agreement: To authorize the purchase of IBM i550 in the amount of \$260,145 from Sirius Computer Solutions through TXMAS Contract, and authorizing the City Manager to execute all necessary documents. (TXMAS-4-70080) [Consent Agenda Item (D)]

Upon a motion made by Deputy Mayor Pro Tem Magnuson and seconded by Council Member LaRosiliere, the Council voted 7-0 to authorize the purchase of maintenance and support of HP printers and servers in the amount of \$31,371 from Hewlett-Packard Company through a Department of Information Resources (DIR) contract, and authorizing the City Manager to execute all necessary documents and to authorize the purchase of IBM i550 in the amount of \$260,145 from Sirius Computer Solutions through TXMAS Contract, and authorizing the City Manager to execute all necessary documents

Council Member Stahel resumed his place at the bench.

To approve an Agreement between the City of Plano and the Shops of Legacy, L.P. whereby the City will provide funding in part for The Lights of Legacy. The City will contribute \$60,000 for this annual event benefiting the Children's Medical Center Legacy. [Consent Agenda Item (J)]

Citizen Dwayne Clark stated opposition to spending tax payers' money on the Shops at Legacy Lighting Program. Mayor Evans spoke to supporting the lighting ceremonies both downtown and uptown for the citizens of the City.

Upon a motion made by Deputy Mayor Pro Tem Magnuson and seconded by Council Member Ellerbe, the Council voted 8-0 to approve an agreement between the City of Plano and the Shops of Legacy, L.P. whereby the City will provide funding in part for The Lights of Legacy.

Public Hearing and adoption of Ordinance No. 2006-10-24 to designate a certain area within the City of Plano as Reinvestment Zone No. 94 for a tax abatement consisting of a 4.0782 acre tract of land located at the west right-of-way line of Preston Road and the north right-of-way line of Headquarters Drive, in the City of Plano; establishing the boundaries of such zone; ordaining other matters relating thereto; and providing an effective date. [Regular Agenda Item (1)]

Ordinance No. 2006-10-24 (cont'd)

Director of Finance McGrane advised that this item would establish a tax abatement with NYLO Hotels, LLC for an 88,500 square foot facility and that personal property improvements will be \$600,000 and real property of \$11 million. He stated that the abatement would be for five years at 25% and that it is expected to have 68 employees.

Mayor Evans opened the Public Hearing. Dwayne Clark, citizen of the City, spoke in opposition to the request and stated concern regarding giving money to private companies for tax abatements as it provides an unfair competitive advantage. He spoke to keeping the tax base high and giving breaks to all businesses and citizens. No one else spoke either for or against the request. The Public Hearing was closed.

Upon a motion made by Council Member LaRosiliere and seconded by Council Member Callison the Council voted 8-0 to designate a certain area within the City of Plano as Reinvestment Zone No. 94 for a tax abatement consisting of a 4.0782 acre tract of land located at the west right-of-way line of Preston Road and the north right-of-way line of Headquarters Drive, in the City of Plano; establishing the boundaries of such zone; ordaining other matters relating thereto; and providing an effective date; and further to adopt Ordinance No. 2006-10-24.

Resolution No. 2006-10-25(R): To approve the terms and conditions of an agreement by and between the City of Plano, Texas, the County of Collin, Texas, the Collin County Community College District and NYLO Hotels, L.L.C., a Delaware Limited Liability Company, and providing for a business personal property and real property tax abatement, and authorizing its execution by the City Manager; and providing an effective date. [Regular Agenda Item (2)]

Director of Finance McGrane responded that he did not have information regarding other sites considered.

Upon a motion made by Council Member LaRosiliere and seconded by Deputy Mayor Pro Tem Magnuson, the Council voted 8-0 to approve the terms and conditions of an agreement by and between the City of Plano, Texas, the County of Collin, Texas, the Collin County Community College District and NYLO Hotels, L.L.C., a Delaware Limited Liability Company, and providing for a business personal property and real property tax abatement, and authorizing its execution by the City Manager; and providing an effective date; and further to adopt Resolution No. 2006-10-25(R).

Public Hearing and adoption of Ordinance No. 2006-10-26 as requested in Zoning Case 2006-22 – To amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, granting Specific Use Permit No. 578 so as to allow the additional use of Day Care Center on one lot on 0.1± acre of land located 110± feet north of Chapel Hill Boulevard and 1,418± feet east of Midway Road in the City of Plano, Collin County, Texas, presently zoned Regional Commercial; directing a change accordingly in the official zoning map of the City; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date. Applicant: Kiddin' Around Property Management Corporation [Regular Agenda Item (3)]

Director of Planning Jarrell advised the Council that the request would be for a “drop in” daycare and that the Planning and Zoning Commission recommended approval of the request subject to the following stipulation: “Day care shall be provided for less than four hours per day for an individual person. However, the day care facility may operate multiple sessions of four hours or less in length.” She further stated that the Commission waived the requirement for outdoor play space. The applicant advised regarding the hours of operation.

Ms. Jarrell responded to Council Member Dunlap that enforcement is done on a complaint basis and spoke regarding similar facilities in the City. She responded to Council Member LaRosiliere regarding the stipulation that outdoor play space may be waived if care is less than four hours per day as being included in the City’s Zoning Ordinance and spoke regarding the center providing indoor play space. Council Member Ellerbe spoke to there being no way to provide monitoring of the time children spend at the facility.

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

Upon a motion made by Council Member Stahel and seconded by Council Member Callison, the Council voted 8-0 to amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, granting Specific Use Permit No. 578 so as to allow the additional use of Day Care Center on one lot on 0.1± acre of land located 110± feet north of Chapel Hill Boulevard and 1,418± feet east of Midway Road in the City of Plano, Collin County, Texas, presently zoned Regional Commercial as requested in Zoning Case 2006-22 and as recommended by the Planning and Zoning Commission; directing a change accordingly in the official zoning map of the City; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date; and further to adopt Ordinance No. 2006-10-26.

Public Hearing and adoption of Ordinance No. 2006-10-27 for Comprehensive Plan Revision – To adopt the updated Utilities Element of the Comprehensive Plan, amendments to the text as originally adopted by Resolution No. 87-2-21(R); approving the utilization of said element as revised and amended by the appropriate personnel and departments of the City of Plano for the purpose of guiding future development within the City of Plano, Texas; and providing an effective date. Applicant: City of Plano [Regular Agenda Item (4)]

Ordinance No. 2006-10-27 (cont'd)

Senior Planner Sims described the Utilities Element of the Comprehensive Plan as a guideline for decision-makers regarding water and wastewater systems. He spoke to the last update done in 1992 and the need to reflect current needs and trends for utility services and the contributions made by various City departments. Mr. Sims spoke to the development of objectives and strategies, organization of information under the themes of the Comprehensive Plan, reformatting of text, shifting the focus to system maintenance, increased emphasis on water conservation and storm water management and private utilities/energy resources. He spoke to providing adequate utility services and looking at the long-term status of the Impact Fee Program and the Water Conservation Program and stated that the Planning and Zoning Commission recommended approval as submitted.

Mr. Sims responded to Council Member Dunlap regarding inclusion of a comparison with other cities in the Metroplex and spoke to the trend to providing more detailed information. He responded to Council Member Stahel regarding conservation and spoke to the legislature's upcoming consideration of an alternative to the "take or pay" system. Mr. Stahel spoke to following up in the coming months regarding finding an alternative. City Manager Muehlenbeck spoke to possible revisions in enforcement by the Property Standards Department to make allowance for the length of native Texas grasses should they be used in landscaping.

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

Upon a motion made by Council Member Ellerbe and seconded by Deputy Mayor Pro Tem Magnuson, the Council voted 8-0 to adopt the updated Utilities Element of the Comprehensive Plan, amendments to the text as originally adopted by Resolution No. 87-2-21(R); approving the utilization of said element as revised and amended by the appropriate personnel and departments of the City of Plano for the purpose of guiding future development within the City of Plano, Texas; and providing an effective date; and further to adopt Ordinance No. 2006-10-27.

Presentation, direction and adoption of Resolution No. 2006-10-28(R) regarding a Coalition Membership for TXU Coal Plants: A Resolution to approve the bylaws of the Texas Clean Air Cities Coalition (the "Coalition") or coalition of cities and other local government entities and organizations formed to pursue mutual interests in respect of certain coal-burning electric power plants proposed for construction in Texas, and to preserve the rights of Texas local governments to protect their air quality and their access to sufficient and reasonably priced electric energy; accepting membership in said coalition; appointing a representative to serve on behalf of the City of Plano; approving payment of a membership assessment; authorizing its execution by the City Manager; and providing an effective date. [Regular Agenda Item (5)]

City Manager Muehlenbeck advised the Council that this item is an opportunity for the City to participate with the cities of Dallas and Houston in the formation of a coalition calling for more detailed studies to be done on a number of new coal-fired plants being planned by TXU.

Resolution No. 2006-10-28(R) (cont'd)

Upon a motion made by Council Member Stahel and seconded by Council Member Ellerbe, the Council voted 8-0 to approve the bylaws of the Texas Clean Air Cities Coalition (the "Coalition") or coalition of cities and other local government entities and organizations formed to pursue mutual interests in respect of certain coal-burning electric power plants proposed for construction in Texas, and to preserve the rights of Texas local governments to protect their air quality and their access to sufficient and reasonably priced electric energy; accepting membership in said coalition; appointing a representative to serve on behalf of the City of Plano; approving payment of a membership assessment; authorizing its execution by the City Manager; and providing an effective date; and further to adopt Resolution No. 2006-10-28(R).

Presentation and Direction regarding City of Plano Smoke Free Ordinance [Regular Agenda Item (6)]

Director of Health Collins spoke regarding the current smoking ordinance and requested the Council direct the development and implementation of a smoke-free ordinance that prohibits the smoking of tobacco in enclosed public areas, in schools and in the workplace. He advised that the recommendation is based on public health evidence which states that there is no risk-free exposure to second-hand smoke and that a smoke-free environment is the only way to fully protect non-smokers. Mr. Collins recommended consideration of an ordinance similar in scope to the one in place in the City of El Paso and responded to Council Member LaRosiliere that there are 75 establishments in the City that have ventilation equipment installed and would be affected.

Mr. Collins advised that the proposal eliminates smoking in public establishments and places of employment, guarantees the right of non smokers to breath smoke-free air and recognizes this has priority over the choice to smoke. He stated that in El Paso smoking is prohibited in all indoor enclosed public areas as well as in the workplace and further that it makes enforcement the responsibility of the employer. Mr. Collins stated that exceptions would be private residences, no more than twenty-five percent of hotel/motel rooms, private functions in a public facility and outdoor areas. He responded to Council Member LaRosiliere that an exception would be made for stand alone retail tobacco stores.

Mayor Evans spoke to formation of an advisory committee and City Manager Muehlenbeck advised that Staff could identify stakeholders. The Council stated a consensus to move ahead requesting Staff return with a list of persons to consider for appointment and directed the El Paso ordinance be used as a starting point.

Discussion and Direction regarding the funding for The Plano Santa's Parade. [Regular Agenda Item (7)]

Citizen of the City Howard Yonce spoke to the Plano Santa's providing assistance to those in need during the holidays and stated that revisions in the special events ordinances have caused expenses of the Christmas parade to increase. He spoke to the need for a change in venue, described the new route and requested assistance from the City in the amount of \$7,775 for police officers and barricades. Marketing and Special Event Coordinator Conklin advised that the revised special event ordinance requires officers to be paid at fair labor standards rather than a flat rate and that the change in route resulted in a \$1,000 increase. She spoke to future consideration of the July 4th parade and stated that Staff has made the organization aware of the small grant process for next year's event. City Manager Muehlenbeck advised Mayor Evans that while the item is not included in the current budget, it can be provided at Council's direction.

Upon a motion made by Deputy Mayor Pro Tem Magnuson and seconded by Council Member LaRosiliere, the Council voted 8-0 to provide funding for The Plano Santa's Parade in the amount of \$7,775.

There being no further discussion, Mayor Evans adjourned the meeting at 9:52 p.m.

Pat Evans, MAYOR

ATTEST:

Elaine Bealke, City Secretary



CITY OF PLANO COUNCIL AGENDA ITEM

| | | | | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|----------------------------------------------------|-------------------------------------------------|-----------------------------------------|-----------------------------------------|
| CITY SECRETARY'S USE ONLY | | Reviewed by Purchasing | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable | |
| <input type="checkbox"/> Consent | <input type="checkbox"/> Regular | <input type="checkbox"/> Statutory | Reviewed by Budget | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable |
| Council Meeting Date: 11/13/06 | | Reviewed by Legal <i>WJ</i> | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable | |
| Department: | Purchasing | | Initials | Date | |
| Department Head | Mike Ryan | | Executive Director | | |
| Dept Signature: | <i>Mike Ryan</i> | | City Manager <i>[Signature]</i> 11/13/06 | | |
| Agenda Coordinator (include phone #): Dianna Wike Ext. 7549 | | | | | |
| ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT | | | | | |
| <input checked="" type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER | | | | | |
| CAPTION | | | | | |
| Award/Rejection of Bid/Proposal for Bid No 2006-217-B for Municipal Center Roof Replacement in the amount of \$226,500.00. | | | | | |
| FINANCIAL SUMMARY | | | | | |
| <input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP | | | | | |
| FISCAL YEAR: 2006-07 | Prior Year (CIP Only) | Current Year | Future Years | TOTALS | |
| Budget | 84,400 | 750,600 | 75,000 | 910,000 | |
| Encumbered/Expended Amount | -84,400 | -122,288 | 0 | -206,688 | |
| This Item | 0 | -226,500 | 0 | -226,500 | |
| BALANCE | 0 | 401,812 | 75,000 | 476,812 | |
| FUND(s): CAPITAL RESERVE | | | | | |
| COMMENTS: Funds are included in the 2006-07 Capital Reserve CIP. This item, in the amount of \$226,500, will leave a current year balance of \$401,812 for the Municipal Center project. | | | | | |
| STRATEGIC PLAN GOAL: Roof replacement relates to the City's Goal of "Service Excellence".. | | | | | |
| SUMMARY OF ITEM | | | | | |
| Staff recommends bid of Supreme Systems, Inc. in the amount of \$226,500.00 be accepted as lowest responsive, responsible bid, conditioned upon timely execution of any necessary contract documents. This is for the purchase of Municipal Center Roof Replacement. | | | | | |
| List of Supporting Documents: Bid Summary | | Other Departments, Boards, Commissions or Agencies | | | |

CITY OF PLANO

BID NO. 2006-183-B DEERFIELD ARCHWAY MONUMENTS REPAIR PROJECT

BID RECAP

Bid opening Date/Time: September 20, 2006 @ 3:30pm

Number of Vendors Notified: 265

Vendors Submitting "No Bids": None

Number of Bids Submitted: 4
SUPREME SYSTEMS, INC.
KING OF TEXAS ROOFING CO., L.P.
K-POST COMPANY
PHOENIX I RESTORATION & CONSTRUCTION, LTD

Bids Evaluated Non-Responsive to Specification: None

Recommended Vendor(s):

SUPREME SYSTEMS, INC. (\$226,500)

Dianna Wike

October 26, 2006

Dianna Wike, Buyer

Date

b-2



**CITY OF PLANO
COUNCIL AGENDA ITEM**

| | | |
|------------------------------------------------------------------------------------------------------|--------------------|--------------------------------------------------------------------------------------------------------|
| CITY SECRETARY'S USE ONLY | | Reviewed by Purchasing <input checked="" type="checkbox"/> Yes <input type="checkbox"/> Not Applicable |
| <input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory | | Reviewed by Budget <input checked="" type="checkbox"/> Yes <input type="checkbox"/> Not Applicable |
| Council Meeting Date: 11/13/06 | | Reviewed by Legal <input checked="" type="checkbox"/> Yes <input type="checkbox"/> Not Applicable |
| Department: Human Resources | | Initials: _____ Date: _____ |
| Department Head: LaShon Ross | Executive Director | |
| Dept Signature: <i>LaShon Ross</i> | City Manager | <i>[Signature]</i> 11/31/06 |
| Agenda Coordinator (include phone #): Christine Donald, ext 5155 | | |

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

CAPTION

Award, rejection of Bids/Proposals, Conditional acceptance of best value Bid/Proposal to establish an annual fixed price contract for Employee Benefit Professional Services in the annual amount of \$85,000 with Special Projects in 2006-2007 totaling \$80,000 (2006-154-C).

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

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

FUND(S): HEALTH CLAIMS FUND

COMMENTS: This fixed price contract approves price quotes for a three-year contract with three one-year optional renewals. Expenditures will be made in the Health Claims Fund within approved budget appropriations. The estimated three-year contract amount for consulting services is \$255,000, with an estimated annual amount of \$85,000 and an additional one-year special project amount in 2006-07, not to exceed \$80,000.

STRATEGIC PLAN GOAL: The consulting services for the self-funded health plan relates to the City's goal of Major Business Center.

SUMMARY OF ITEM

Staff recommends accepting the Hay Group Inc.'s proposal as the best value proposal for consulting services on the City's employee benefits. This will be a three (3) year agreement, with the right and option to renew by three (3) additional one (1) year periods, at the sum of \$85,000 annually for ongoing consulting services. The Agreement will also provide for the Hay Group Inc. to perform special projects in 2006-2007 at an amount not to exceed \$80,000. The expenditure is relative to the City's health and welfare programs.

List of Supporting Documents: Scoring Matrix, Professional Services Agreement, Exhibit A- Schedule of Fees, Exhibit B- Contractor Insurance Agreement, Exhibit C - Affidavit Memorandum to City Manager

Other Departments, Boards, Commissions or Agencies

Date: October 26, 2006
To: Thomas H. Muehlenbeck, City Manager
From: LaShon Ross, Director of Human Resources
Subject: Approval Employee Benefits Consultant Proposal

The City received fourteen responses to the RFP for an Employee Benefits Consultant. The Waters Consulting Group evaluated the responses against the criteria outlined in the RFP for this item, and provided the City with the initial evaluation scores and supporting narrative. Waters Consulting Group also provided reference checks and comments from similarly situated municipalities that have utilized the same services we are requesting.

The internal review committee then selected the top four firms to review the proposals and determine which firms would be asked for interviews. Of the top four firms, three were selected for interview by the committee. Interviews were given to Buck Consultants; Gabriel, Roeder, Smith & Company; and Hay Group. Based on the interviews, it is the recommendation of the committee and Human Resources that the City accept the proposal of Hay Group for the employee benefits consulting services.

The City's primary initiative beyond day to day administration of benefits will be to develop a strategic benefits plan that will address rising healthcare costs and identify innovative approaches for the future. It is our goal to provide a competitive and affordable (according to market standards) selection of benefits which is accessible to all eligible employees and retirees at the level that is most appropriate for their individual circumstances. It is also our goal to maintain a stable environment of benefit offerings and cost to both the City and employees. The committee and Human Resources is convinced that the Hay Group can assist the City in all these efforts.

Hay Group is located in the North Dallas area and the team assigned to the City of Plano is easily accessible and responsive. The attached contract represents costs broken out by daily activities and project initiatives.

Please let me know if you have any questions regarding this recommendation.

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| Criterion | Weighting | POINTS | WEIGHTED SCORE |
|-----------------------------------------------------------------------------------------------------------------------------------------------------|-------------|------------|----------------|------------|----------------|------------|----------------|------------|----------------|
| Responsiveness to the RFP including, but not limited to the information provided, as well as thoroughness, clarity and conciseness of the proposal. | 20% | 29 | 5.8 | 32 | 6.4 | 19 | 3.8 | 28 | 5.6 |
| Services offered. | 20% | 29 | 5.8 | 32 | 6.4 | 21 | 4.2 | 28 | 5.6 |
| Experience with self-funded plans and consumer driven health plans. | 10% | 26 | 2.6 | 27 | 2.7 | 20 | 2 | 26 | 2.6 |
| Qualifications and experience of personnel assigned to work on City account. | 10% | 29 | 2.9 | 25 | 2.5 | 24 | 2.4 | 28 | 2.8 |
| Availability of personnel to work with City. | 10% | 25 | 2.5 | 29 | 2.9 | 21 | 2.1 | 23 | 2.3 |
| Knowledge of industry practices both public and private. | 5% | 28 | 1.45 | 28 | 1.4 | 23 | 1.15 | 25 | 1.25 |
| References and experience in municipal sector. | 5% | 26 | 1.3 | 25 | 1.25 | 29 | 1 | 23 | 1.25 |
| Economic evaluation of the proposal fee schedule. | 20% | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A |
| Totals | 100% | 192 | 22.15 | 192 | 22.95 | 148 | 16.65 | 184 | 21.6 |

**Proposal Fee Schedule will be evaluated by Purchasing.

Explanation of Rating 0-5

- 0 = Non-responsive
- 1 = Merely responsive
- 2 = Fair (Meets Some Needs)
- 3 = Good (Meets ALL Needs)
- 4 = Above Average (Meets ALL and EXCEEDS some Needs)
- 5 = Excellent (Innovatively EXCEEDS ALL Needs)

NOTE: Due to varying prices in relationship to services, the fee was not included as part of this process.

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF PLANO AND HAY GROUP, INC.**

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 **HAY GROUP, INC.**, a Delaware corporation, hereinafter referred to as "Professional" to be effective from and after the date of execution by City.

WITNESSETH:

WHEREAS, City desires to engage the services of the Professional to provide consultation to the City for employee benefits; and

WHEREAS, Professional agrees to render its services to the City as provided herein;

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

**I.
TERM**

This Agreement shall be for a period of three years (3) commencing on January 1, 2007; provided however, that the City shall have the right and option to extend the term hereof by three (3) additional one year (1) periods by giving written notice to Professional of City's election to extend the term hereof, such notice to be given not more than ninety (90) days prior to the expiration of the initial term. However, this Agreement may be terminated by the City without cause, upon ten (10) days written notice to Professional.

Professional recognizes that this Agreement shall commence upon the effective date herein and continue in full force and effect until termination in accordance with its provisions. Professional and City herein recognize that the continuation of any 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.

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II. SERVICES

Professional shall provide all labor, supervision, materials and equipment necessary to provide City consultation in accordance with the scope of services attached hereto and incorporated herein for all purposes as **Exhibit "A"**.

III. USE OF AGENTS OR ASSISTANTS

Neither this Agreement nor any duties or obligations hereunder shall be assignable by the Professional without the prior written consent of City. However, to the extent reasonably necessary for Professional to perform its duties hereunder, Professional may engage the services of any agents or assistants which it may deem proper, and it may further employ, engage, or retain the services of such other persons or corporations to aid or assist it in the proper performance of its duties. The cost of the services of such agents or assistants shall be borne by Professional at its sole cost and expense.

IV. FACILITIES

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

V. FEE/OWNERSHIP OF DOCUMENTS

(a) In consideration for the services to be rendered under this Agreement, the Professional shall be paid a fee as indicated in the Schedule of Fees attached hereto and incorporated herein as **Exhibit "A."** Professional may invoice City upon completion and acceptance of services to be provided or may invoice City on a monthly basis. Such invoices shall be itemized to show services performed, expenses and corresponding charges. Professional shall keep accurate records of its services and expenses incurred in the performance of this Agreement and shall make the same available to City for inspection and copying upon five (5) days notice thereof. These records shall be kept by Professional for two (2) years following the expiration of this Agreement. No interest or other late payment charges shall ever be due.

(b) All documents and reports developed as a result of the services of this Agreement shall be the property of the City. Any use by Professional of the information developed for publication or work with other clients must receive prior written permission from the City.

**VI.
MAXIMUM COMPENSATION UPON TERMINATION
BY CITY OR PROFESSIONAL**

In the event of termination by City without cause, the Professional shall be compensated only for actual expenses and fees incurred by Professional in providing those services acceptable to City which are within the scope of work under this Agreement to date of notice of termination. Expenses do not include overhead such as utilities, rent, insurance, etc., and shall not exceed the total amount due under this Agreement.

**VII.
INDEPENDENT CONTRACTOR**

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

**VIII.
INSURANCE**

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

**IX.
INDEMNIFICATION**

Professional shall release, defend, indemnify and hold City and its officers, agents and employees harmless from and against all damages, injuries (including death), claims, property damages (including loss of use), losses, demands, suits, judgments and costs, including attorney's fees and expenses, in any way arising out of, related to or caused by the negligent act or omission under this Agreement by Professional, its officers, agents, employees, subcontractors, licensees, invitees or any other third parties for whom Professional is legally responsible (hereinafter "Claims"). Professional is expressly required to defend City against all such Claims.

In the event the City is a named party to a suit arising out of the subject matter of this Agreement, the City shall have reasonable input into the selection of defense

counsel to be retained by Professional in fulfilling its obligation hereunder to defend and indemnify City. City reserves the right to provide a portion or all of its own defense; however, City is under no obligation to do so. Any such action by City is not to be construed as a waiver of Professional's obligation to defend City or as a waiver of Professional's obligation to indemnify City pursuant to this Agreement. Professional shall retain defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If Professional fails to retain counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Professional shall be liable for all costs incurred by City.

**X.
ENTIRE AGREEMENT**

This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other agreement, statement, or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding. The parties agree that this Agreement and its attachments constitute the entire understanding of the parties. In the event of conflict between the Agreement and Proposal, the Agreement shall control.

**XI.
SUCCESSORS AND ASSIGNS**

City and Professional each bind themselves, their successors, executors, administrators and assigns to the other party to this Agreement. Neither City nor Professional will assign, sublet, subcontract or transfer any interest in this Agreement without the written consent of the other party. No assignment, delegation of duties or subcontract under this Agreement will be effective without the written consent of City. Subject to the provision regarding assignment, this Agreement shall be binding on he administrators, legal representatives, successors, and assigns of the respective parties.

**XII.
GOVERNING LAW/VENUE**

The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the State of Texas. The parties agree that it is performable in Collin and Denton County, Texas and that exclusive venue shall be in Collin County, Texas.

**XIII.
APPLICABLE LAW**

This Agreement is entered into subject to the charter and ordinances of City as they may be amended from time to time, and is subject to and is to be construed, governed and enforced under all applicable federal and state laws. Professional shall make any and all reports required in accordance with federal, state or local law,

including but not limited to proper reporting to the Internal Revenue Service as required in accordance with Professional's income.

**XIV.
SEVERABILITY**

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

**XV.
AFFIDAVIT OF NO PROHIBITED INTEREST**

Professional acknowledges and represents it is aware of the laws, City Charter, and City Code of Conduct regarding prohibited interest and that the existence of a prohibited interest at any time will render the Agreement voidable. At the time of executing this Agreement, a representative of Professional will execute the Affidavit of No Prohibited Interest, attached and incorporated herein as **Exhibit "C"**.

**XVI.
NONWAIVER**

It is further agreed that one (1) or more instances of forbearance by City in the exercise of its rights herein shall in no way constitute a waiver thereof.

**XVII.
PARAGRAPH 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.

**XVIII.
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.

**XIX.
NO FEES/COMMISSIONS RECEIVED BY PROFESSIONAL**

For any insurance product or service purchased by the City of Plano, Professional¹ agrees that he will only provide consulting services to the City and will ONLY accept

¹ ("Professional" as referenced in this Agreement shall also refer to the professional's firm, employees, representatives, and/or family member in the first (1st) degree of affinity or consanguinity.)

compensation from the City for the same. Professional agrees that he will NOT accept any brokerage fees, commissions, compensation and/or incentives from any insurance companies and/or plan administrators for placing or renewing any contracts on behalf of the City.

**XX.
LIMITATION OF LIABILITY**

Neither party shall be liable for consequential, incidental or indirect damages under any circumstances.

EXECUTED on the dates indicated below.

**HAY GROUP, INC., a Delaware
corporation**

Date: _____

By _____
Name: _____
Title: _____

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 _____, 2006 by _____, _____ of HAY GROUP, INC., a Delaware 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 _____, 2005 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

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EXHIBIT "A"

SCOPE OF SERVICES/SCHEDULE OF FEES

November 15, 2006 – December 31, 2007

| | |
|---------------------------------------------------------|----------|
| Transition (11-15-06 – 12-31-06) | \$25,000 |
| – Review City Benefit Plan Documentation | |
| – Meeting/Discussion with City and current broker | |
| – Review of Current Vendor Contracts | |
| Ongoing Consulting (1-1-07 – 12-31-07) | \$85,000 |
| – Rates, Funding, and Budget Analysis | |
| – Analysis of Vendor Renewals | |
| – Claims Tracking and Quarterly Reports | |
| – Stop Loss Reporting | |
| – Vendor Liaison and Performance Reviews | |
| – Legislative Issues and Compliance | |
| – Meetings as Needed | |
| – Day-to-Day Issue Resolution | |
| Request for Proposal (RFP) Assistance (2007) | \$15,000 |
| – Stop Loss | |
| – COBRA | |
| Strategic Planning and Competitive Analysis (2007) | \$40,000 |
| – 5 Year Strategic Plan Development | |
| – Comparison of City Plan to Market, Public and Private | |

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EXHIBIT "B"

City of Plano Contractor Insurance Requirements and Agreement

Requirements

Contractors performing work on City property or public right-of-way for the City of Plano shall provide the City a certificate of insurance evidencing the coverages and coverage provisions identified herein. Contractors shall provide the City evidence that all subcontractors performing work on the project have the same types and amounts of coverages as required herein or that the subcontractors are included under the contractor's policy. The City, at its own discretion, may require a certified copy of the policy.

All insurance companies and coverages must be authorized by the Texas Department of Insurance to transact business in the State of Texas and must be acceptable to the City of Plano.

Listed below are the types and amounts of insurance required. The City reserves the right to amend or require additional types and amounts of coverages or provisions depending on the nature of the work.

| Type of Insurance | Amount of Insurance | Provisions |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. Commercial General (Public) Liability to include coverage for: a) Premises/Operations b) Products/Completed Operations c) Independent Contractors d) Personal Injury e) Contractual Liability | \$500,000 each occurrence, \$1,000,000 general aggregate; Or \$1,000,000 combined single limits | City to be listed as additional insured and provided 30-day notice of cancellation or material change in coverage. City prefers that insurer be rated B+VI or higher by A.M. Best or A or higher by Standard & Poors |
| 2. Business Auto Liability | As required by State of Texas | |
| 3. Workers' Compensation & Employers' Liability | Statutory Limits \$100,000 each accident | City to be provided a waiver of subrogation |

Questions regarding this insurance should be directed to the City of Plano Purchasing Department (972) 941-7557.

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This form must be signed and returned with your quotation to verify that you can and will meet the insurance requirements listed herein should you be selected to perform work for the City, and will provide the certificates of insurance acceptable to the City. A PURCHASE ORDER WILL NOT BE ISSUED WITHOUT EVIDENCE OF INSURANCE.

AGREEMENT

I agree to provide the above-described insurance coverages if selected to perform work for the City of Plano. I also agree to provide the City evidence of insurance coverage on any and all subcontractors performing work on the project.

Project/Bid #: _____

Company: _____

Printed Name: _____ Vendor # (if applicable) _____

Signature: _____

Date: _____

Return Signed Form to: _____

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EXHIBIT "C"

AFFIDAVIT OF NO PROHIBITED INTEREST

I, the undersigned declare and affirm that no person or officer of **HAY GROUP, INC.** (herein "Professional") 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.

HAY GROUP, INC.

By: _____
Signature

Print Name

Title

Date

STATE OF _____ §
 §
COUNTY OF _____ §

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2006.

Notary Public, State of _____

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**CITY OF PLANO
COUNCIL AGENDA ITEM**

| | | | | | |
|---------------------------------------|----------------------------------|------------------------------------|-----------------------------------------|-----------------------------------------|----------------------------------------------------|
| CITY SECRETARY'S USE ONLY | | Reviewed by Purchasing | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable | |
| <input type="checkbox"/> Consent | <input type="checkbox"/> Regular | <input type="checkbox"/> Statutory | Reviewed by Budget | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable |
| Council Meeting Date: | 11/13/06 | | Reviewed by Legal | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Not Applicable |
| Department: | Engineering | | Initials | Date | |
| Department Head | Upchurch | Executive Director | <i>[Signature]</i> | 11/01/06 | |
| Dept Signature: | <i>[Signature]</i> | City Manager | <i>[Signature]</i> | 11.7.06 | |
| Agenda Coordinator (include phone #): | | Irene Pegues (7198) | Project Nos. 5281 and 5590.1 | | |

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

CAPTION

Award of Bid for Bid No. 2006-234-B for Plano Parkway – Tollroad to Park Boulevard and West Plano Quiet Zone Improvements project, to Tiseo Paving Company in the amount of \$2,342,664.10 for the Base Bid.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

| FISCAL YEAR: 2006-07 | Prior Year (CIP Only) | Current Year | Future Years | TOTALS |
|-----------------------------|--------------------------|-----------------|-----------------|-------------------|
| Budget | 244,094 | 2,852,906 | 0 | 3,097,000 |
| Encumbered/Expended Amount | -244,094 | -60,352 | 0 | -304,446 |
| This Item | 0 | -2,342,664 | 0 | -2,342,664 |
| BALANCE | 0 | 449,890 | 0 | 449,890 |

FUND(s): STREET IMPROVEMENT CIP

COMMENTS: Funds are included in the 2006-07 Street Improvement CIP. This item, in the amount of \$2,342,664, will leave a current year balance of \$449,890 for the Plano Parkway – Tollway to Park and Railroad Crossings project.

STRATEGIC PLAN GOAL: Street widening and quiet zone improvements relate to the City's Goal of Safe, Efficient Travel.

SUMMARY OF ITEM

Staff recommends bid of Tiseo Paving Company, in the amount of \$2,342,664.10 for the Base Bid, be accepted as lowest responsible bid conditioned upon timely execution of any necessary contract documents.

The second vendor being recommended is JRJ Paving L.P. in the amount of \$2,367,250.47 for the Base Bid.

Engineers' estimate was \$2,350,000.00

The project consists of the widening from four lanes to six lanes of Plano Parkway from the Tollroad to Park Boulevard and the completion of the southbound lanes from International Parkway to Park Boulevard and improvements to Parker Road at the west city limits for a future quiet zone.

| | |
|--------------------------------------------------------------|-----------------------------------------------------------|
| List of Supporting Documents: Bid Summary Location Map | Other Departments, Boards, Commissions or Agencies N/A |
|--------------------------------------------------------------|-----------------------------------------------------------|

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CITY OF PLANO
BID TABULATION
2006-234-B

**PLANO PARKWAY – TOLLROAD TO PARK BOULEVARD AND WEST
PLANO QUIET ZONE IMPROVEMENTS – PROJECT NOS. 5281 AND 5590.1**

OCTOBER 12 @ 3:30 P.M.
BID TABULATION

| BIDDER: | BID BOND | GRAND TOTAL FOR ALL WORK |
|---------------------------|---------------------|-------------------------------------|
| TISEO PAVING CO | YES | \$2,342,664.10 |
| JRJ PAVING L.P. | YES | \$2,367,250.47 |
| L.H.LACY COMPANY, LTD. | YES | \$2,481,545.20 |
| MCMAHON CONTRACTING, L.P. | YES | \$2,589,781.92 |

I certify that the above includes all firms contacted to bid and that replies are exactly as stated.

Dianna Wike

October 12, 2006

Dianna Wike, Buyer

Date

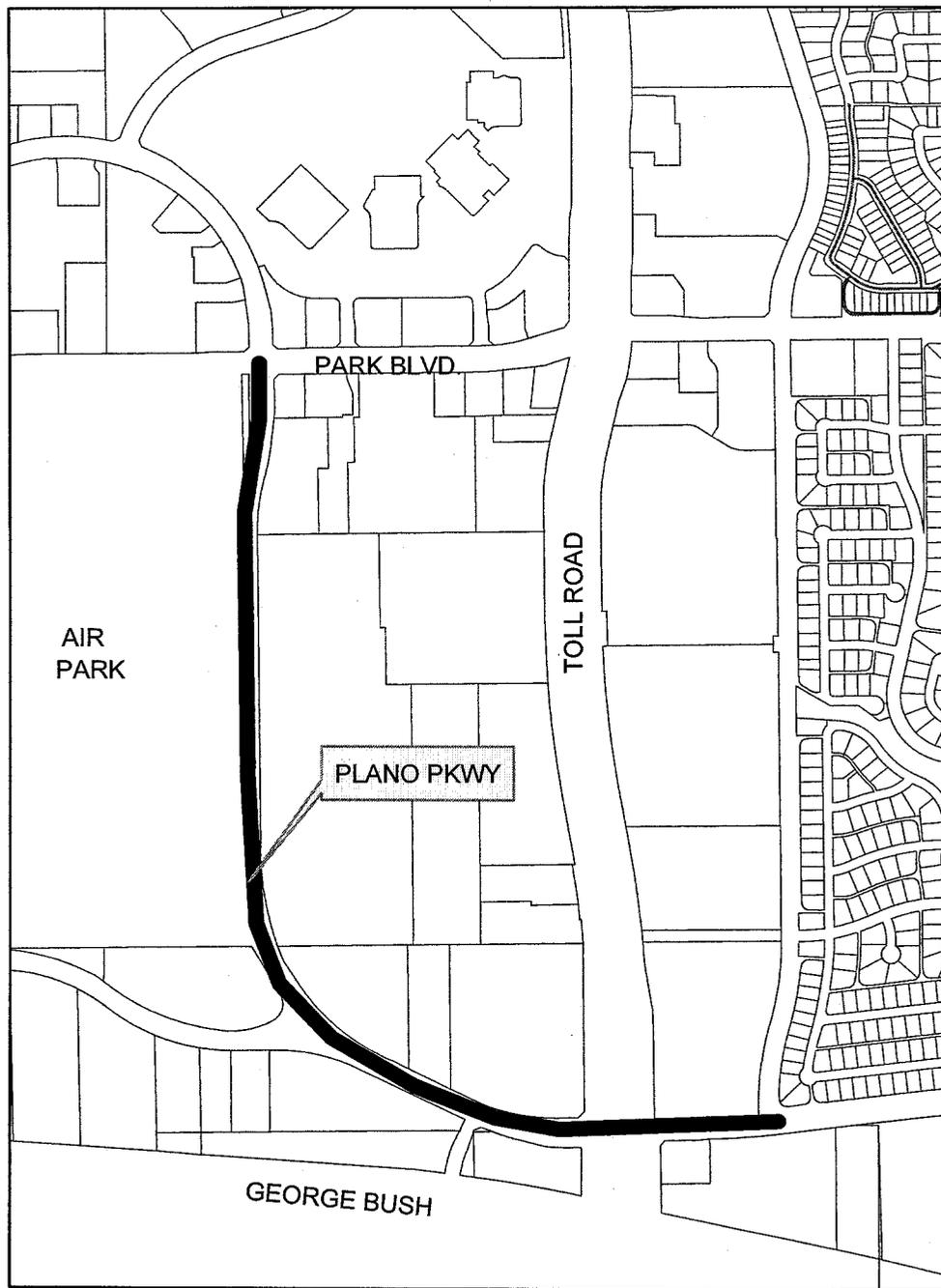
“BID TABULATION STATEMENT”

ALL BIDS SUBMITTED FOR THE DESIGNATED PROJECT ARE REFLECTED ON THIS BID TAB SHEET. HOWEVER, THE LISTING OF A BID ON THIS SHEET SHOULD NOT BE CONSTRUED AS A COMMENT ON THE RESPONSIVENESS OF SUCH BID OR AS ANY INDICATION THAT THE CITY ACCEPTS SUCH BID AS RESPONSIVE. THE CITY WILL MAKE A DETERMINATION AS TO THE RESPONSIVENESS OF BIDS SUBMITTED BASED UPON COMPLIANCE WITH ALL APPLICABLE LAWS, CITY OF PLANO PURCHASING GUIDELINES, AND PROJECT DOCUMENTS, INCLUDING BUT NOT LIMITED TO THE PROJECT SPECIFICATIONS AND CONTRACT DOCUMENTS. THE CITY WILL NOTIFY THE SUCCESSFUL BIDDER UPON AWARD OF THE CONTRACT AND, ACCORDING TO LAW, ALL BIDS RECEIVED WILL BE AVAILABLE FOR INSPECTION AT THAT TIME.

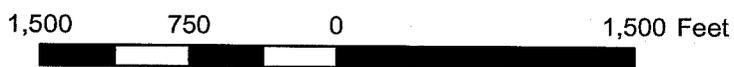
PURCHASING DIVISION
CITY OF PLANO TEXAS

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PLANO PKWY. - PARK BLVD. TO TOLL ROAD

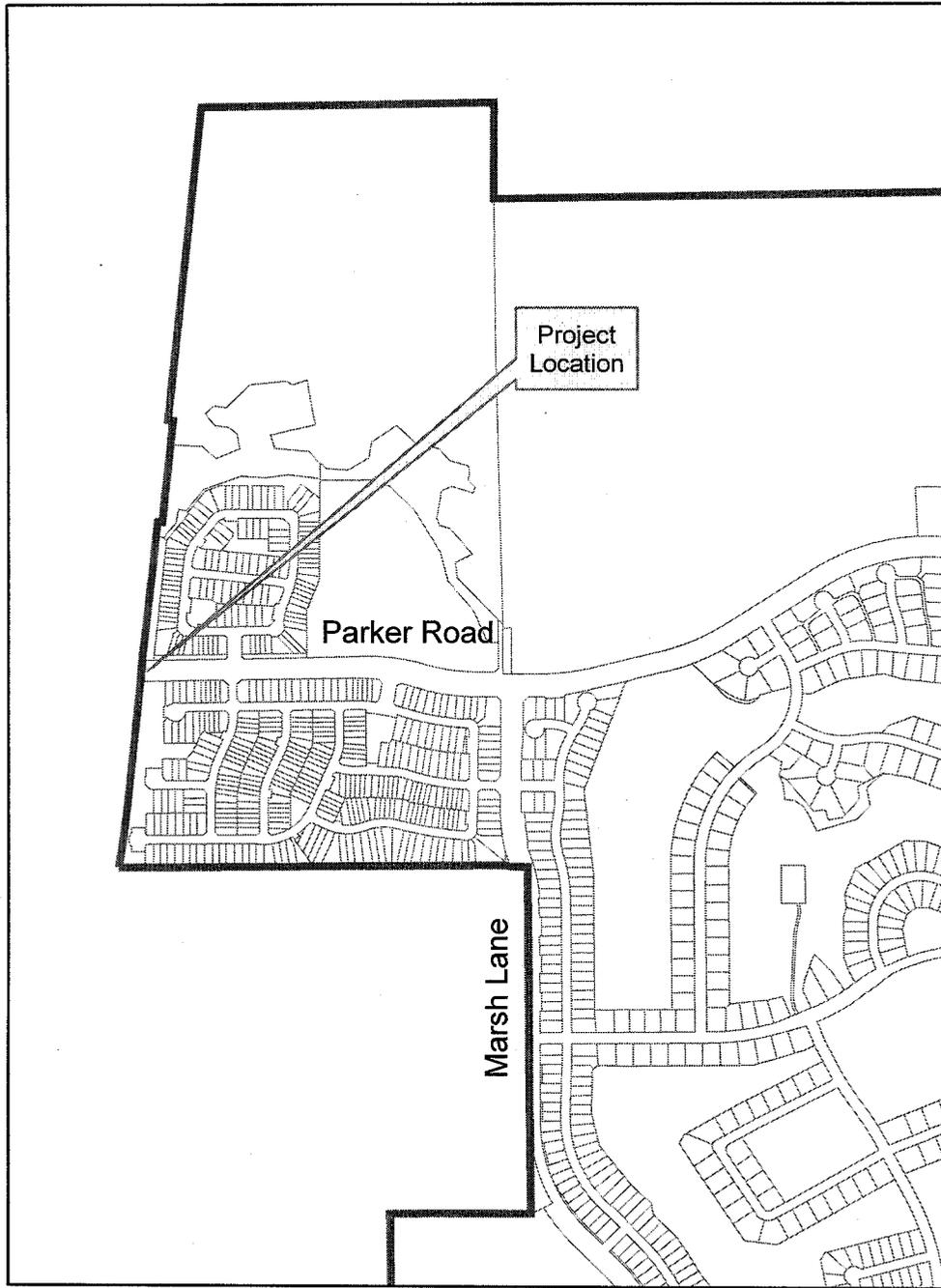


CITY OF PLANO ENGINEERING DEPT.

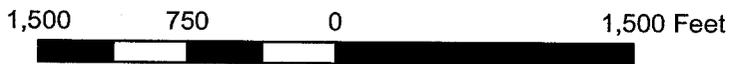


d-3

West Plano Quiet Zone Improvements



CITY OF PLANO ENGINEERING DEPT.



d-4



**CITY OF PLANO
COUNCIL AGENDA ITEM**

| | | | | | |
|---------------------------------------|----------------------------------|------------------------------------|-----------------------------------------|-----------------------------------------|-----------------------------------------|
| CITY SECRETARY'S USE ONLY | | Reviewed by Purchasing | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable | |
| <input type="checkbox"/> Consent | <input type="checkbox"/> Regular | <input type="checkbox"/> Statutory | Reviewed by Budget | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable |
| Council Meeting Date: | 11/13/06 | | Reviewed by Legal | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable |
| Department: | Technology Services | | Initials | Date | |
| Department Head | David Stephens | Executive Director | <i>[Signature]</i> | <i>[Signature]</i> | |
| Dept Signature: | <i>[Signature]</i> | City Manager | <i>[Signature]</i> | <i>[Signature]</i> | |
| Agenda Coordinator (include phone #): | | Lisa Prunty Ext. 7342 | | | |

ACTION REQUESTED: ORDINANCE RESOLUTION CHANGE ORDER AGREEMENT
 APPROVAL OF BID AWARD OF CONTRACT OTHER
Purchasing from existing contract

CAPTION

Purchase from an existing contract/Agreement to authorize the purchase of Gartner Membership Seats in the amount of \$32,878.00 from Gartner through a Department of Information Resources (DIR) contract, and authorizing the City Manager or his designee to execute all necessary documents. (DIR-SDD-204)

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

| FISCAL YEAR: 2006-07 | Prior Year (CIP Only) | Current Year | Future Years | TOTALS |
|-----------------------------|--------------------------|-----------------|-----------------|----------------|
| Budget | 0 | 251,500 | 0 | 251,500 |
| Encumbered/Expended Amount | 0 | -32,015 | 0 | -32,015 |
| This Item | 0 | -32,878 | 0 | -32,878 |
| BALANCE | 0 | 186,607 | 0 | 186,607 |

FUND(S): **TECHNOLOGY SERVICES FUND (066)**

COMMENTS: FUNDS ARE INCLUDED IN THE 2006-07 TECHNOLOGY SERVICES BUDGET TO INCREASE THE NUMBER OF SEAT MEMBERS IN THE GARTNER GROUP. THE REMAINING BALANCE WILL BE USED THROUGHOUT THE YEAR FOR OTHER TRAINING.

STARTEGIC PLAN GOAL: TRAINING RELATES TO THE CITY'S GOAL OF 'SERVICE EXCELLENCE'.

SUMMARY OF ITEM

Technology Services recommends Council approve an expenditure of \$ 32,878.00 to Gartner through the Department of Information Resources (DIR) for renewal of two membership seats with an additional third seat. Two of these seats are IT Leader Advisor Seats and one is an IT Leader Reference Seat. 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 the local government to seek competitive bids for the items. (DIR-SDD-204)

List of Supporting Documents:
Quote , Staff Memo

Other Departments, Boards, Commissions or Agencies

e-1

Interoffice Memo

Date: 10/20/06
To: David Stephens, Director Technology Services
Cc:
From: Chester M. Helt, Infrastructure Manager
RE: Gartner Membership

We are recommending renewing our two research membership seats with Gartner and adding a third seat. This year Gartner is changing their research memberships and we are recommending upgrading to two IT Leader Advisor seats. These newly configured research positions will allow us to access leading edge Information Technology and provide access to industry specialists in areas such as mobility research, telecommunications, networking, and infrastructure security. These two seats will aid our staff in providing real-time solutions for the City for a total costs for both Seats of \$ 21,148.00. In addition to these two seats we are adding a new IT Leader Reference Seat for a cost of \$ 11,730.00. This additional seat will provide the Director of Technology Services access into the Gartner research and also allow him to network with other Municipal IT Leaders around the Country and aid us in implementing more efficient solutions for our community. We will be purchasing these three seats for a total cost of \$ 32,878.00 from the Gartner State of Texas DIR contract number DIR-SDD-204. We have attached the Gartner quote.

e-2

This purchase is pursuant to the contract between the State of Texas Department of Information and Gartner.
 Contract number: DIR-SDD-204

| IT Leader Advisor Seat Transition Cost 1st year- per user | | | IT Leader Advisor Seat- Following years- Per user |
|-----------------------------------------------------------|------------------|--|---------------------------------------------------|
| \$ 13,719.00 | | | \$ 19,890.00 |
| \$ (3,145.00) | Credit 5 months | | |
| \$ 10,574.00 | x 2= \$21,148.00 | | |
| Term- Nov. 1 2006 - Oct. 31, 2007 | | | Term 1 year |
| | | | |
| | | | |
| IT Leader Seat Reference Seat | | | IT Leader Seat Reference- Following years |
| \$ 11,730.00 | \$ 11,730.00 | | \$ 11,730.00 |
| | | | |
| | | | |
| Term- Nov. 1, 2006- Oct. 31, 2007 | \$ 32,878.00 | | Term - 1 year |
| | | | |
| | | | |
| Credit \$7528/12= \$629.00 per month | | | |

e-3



**CITY OF PLANO
COUNCIL AGENDA ITEM**

| | | | | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|------------------------------------|-----------------------------------------|-----------------------------------------|-----------------------------------------|
| CITY SECRETARY'S USE ONLY | | Reviewed by Purchasing | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable | |
| <input type="checkbox"/> Consent | <input type="checkbox"/> Regular | <input type="checkbox"/> Statutory | Reviewed by Budget | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable |
| Council Meeting Date: 11/13/06 | | Reviewed by Legal <i>JS</i> | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable | |
| Department: | Technology Services | | Initials | Date | |
| Department Head | David Stephens | Executive Director | <i>[Signature]</i> | 11.6.06 | |
| Dept Signature: | <i>[Signature]</i> | City Manager | <i>[Signature]</i> | 11.6.06 | |
| Agenda Coordinator (include phone #): Lisa Prunty Ext. 7342 | | | | | |
| ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT | | | | | |
| <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input checked="" type="checkbox"/> OTHER EXISTING CONTRACT | | | | | |

CAPTION

Purchase from Existing Contract/Agreement to authorize the purchase of Microsoft server and desktop software in the amount of \$512,588 from SHI-GS through a Department of Information Resources (DIR) Contract, and authorizing the City Manager or his designee to execute all necessary documents. (DIR#SDD-198)

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

| FISCAL YEAR: 2006-07 | Prior Year (CIP Only) | Current Year | Future Years | TOTALS |
|-----------------------------|--------------------------|------------------|-----------------|------------------|
| Budget | 0 | 2,523,440 | 0 | 2,523,440 |
| Encumbered/Expended Amount | 0 | -132,586 | 0 | -132,586 |
| This Item | 0 | -512,588 | 0 | -512,588 |
| BALANCE | 0 | 1,878,266 | 0 | 1,878,266 |

FUND(S): TECHNOLOGY SERVICES FUND (066)

COMMENTS: Funds are available in the 2006-07 Technology Services operating budget for this item. The balance will be used for other maintenance agreements and contracts.

STRATEGIC PLAN GOAL: Annual Microsoft License renewal relates to the City's Goal of "Service Excellence".

SUMMARY OF ITEM

Technology Services recommends Council approve an expenditure of \$468,341 to SHI-GS for the second annual payment of our three-year renewal of an enterprise agreement for Microsoft Products with an additional \$44,247 of true-up charges for server and desktop software in accordance with our annual enterprise agreement with Microsoft. The total amount requested is \$512,588. This is the second year of a three-year renewable contract. 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 the local government to seek competitive bids for the items. (DIR# SDD-198)

| | |
|------------------------------------------------------|----------------------------------------------------|
| List of Supporting Documents: Memo, True Up-Quote | Other Departments, Boards, Commissions or Agencies |
|------------------------------------------------------|----------------------------------------------------|

J-1

Interoffice Memo

Date: 11/1/06

To: David Stephens, Director Technology Services

Cc:

From: Chester M. Helt, Infrastructure Manager

RE: Microsoft Enterprise Agreement Renewal and Annual True-up

It is time to renew our Microsoft Enterprise Agreement with Microsoft Corp. through the Department of Information Resources with the State of Texas. This contract provides the City license protection throughout the year, licensing our Microsoft products. We also must true-up our Microsoft licenses for both the desktop and server products used this year. This is our second year renewal of a three year contract. Our annual State of Texas (DIR) pricing is \$ 468,341.00 for the base contract and our true-up costs for this year is \$ 44,247.00. This contract was purchased from Software House International (SHI), a DIR vendor. The total for this year's contract and the true-up costs for additional server and desktop products is \$ 512,588.00. The SHI DIR contract number is DIR-SDD-198.

f-2

Lisa Prunty

From: Chester Helt
Sent: Wednesday, November 01, 2006 4:28 PM
To: Lisa Prunty
Subject: FW: SHI Quote 1886838, Microsoft EA True-Up
Attachments: Quote.htm

Here is one.

From: Dana_McEvoy@shi.com [mailto:Dana_McEvoy@shi.com]
Sent: Wednesday, November 01, 2006 4:19 PM
To: Chester Helt
Subject: SHI Quote 1886838, Microsoft EA True-Up



Pricing Proposal
 Quotation #: 1886838
 Created On: Nov-01-2006
 Valid Until: Dec-01-2006

City of Plano**Chester Helt**

Phone:
 Fax:
 Email: cheth@plano.gov

Account Representative

Dana McEvoy
 1250 Capital of Texas Hwy South,
 Suite I-350
 Austin, TX 78746
 Phone: 800-870-6079
 Fax: 512-732-0232
 Email: Dana_McEvoy@shi.com

All Prices are in US Dollar(USD)

| Product | Qty | Your Price | Total |
|-------------------------------------------------------------------------------------------------------------------------|-----|------------|-------------|
| 1 MS EA Additional Product - Windows Server - Standard Edition - L&SA True-Up Year 1 MICROSOFT - Part#: P73-00202 | 34 | \$761.00 | \$25,874.00 |
| 2 MS EA Additional Product - Exchange Server - Enterprise Edition - L&SA True-Up Year 1 MICROSOFT - Part#: 395-02611 | 2 | \$4,230.00 | \$8,460.00 |
| 3 MS EA Additional Product - SQL Server - Enterprise Edition x64 - L&SA True-Up Year 1 MICROSOFT - Part#: 810-03805 | 1 | \$8,977.00 | \$8,977.00 |
| 4 MS EA Additional Product - SQL Server - Standard Edition x64 - L&SA True-Up Year 1 MICROSOFT - Part#: 228-04079 | 1 | \$936.00 | \$936.00 |
| | | Shipping | \$0.00 |

11/1/2006

D-3

Total \$44,247.00

Additional Comments

**Microsoft EA True-up items are available for purchase from SHI Govt Solutions via DIR Contract number DIR-SDD-198
DIR-SDD-198**

Thank You for choosing SHI-GS! To ensure the best level of service, please provide End User Name, Phone Number, and E-Mail Address when submitting a Purchase Order. For any additional information including Hardware and Software Contract Numbers, please contact an SHI-GS Sales Representative at 800-870-6079.

J-4

11/1/2006



Government Solutions

SHI-Government Solutions

State of Texas Gov't Sales Team

800-870-6079 FAX 512-732-0232

www.texas.gs.shi.com

email: texas@gs.shi.com

Microsoft Enterprise Agreement - Renewal Pricing

Darron Gross - Account Executive

1250 Capitol of Texas Hwy, I-350

Austin, Texas 78746

Phone 512-634-8100 - fax 512-732-0232

Quote to: **Chester Helt**

City of Plano

Phone:

Fax:

DIR Contract # DIR-SDD-198

| Qty | Part Number | Enterprise Products | Per-Desktop Price | Extended Annual Price |
|----------------------------------------------------|-------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------|-------------------|-----------------------|
| 2200 | | MS Full Platform Enterprise Agreement SA ONLY - Annual Price (includes Office Pro, Windows OS, CORE CAL & SQL CAL) | \$154.00 | \$338,800.00 |
| Qty | Additional Products - Software Assurance Only | | Annual Unit | Annual Extended |
| 115 | Windows Server - Std Edition | | \$117.00 | \$13,455.00 |
| 40 | Windows Server - Enterprise Edition | | \$380.00 | \$15,200.00 |
| 2200 | Windows Terminal Server CAL (device or user) | | \$13.00 | \$28,600.00 |
| 6 | Exchange Server - Std Edition | | \$114.00 | \$684.00 |
| 2 | Exchange Server - Enterprise Edition Step-Up | | \$1,254.00 | \$2,508.00 |
| 35 | SQL Server - Standard Edition | | \$109.00 | \$3,815.00 |
| 1 | SQL Server - Enterprise Edition | | \$1,039.00 | \$1,039.00 |
| 1 | Share Point Portal Server | | \$651.00 | \$651.00 |
| 4 | BizTalk Server - Standard Edition - 1 Processor | | \$1,139.00 | \$4,556.00 |
| 6 | Content Management Server - Enterprise Edition | | \$4,068.00 | \$24,408.00 |
| 227 | MOM Operations Mgmt | | \$70.00 | \$15,890.00 |
| 1 | MOM Operations Mgr Server - Enterprise Edition | | \$94.00 | \$94.00 |
| 1 | Office Live Communication Server | | \$129.00 | \$129.00 |
| 2200 | Office Live Communication Server CAL (device or user) | | \$5.00 | \$11,000.00 |
| 6 | Project Professional (with 1 Project Server CAL) | | \$152.00 | \$912.00 |
| 1 | Project Server | | \$124.00 | \$124.00 |
| 50 | Project Server CAL (device or user) | | \$22.00 | \$1,100.00 |
| 50 | Visio Professional | | \$77.00 | \$3,850.00 |
| 2 | MSDN Universal | | \$763.00 | \$1,526.00 |
| Total Annual Price - Add-On Products | | | | \$129,541.00 |
| Annual Price - EA Desktop + Add-On Products | | | | \$468,341.00 |
| ESTIMATED - Total 3 Year EA Renewal Price | | | | \$1,405,023.00 |

NOTE: ORDER FOR ENTERPRISE AGREEMENT MUST BE ACCOMPANIED BY TWO SIGNED ORIGINAL MS ENTERPRISE ENROLLMENT FORMS

Annual Desktop True-Up Prices
Year 1 - \$710 ; Year 2 - \$588 ; Year 3 - \$468

Date Quoted: August 18, 2005

f-5



**CITY OF PLANO
COUNCIL AGENDA ITEM**

| | | | | | |
|---------------------------------------------------------------------|----------------------------------|------------------------------------|-----------------------------------------|-----------------------------------------|-----------------------------------------|
| CITY SECRETARY'S USE ONLY | | Reviewed by Purchasing | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable | |
| <input type="checkbox"/> Consent | <input type="checkbox"/> Regular | <input type="checkbox"/> Statutory | Reviewed by Budget | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable |
| Council Meeting Date: | 11/13/06 | | Reviewed by Legal | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable |
| Department: | Technology Services | | Initials | Date | |
| Department Head | David Stephens | | Executive Director | 10-31-06 | |
| Dept Signature: | <i>David Stephens</i> | | City Manager | <i>10/31/06</i> | |
| Agenda Coordinator (include phone #): Lisa Prunty, Ext. 7342 | | | | | |

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

CAPTION

Purchase from existing Contract/Agreement to authorize the purchase of maintenance support for network infrastructure switches in the amount of \$148,721.84 from Internetwork Experts through a Department of Information Resources (DIR) Contract, and authorizing the City Manager or his designee to execute all necessary documents. (DIR-SDD-239)

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

| FISCAL YEAR: 2006-07 | Prior Year (CIP Only) | Current Year | Future Years | TOTALS |
|-----------------------------|--------------------------|------------------|-----------------|------------------|
| Budget | 0 | 2,510,000 | 0 | 2,510,000 |
| Encumbered/Expended Amount | 0 | 0 | 0 | 0 |
| This Item | 0 | -148,722 | 0 | -148,722 |
| BALANCE | 0 | 2,361,278 | 0 | 2,361,278 |

FUND(S): **TECHNOLOGY SERVICES FUND (066)**

COMMENTS: Funds are included in the 2006-07 Technology Services budget. The remaining balance will be used throughout the year for other maintenance agreements.

STRATEGIC PLAN GOAL: Network switches and other infrastructure support services relate to the City's Goal of "Service Excellence".

SUMMARY OF ITEM

Technology Services recommends Council approve an expenditure of \$148,721.84 to InterNetwork Experts through the Department of Information Resources (DIR) for maintenance support on network infrastructure switches. 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 the local government to seek competitive bids for the items. (DIR-SDD-239)

| | |
|-----------------------------------------------|----------------------------------------------------|
| List of Supporting Documents: Memo , Quote | Other Departments, Boards, Commissions or Agencies |
|-----------------------------------------------|----------------------------------------------------|

g-1

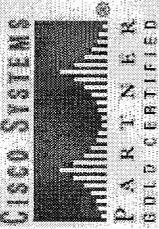
Interoffice Memo

Date: 10/20/06
To: David Stephens, Director Technology Services
Cc:
From: Chester M. Helt, Infrastructure Manager
RE: Cisco Switch Maintenance

We are recommending that the attached Cisco Maintenance be acquired as listed in the attached document from Internetwork Experts. This maintenance is for a one year term and provides us on-site support for our Cisco Equipment should we have any hardware outages.

We are recommending purchasing this maintenance from Internetworking Experts from their State of Texas contract DIR No. SDD-239 for the amount of \$ 148,721.84.

g-2



Contract Number DIR-SDD-239

From: Traci Chrisman
Phone: 469-549-3841
FAX: 469-549-3888
tchrisman@inx.com

Cisco Maintenance Renewal quote Summary Page

| | |
|----------------------------------------------|----------------------|
| SNT renewal to extend contract for 1 year - | \$ 41,054.02 |
| SNTP renewal to extend contract for 1 year - | \$ 94,969.42 |
| SNTE renewal to extend contract for 1 year - | \$ 56.80 |
| SAS renewal to extend contract for 1 year - | \$ 6,077.60 |
| SU3 renewal to extend contract for 1 year - | \$ 6,564.00 |
| Renewal Total - | \$ 148,721.84 |

g-3



CITY OF PLANO COUNCIL AGENDA ITEM

| | | | | | |
|---------------------------------------|----------------------------------|------------------------------------|-----------------------------------------|-----------------------------------------|-----------------------------------------|
| CITY SECRETARY'S USE ONLY | | Reviewed by Purchasing | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable | |
| <input type="checkbox"/> Consent | <input type="checkbox"/> Regular | <input type="checkbox"/> Statutory | Reviewed by Budget | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable |
| Council Meeting Date: 11/13/06 | | Reviewed by Legal <i>WS</i> | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable | |
| Department: | Facilities Maintenance | | | Date | |
| Department Head | Alan Upchurch | Executive Director | <i>[Signature]</i> 11.02.06 | | |
| Dept Signature: | <i>[Signature]</i> | City Manager | <i>[Signature]</i> 11/2/06 | | |
| Agenda Coordinator (include phone #): | | Amy Powell X5513 <i>AP</i> | | | |

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

CAPTION

Approval of the purchase of new office furniture, in the amount of \$53,065 from Plano Office Supply through an existing contract/agreement with Collin County, and authorizing the City Manager or his designee to execute all necessary documents (Collin County IFB No. 0307-011 / City of Plano tracking No. 2004-45-1)

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

| FISCAL YEAR: 2006-07 | Prior Year (CIP Only) | Current Year | Future Years | TOTALS |
|-----------------------------|--------------------------|-----------------|-----------------|---------|
| Budget | 4,814 | 252,186 | 0 | 257,000 |
| Encumbered/Expended Amount | -4,814 | 0 | 0 | -4,814 |
| This Item | 0 | -53,065 | 0 | -53,065 |
| BALANCE | 0 | 199,121 | 0 | 199,121 |

FUND(S): **JOINT USE FACILITY FUND**

COMMENTS: Funds are included in the 2006-07 Joint Use Facility Fund. This item, in the amount of \$53,065, will leave a current year balance of \$199,121 for the Joint Use Facility project.

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

SUMMARY OF ITEM

Request for approval of expenditure, in the amount of \$53,065, from Plano Office Supply, to purchase new office furniture for the Property Standards staff relocating to the Joint Use Facility. 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. (Collin County IFB No. 0307-011 / City of Plano tracking No. 2004-45-1).

List of Supporting Documents:

Other Departments, Boards, Commissions or Agencies:

PLANO office supply

705 Avenue K
Plano, Texas 75074
P) 972.424.8561
F) 972.422.9936

Date: 10/09/2006

PROPOSAL for: City of Plano – JUF / Property Standards
Richard Medlin

Pricing per the Collin County Purchaser's Forum Contract
Contract Discount - 59.3%
Manufacturers List - \$ 130,387.00

| | | | | |
|----|---------|-----------------------------------------------------------|--------|----------|
| 1 | 10702L | Single Pedestal Left B/B/F 66W 30D 29-1/2H | 435.08 | 435.08 |
| 2 | 10707R | Single Pedestal Credenza Right F/F 72W 24D | 391.53 | 783.06 |
| 1 | 10708L | Single Pedestal Credenza Left F/F 72W 24D | 391.53 | 391.53 |
| 1 | 107295R | Wardrobe/Storage Cabinet 18W X 24D X 66H RH | 479.03 | 479.03 |
| 3 | 10734 | 10700 Series Stack-on Storage for 72W Credenza or Desk | 317.05 | 951.15 |
| 1 | 10755 | 10700 Series Bookcase 5-Shelf 36W x 13-1/8D | 266.58 | 266.58 |
| 1 | 10760 | 10700 Series Bridge 24D x 42W | 101.75 | 101.75 |
| 2 | 10770 | 10700 Series Bridge 24D x 48W | 107.44 | 214.88 |
| 1 | 10787R | Single Pedestal Right B/B/F 72W 36D 29-1/2H | 477.81 | 477.81 |
| 1 | 10788L | Single Pedestal Left B/B/F 72W 36D 29-1/2H | 477.81 | 477.81 |
| 3 | 1522 | Wood Center Drawer 22W x 15-3/8D | 50.46 | 151.38 |
| 2 | 801043P | Straight Connector Kit 43H | 20.35 | 40.70 |
| 25 | 801069P | Straight Connector Kit 69H | 21.97 | 549.25 |
| 2 | 801143P | Ell Connector Kit 43H | 28.49 | 56.98 |
| 13 | 801169P | Ell Connector Kit 69H | 31.33 | 407.29 |
| 7 | 801269P | Tee Connector Kit 69H | 60.64 | 424.48 |
| 5 | 801369P | Cross Connector Kit 69H | 60.64 | 303.20 |
| 2 | 801443P | Panel End Cover-Fabric 43H | 20.35 | 40.70 |
| 23 | 801469P | Panel End Cover-Fabric 69H | 21.97 | 505.31 |
| 8 | 831324 | Worksurfaces-To-Panel Bracket | 16.68 | 133.44 |
| 1 | 831330 | Worksurfaces-To-Panel Bracket | 16.68 | 16.68 |
| 2 | 832424A | T-Mold Edge Worksurface 24D 24W | 59.42 | 118.84 |
| 14 | 832442A | T-Mold Edge Worksurface 24D 42W | 78.14 | 1,093.96 |

h-2

PLANO office supply

705 Avenue K
Plano, Texas 75074
P) 972.424.8561
F) 972.422.9936

Date: 10/09/2006

PROPOSAL for: **City of Plano – JUF / Property Standards
Richard Medlin**

| | | | | |
|----|----------|-----------------------------------------------------|--------|----------|
| 2 | 832448A | T-Mold Edge Worksurface 24D 48W | 84.65 | 169.30 |
| 14 | 832460A | T-Mold Edge Worksurface 24D 60W | 104.19 | 1,458.66 |
| 1 | 833042A | T-Mold Edge Worksurface 30D 42W | 86.69 | 86.69 |
| 1 | 833072AT | T-Mold Edge Worksurface 30D 72W T-Span | 144.07 | 144.07 |
| 14 | 833624A | T-Mold Edge Corner Worksurface 36Wx24D | 125.35 | 1,754.90 |
| 4 | 834824RA | T-Mold Edge Corner Worksurface 48Wx24D Lead Rad | 161.17 | 644.68 |
| 4 | 851500 | Counter Top Brackets 1 Pair Low Profile Painted/ | 8.95 | 35.80 |
| 2 | 851572RS | Countertop 15D 72W Routed One End | 96.45 | 192.90 |
| 3 | 870071A | Integrated Power Pole 78" Long 2" Square | 120.06 | 360.18 |
| 1 | 870072P | Trim/Connector Kits | 32.56 | 32.56 |
| 2 | 870073P | Trim/Connector Kits | 32.56 | 65.12 |
| 14 | 870930 | Tasklight for 30/36W | 64.71 | 905.94 |
| 18 | 870942 | Tasklight for 42/48W | 70.00 | 1,260.00 |
| 10 | 871136A | Pass-Thru Harness w/Power Block | 34.18 | 341.80 |
| 1 | 871224A | Power Harness 24W | 55.75 | 55.75 |
| 9 | 871236A | Power Harness 36W | 55.75 | 501.75 |
| 2 | 871242A | Power Harness 42W | 59.42 | 118.84 |
| 6 | 871260A | Power Harness 60W | 59.42 | 356.52 |
| 14 | 871501A | Duplex Receptacle Circuit 1 | 9.36 | 131.04 |
| 47 | 871502A | Duplex Receptacle Circuit 2 | 9.36 | 439.92 |
| 14 | 871503A | Duplex Receptacle Circuit 3 | 9.36 | 131.04 |
| 1 | 871601A | Duplex Receptacle Circuit 1 (20 AMP) | 9.36 | 9.36 |
| 3 | 871918A | Ceiling Electrical In-Feed Cable | 80.58 | 241.74 |
| 1 | 871972A | Base In-Feed 72" Long Conduit | 47.61 | 47.61 |
| 4 | 894324P | Acoustical Panel 43H x 24W | 112.33 | 449.32 |
| 2 | 894348P | Acoustical Panel 43H x 48W | 164.42 | 328.84 |
| 6 | 896924P | Acoustical Panel 69H x 24W | 133.08 | 798.48 |
| 1 | 896930P | Acoustical Panel 69H x 30W | 150.99 | 150.99 |

h-3

PLANO office supply

705 Avenue K
Plano, Texas 75074
P) 972.424.8561
F) 972.422.9936

Date: 10/09/2006

PROPOSAL for: City of Plano – JUF / Property Standards
Richard Medlin

| | | | | |
|----|------------|--------------------------------------------------------|--------|----------|
| 23 | 896936P | Acoustical Panel 69H x 36W | 168.90 | 3,884.70 |
| 14 | 896942P | Acoustical Panel 69H x 42W | 186.81 | 2,615.34 |
| 18 | 896948P | Acoustical Panel 69H x 48W | 198.20 | 3,567.60 |
| 7 | 896960P | Acoustical Panel 69H x 60W | 216.93 | 1,518.51 |
| 32 | CCB24L | Concensys Cantilever Bracket | 13.83 | 442.56 |
| 32 | CCB24R | Concensys Cantilever Bracket | 13.83 | 442.56 |
| 2 | CCWD29R | Corner w/Desk Panel Attachment Kit 29-1/2H-RH | 19.53 | 39.06 |
| 14 | CE36FNN | Ess OH Stg Cab 36W/Flat Pntd D r/Non-Assist/No Pull | 151.81 | 2,125.34 |
| 4 | CE48FNN | Ess OH Stg Cab 48W/Flat Pntd D r/Non-Assist/No Pull | 164.83 | 659.32 |
| 14 | CE60FNN | Ess OH Stg Cab 60W/Flat Pntd D r/Non-Assist/No Pull | 239.72 | 3,356.08 |
| 2 | CEP2429F | Freestanding End-Panel Support 24DX29-1/2H | 47.21 | 94.42 |
| 1 | CEP3029P | Panel-Mounted End-Panel Support 30DX29-1/2H | 58.20 | 58.20 |
| 4 | CS484 | Half Height Modesty Panel 48W x 14H | 42.73 | 170.92 |
| 2 | CSL2429F | Freestanding Support Legs 24Dx 29-1/2H | 40.29 | 80.58 |
| 2 | CSL3029P | Panel-Mount Support Legs 30D 29-1/2H | 51.68 | 103.36 |
| 2 | CVH26PF | Variable Hgt 26H Low Profile | 32.96 | 65.92 |
| 3 | ELF230NB | Essentials Lateral 2-High 27-1 /4H 30W B Pull | 218.96 | 656.88 |
| 2 | ELF236NB | Essentials Lateral 2-High 27-1 /4H 36W B Pull | 241.75 | 483.50 |
| 2 | ELF242NB | Essentials Lateral 2-High 27-1 /4H 42W B Pull | 280.42 | 560.84 |
| 1 | ELF430NB | Essentials Lateral 4-High 52-1 /2H 30W No PS B Pull | 363.45 | 363.45 |
| 1 | ELF436NB | Essentials Lateral 4-High 52-1 /2H 36W No PS B Pull | 412.69 | 412.69 |
| 16 | PF197-233B | Essentials Support Ped BBF 28H 22-7/8D B Pull | 177.04 | 2,832.64 |
| 14 | PF198-202B | Essentials Support Ped FF 28H 19-7/8D B Pull | 170.94 | 2,393.16 |

H-4

PLANO office supply

705 Avenue K
Plano, Texas 75074
P) 972.424.8561
F) 972.422.9936

Date: 10/09/2006

PROPOSAL for: City of Plano – JUF / Property Standards
Richard Medlin

| | | | |
|------------|------------------------------------------------|--------|-------------|
| 3 SC2472 | Storage Cabinet 24D x 36W x 72H | 260.07 | 780.21 |
| 19 SEN-HWS | Sensible High-Back, Adj Arms, Asynch,Slider | 264.55 | 5,026.45 |
| 6 SEN-SAP | Sensible Side Chair, Armless | 115.99 | 695.94 |
| | Sub Total | | \$53,064.92 |

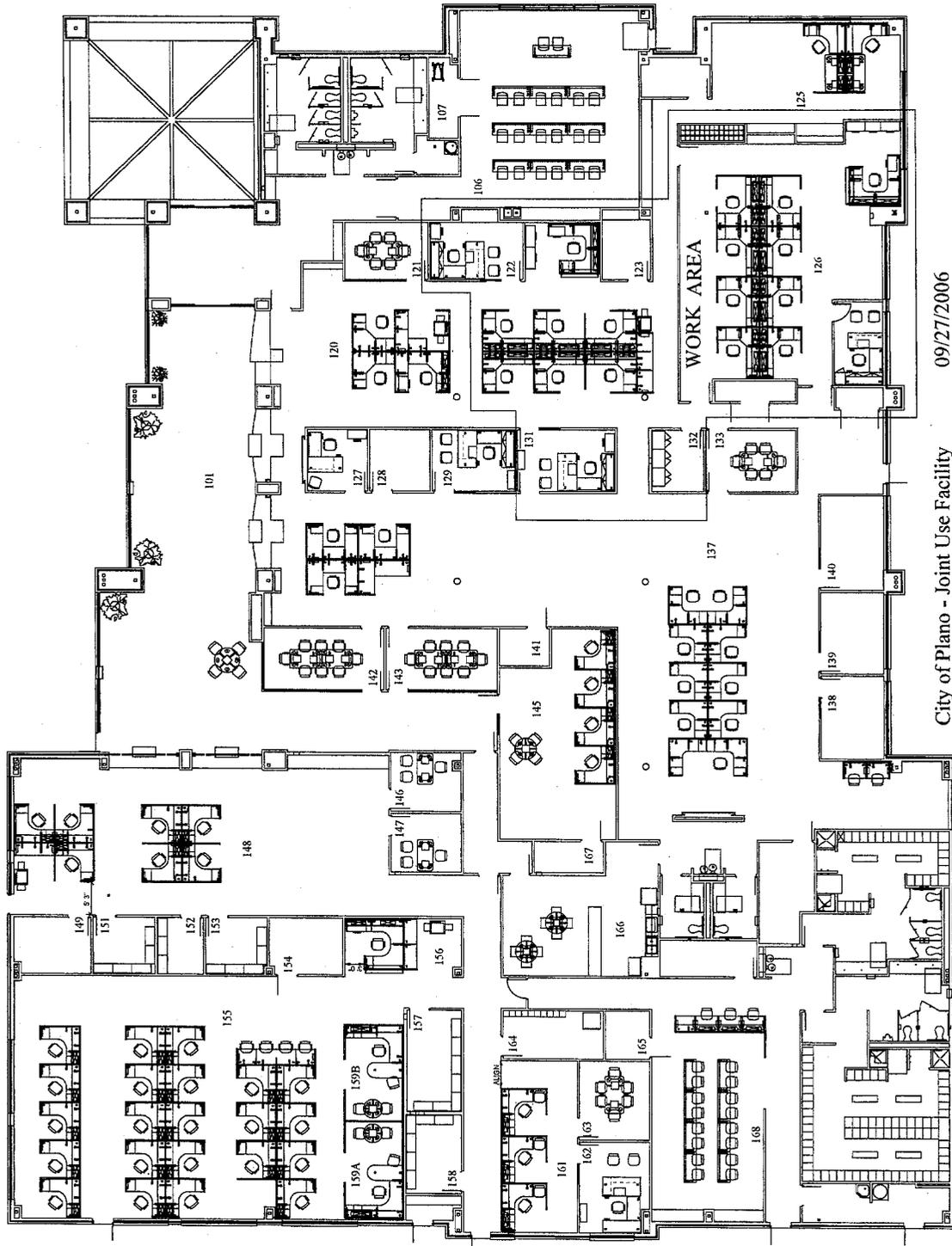
Total: 53,064.92
Installation Total: 0.00
Freight Total: 0.00
Design Total: 0.00
Project Total: **\$53,064.92**

Page 4 of 4

Please note the following:

- Terms: Net 30 days. Lead-time: 5-7 Weeks
- Pricing includes freight, delivery and installation; Mon. – Fri., 8:00 – 5:00, unless noted otherwise
- Pricing does not include relocation of existing furniture, electronic equipment or personal items.
- Pricing does not include sales tax, if applicable.
- Custom or special order items cannot be cancelled or returned. Deposits are non-refundable.
- No returns are allowed on assembled furniture items
- Pricing does not include hard wiring to building power or data cabling relating to modular furniture installation.
- This proposal is valid for 30 days, unless noted otherwise.

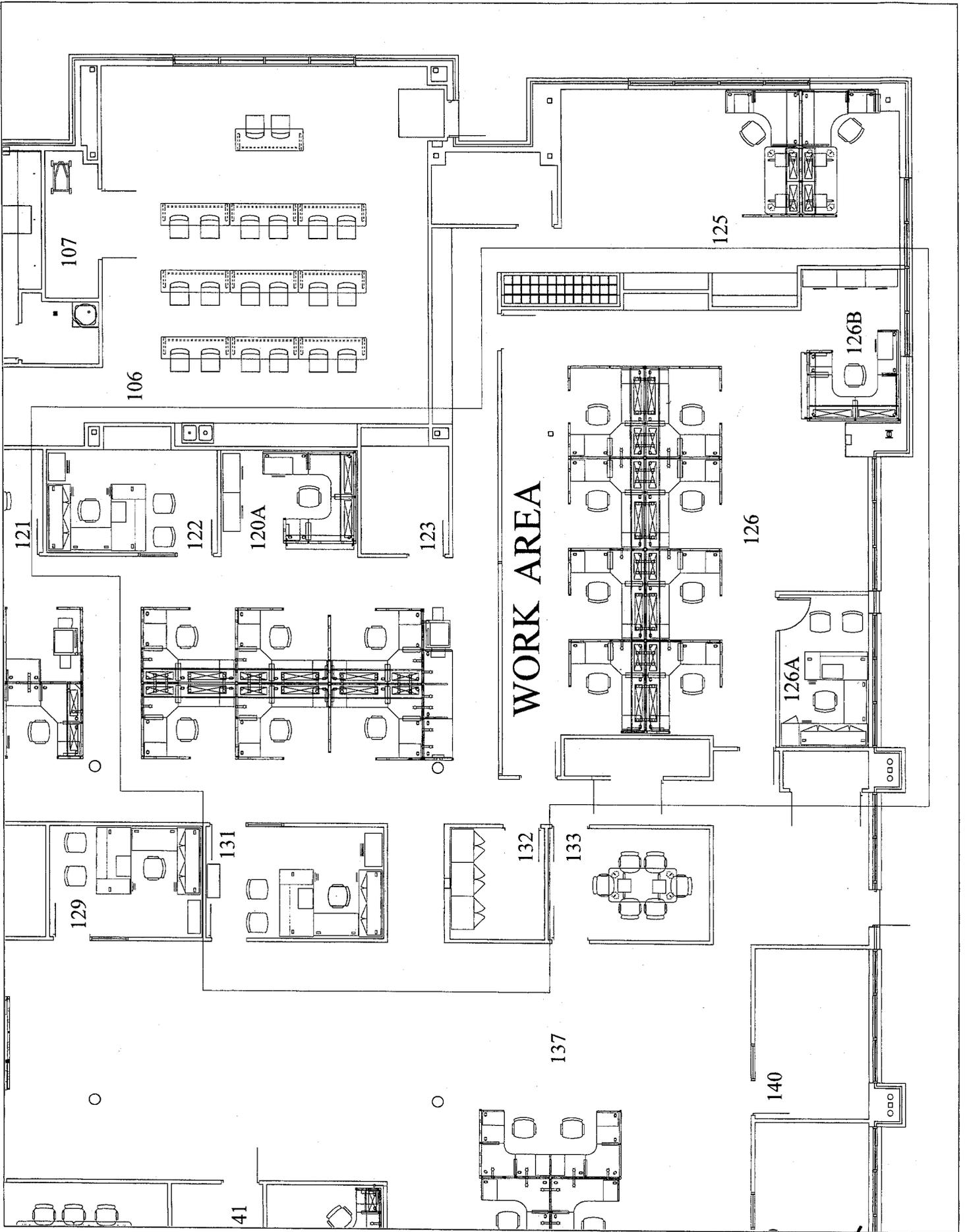
h-5



09/27/2006

City of Plano - Joint Use Facility

h-6



h-7



**CITY OF PLANO
COUNCIL AGENDA ITEM**

| | | | | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|------------------------------------------------------------------|-----------------------------------------|-----------------------------------------|
| CITY SECRETARY'S USE ONLY | | Reviewed by Purchasing | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable |
| <input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory | | Reviewed by Budget | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable |
| Council Meeting Date: | 11/13/06 | Reviewed by Legal <i>WS</i> | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable |
| Department: | Engineering | Initials | Date | |
| Department Head | Alan L. Upchurch | Executive Director | <i>PA</i> | <i>11-3-06</i> |
| Dept Signature: | <i>Alan L. Upchurch</i> | City Manager | <i>JA</i> | <i>11/3/06</i> |
| Agenda Coordinator (include phone #): | | Irene Pegues (7198) <i>IP</i> | Project No. 5728 | |
| ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input checked="" type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER | | | | |
| CAPTION | | | | |
| Approval of an Architectural Professional Services Agreement by and between the City and PSA-Dewberry, Inc., in the amount of \$123,000.00, for architectural services for Haggard Library Basement and Harrington Library Renovations, Design Phase, and authorizing the City Manager or his designee to execute all necessary documents. | | | | |
| FINANCIAL SUMMARY | | | | |
| <input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP | | | | |
| FISCAL YEAR: | 2006-07 | Prior Year (CIP Only) | Current Year | Future Years |
| Budget | | 96,160 | 2,003,840 | 0 |
| Encumbered/Expended Amount | | -96,160 | -167,346 | 0 |
| This Item | | 0 | -123,000 | 0 |
| BALANCE | | 0 | 1,713,494 | 0 |
| FUND(s): LIBRARY FACILITIES CIP | | | | |
| COMMENTS: Funds are included in the 2006-07 Library Facilities CIP. This item, in the amount of \$123,000, will leave a current year balance of \$1,713,494 for the Library Improvements project. | | | | |
| STRATEGIC PLAN GOAL: Library improvements relate to the City's Goal of Premier City of Families. | | | | |
| SUMMARY OF ITEM | | | | |
| PSA-Dewberry, Inc., previously performed programming services for this project. Design services, bidding and construction administration will be provided under this contract. This contract is within budget amounts. | | | | |
| List of Supporting Documents: Architectural Professional Services Agreement Location Maps | | Other Departments, Boards, Commissions or Agencies N/A | | |

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**HAGGARD LIBRARY BASEMENT AND
HARRINGTON LIBRARY RENOVATIONS
DESIGN PHASE**

PROJECT NO. 5728

ARCHITECTURAL 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 **PSA-DEWBERRY, INC.**, a Delaware Corporation, licensed to do business in the State of Texas, hereinafter referred to as "Architect", to be effective from and after the date as provided herein.

W I T N E S S E T H:

WHEREAS, the City desires to engage the services of the Architect to prepare construction plans, specifications, details and special provisions and to perform other related architectural services in connection with the **HAGGARD LIBRARY BASEMENT AND HARRINGTON LIBRARY RENOVATIONS – DESIGN PHASE** located in the City of Plano, Collin County, Texas, hereinafter referred to as the "Project"; and

WHEREAS, the Architect desires to render such architectural 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 Architect

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

II. Scope of Services

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

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**Architectural Services Agreement
Haggard Library Basement and Harrington Library Renovations
Design Phase
Project No. 5728**

Page 1

III. Schedule of Work

The Architect 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 Architect, 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 Architect 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 Architect and available in City's files.

VI. Insurance

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

VII. Indemnity

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

In its sole discretion, City shall have the right to approve defense counsel to be retained by Architect in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. City reserves the right to provide a portion or all of its own defense; however, City is under no obligation to do so. Any

Any such action by City is not to be construed as a waiver of Architect's obligation to defend City or as a waiver of Architect's obligation to indemnify City pursuant to this Agreement. Architect shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If Architect fails to retain counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Architect shall be liable for all costs incurred by City.

VIII. Independent Contractor

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

IX. Assignment and Subletting

The Architect 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 Architect 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 Architect from its full obligations to the City as provided by this Agreement.

X. Audits and Records/Prohibited Interest

The Architect agrees that at any time during normal business hours and as often as City may deem necessary, Architect 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 Architect 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 Architect shall execute the affidavit shown in Exhibit "E". Architect understands and agrees that the existence of a prohibited interest during the term of this

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 Architect. In the event of such termination, Architect shall deliver to City all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items prepared by Architect in connection with this Agreement. Architect 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. Architect's Opinion of Probable Construction Costs

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

XIII. Ownership of Documents

Original drawings and specifications are the property of the Architect; however, the Project is the property of the City and Architect 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, Architect 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 Architect'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.

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XV. Mailing of Notices

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

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

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

PSA-Dewberry, Inc.
7557 Rambler Road, Suite 670
Dallas, Texas 75231
Attn: Denelle Wrightson
Director of Library Architecture

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:

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**Architectural Services Agreement
Haggard Library Basement and Harrington Library Renovations
Design Phase
Project No. 5728**

Page 5

City and Architect, 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.

PSA-DEWBERRY, INC.
A Delaware Corporation, licensed to do
business in the State of Texas

DATE: _____

BY: _____
Kenneth D. Franch
DALLAS OFFICE DIRECTOR

CITY OF PLANO, TEXAS

DATE: _____

BY: _____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM:



Diane C. Wetherbee
CITY ATTORNEY

ACKNOWLEDGMENTS

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STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of _____, 2006, by **KENNETH D. FRANCH, Dallas Office Director of PSA-Dewberry, Inc., a Delaware corporation, licensed to do business in the State of Texas, on behalf of said corporation.**

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2006, by **THOMAS H. MUEHLENBECK, City Manager of the City of Plano, Texas, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.**

Notary Public, State of Texas

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**Architectural Services Agreement
Haggard Library Basement and Harrington Library Renovations
Design Phase
Project No. 5728**

Haggard Library Basement Renovation and Harrington Library Renovation

1. PROJECT DEFINITION

- 1.1 The project consists of the schematic design for the relocation of the Genealogy area at Harrington Library to the Basement of the W. O. Haggard Library. This facility is located at 2501 Coit Road.
- 1.2 The renovation of the Harrington Library will include creating a children's program room and a teen area.
- 1.3 The development has a project budget of \$1,000,000.00
- 1.4 The scope of work shall consist of architectural design services, and mechanical, electrical, plumbing and fire protection engineering, as required to develop thbid package.

2. SCOPE OF SERVICES

2.1 Architectural

2.1.1 Design Development Phase

- .1 Based on the approved schematic design documents and any adjustments authorized by the City in the program or project budget, PSA shall prepare, for approval by the City, Design Development drawings and other documents to describe the size and character of the exterior and interior of the project, including civil, architectural, landscape architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate to be incorporated into floors, walls, partitions or ceilings.

2.1.2 Construction Document Phase

- .1 Based on the approved Design Development documents and any further adjustments in the scope or quality of the project or in the construction budget authorized by the City, PSA shall prepare, for approval by the City, Construction documents consisting of drawings and specifications setting forth in detail the requirements for the construction of the project.
- .2 PSA will assist the City in the preparation of the necessary bidding information, bidding forms, the conditions of the Contract, and the form of agreement between the City and Contractor.
- .3 PSA will advise the City of any adjustments to previous preliminary estimates of Construction Cost indicated by changes in requirements or general market conditions.

2.1.3 Bidding Phase

- .1 PSA, following the City's approval of the Construction Documents and of the latest preliminary estimate of Construction Cost, shall assist the City in obtaining bids and assist in reviewing, awarding and preparing contracts for construction.

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2.1.4 Construction Phase - Administration of the Construction Contract

- .1 The Architect's responsibility to provide Basic Services for the Construction Phase under this Agreement commences with the award of the Contract for Construction and terminates at the earlier of the issuance to the City of the final Certificate of Payment or 60 days after the date of Substantial Completion of the Work established in the Contract for Construction between the City and Contractor.
- .2 PSA shall visit the site at intervals appropriate to the stage of construction or as otherwise agreed by the City and PSA in writing to become generally familiar with the progress and quality of the Work completed and to determine in general if the Work is being performed in a manner indicating that the Work when completed will be in accordance with the Contract Documents. However, PSA shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of on-site observations as an architect, PSA shall keep the City informed of the progress and quality of the Work, and shall endeavor to guard the City against defects and deficiencies in the Work. More extensive site representation may be agreed to as an Additional Service, as described in Section 3 of Exhibit AC.
- .3 PSA shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility under the Contract for Construction. PSA shall not be responsible for the Contractor's schedules or failure to carry out the Work in accordance with the Contract Documents. PSA shall not have control over or charge of acts or omissions of the Contractor, Subcontractors or their agents or employees, or of any other persons performing portions of the Work.
- .4 PSA shall at all times have access to the Work wherever it is in preparation or progress.
- .5 Except as may otherwise be provided in the Contract Documents or when direct communications have been specially authorized, the City and Contractor shall communicate through PSA. Communications by and with PSA's consultants shall be through PSA.
- .6 PSA shall review Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. PSA's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the construction while allowing sufficient time in PSA's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Contractor, all of which remain the responsibility of the Contractor to the extent required by the Contract Documents. PSA's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by PSA, of construction means,

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methods, techniques, sequences or procedures. PSA=s review of a specific item shall not indicate approval of an assembly of which the item is a component. When professional certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, PSA shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.

- .7 PSA shall prepare Change Orders and Construction Change Directives, with supporting documentation and data if deemed necessary by PSA for the City's approval and execution in accordance with the Contract Documents, and may authorize minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time which are not inconsistent with the intent of the Contract Documents.
- .8 After receipt of the Contractor's completion list, PSA shall conduct an inspection to determine the date of substantial completion. Reinspections due to incompleteness of the Contractor's list shall constitute additional services. Subsequent to the Contractors completing the items on the completion list and notification to PSA, PSA will conduct an inspection to determine the date of final completion.
- .9 Interpretations and decisions of PSA shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, PSA shall endeavor to secure faithful performance by both City and Contractor, shall not show partiality to either

2.1.5 Furniture Design and Specifications

- .1 The Architect shall prepare for approval by the City, Drawings, Specifications and other documents setting forth in detail the requirements for fabrication procurement, shipment, delivery, and installation of furniture for the project.
- .2 The Architect shall assist the City in the preparation of the necessary bidding and procurement information. The Architect shall assist the City for obtaining bids, awarding the preparing contracts for furniture.
- .3 The Architect shall assist the City in coordinating schedules for delivery and installation of furniture. The Architect shall visit the project premises during furniture installation to become generally familiar with the progress and quality of the work completed.

2.1.6 Schematic Furniture Design and Specifications

- .1 The Architect shall prepare preliminary furniture plans for the schematic package. Preliminary furniture cost estimates will be prepared for use in determining the final scope of work for the rest of the project.

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2.2 MEP ENGINEERING SERVICES

2.2.1 Basic Services shall include the preparation of complete drawings and specifications which will include the design of normal power distribution systems; lighting systems; emergency power generating system; fire alarm and fire sprinkler protection systems; domestic water systems; cooling, heating and ventilating systems; and coordination with the local utility companies and civil engineer. Site visits (4) and review of shop drawings are included during the construction phase.

2.2.2 The engineer shall provide design services required for the telephone and data cable requirements for the project. The engineer shall meet with the City's communications and data departments to determine the requirements of the respective systems. The engineer shall prepare drawings and specifications of the systems for inclusion in the general contract, shop drawing review, and the related construction administration services.

2.6 Record Drawings

.1 The Architect shall provide the City with one (1) set of black-line and one set of reproducible record drawings showing significant changes in the work made during construction based on marked-up prints, drawings and other data furnished by the Contractor to the Architect.

3. ADDITIONAL SERVICES

3.1 General

3.1.1 Design services not included in Basic Services shall be defined as Additional Services. Additional Services shall only be provided if authorized or confirmed in writing by the City. If Additional Services are required due to circumstances beyond the architect's control, the Architect shall notify the City prior to commencing such services. Compensation for these Additional Services shall be a mutually agreed upon fixed fee or, if total scope of Additional Services compensation for the Additional Services cannot be determined, work will be billed on an hourly basis at the rates defined in Section 1.3 of Exhibit AC of this Agreement. Additional Services shall include, but are not limited to, the following:

- .1 Design or field observations of shoring and bracing for excavations and buildings.
- .2 Continuous and/or detailed inspections of construction.

3.2 Optional Additional Services

3.2.1 Making revisions in Drawings, Specifications or other documents when such revisions are:

- .1 inconsistent with approvals or instructions previously given by the City, including revisions made necessary by adjustments in the City's program or Project budget;

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- .2 required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents; or
 - .3 due to changes required as a result of the City's failure to render decisions in a timely manner.
- 3.2.2 Preparing Drawings, Specifications and other documentation, supporting data, and providing other services in connection with Change Orders and Construction Change Directives due to a change in project scope.
 - 3.2.3 Making revisions to Drawings, Specifications and other documentation resulting from proposed Contractor substitutions.
 - 3.2.4 Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work.
 - 3.2.5 Providing services made necessary by the default of the Contractor, by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the City or Contractor under the Contract for Construction.
 - 3.2.6 Providing special surveys, environmental studies and submissions required for approvals of governmental authorities or others having jurisdiction over the Project.
 - 3.2.7 Providing off-site utility services design.
 - 3.2.8 Providing construction documents for the structural portion of the work if it is found that a structural ground floor is required.
 - 3.2.9 Providing services after issuance to the City of the final Certificate for Payment, or in the absence of a final Certificate for Payment, more than 60 days after the date of Substantial Completion of the Work established in the Contract for Construction between the City and Contractor(s).
 - 3.2.10 Providing services of consultants for other than architectural, landscape, civil, structural, mechanical and electrical engineering portions of the Project provided as a part of Basic Services.
 - 3.2.11 Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural practice.
 - 3.2.12 Revisions made to existing ground floor and basement except areas directly affected by second floor addition.

4. OTHER CONDITIONS

4.1 Force Majeure

- 4.1.1 In the event Architect is hindered, delayed or prevented from performing its obligations

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under this Agreement as a result of any fire, flood, landslide, tornado or other act of God, malicious mischief, theft, strike, lockout, other labor problems, shortages of material or labor, failure of any governmental agency or City to furnish information or to approve or to disapprove Architect's work or any other cause beyond the reasonable control of Architect, the time for completion of Architect's work shall be extended by the period of resulting delay.

4.2 Responsibility for Code Compliance

4.2.1 The Architect shall conform the Drawings and Specifications with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, orders or other legal requirements, including but not limited to all zoning, building, occupancy, environmental and land use laws, requirements, regulations and ordinances relating to the construction, use and occupancy of the Project (collectively "Governmental Requirements") existing on the date of this Agreement. However, City recognizes that interpretations by governmental officials ("Code Authority") are often subject to change even after issuance of a building permit. If after award of the building permit, modifications to the Drawings or Specifications are required because of an interpretation by the Code Authority which had not been previously given, or which if given, was different than a prior interpretation of the Code Authority, Architect shall make the required modifications, but the cost of such modifications shall be considered a Contingent Additional Service. Nothing contained herein shall relieve the Architect of its obligations to modify at its own expense Plans and Specifications where the Architect has negligently failed to prepare them in compliance with the applicable Government Requirements.

4.3 Elimination of Architectural Barriers

4.3.1 Effective September 1, 1991 the Texas Department of Licensing and Regulation is requiring review of all buildings defined as a public accommodation (by Section 301) of the Americans with Disabilities Act (ADA) which are constructed on or after January 1, 1992. The Texas Commission on Licensing and Regulation, at its December 17, 1993 meeting, adopted the Texas Accessibility Standards (TAS) for purposes of administering the state Architectural Barriers Act, Article 9102, Texas Civil Statutes.

4.3.2 TAS is based on the Americans with Disabilities Act Accessibility Guidelines (ADAAG) and applies to subject buildings and facilities constructed on or after April 1, 1994.

4.3.3 The express purpose of TAS is to satisfy legislative intent requiring the department to adopt accessibility standards consistent with federal standards. Review of the construction documents are subject to the following fees, or most current fees at the time of application:

Project Cost \$1,000,000 to \$5,000,000:

| | |
|---------------------------|-------------|
| Plan Review..... | \$370.00 |
| Inspections..... | 290.00 |
| Variance Application..... | 100.00 each |

All fees for the Texas Department of Licensing and Regulation review will be paid by the City.

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**W.O. Haggard Basement Renovation and Harrington Library Renovation
Proposed Project Schedule**

| | |
|------------------------------------------|--------------------------|
| Notice to Continue | November 1, 2006 |
| DD Meeting #1 | November 14, 2006 |
| DD Meeting #2 | November 28, 2006 |
| DD Meeting #3 | December 12, 2006 |
| Design Development Completion | December 19, 2006 |
| CD Meeting #1 | January 9, 2006 |
| CD Meeting #2 | January 23, 2006 |
| CD Meeting #3 | February 6, 2006 |
| Construction Documents Completion | February 13, 2006 |
| Owner Review | February |
| Bidding | March |
| Award | April, May |
| Construction | June – September |
| Furniture Installation | October |
| Project Completion | November |

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W. O. Haggard Basement Renovation and Harrington Library Renovation

1. COMPENSATION

1.1 Compensation for the items described in Section 2 under Scope of Services in Exhibit A.

2.1 Architectural Services:

| | |
|-------------------------------------|--------|
| 2.1.1 Design Development Phase..... | 23,750 |
| Construction Documents Phase..... | 38,000 |
| Bidding..... | 9,500 |
| Construction Administration..... | 23,750 |
| FFE | 19,000 |

Subtotal **\$114,000.00**

Reimbursables Expenses will be billed at a multiple of 1.15 times the actual expense in addition..... to the compensation for architectural and engineering services. Reimbursable expenses include..... expenditures for reprographic work, transportation costs (mileage), delivery services, telephone/fax, and photography not to exceed the stated amount without further approval.

Reimbursables (not to exceed).....**\$9,000**

Hourly Rate Fee Schedule

| | | |
|-------------------------|--------|--------|
| Project Manager | | 175.00 |
| Senior Project Engineer | 120.00 | |
| Project Architect | | 110.00 |
| CAD Technician | | 70.00 |
| Clerical | | 60.00 |

Compensation for additional services of the Architects Consultants including, but not limited to, additional civil, structural, mechanical, fire protection and electrical engineering services, shall be a multiple of 1.15 times the amounts billed to the Architect for such services.

2. PAYMENT

Invoices shall be issued monthly for compensation earned based on the percentage of work coproportional to services performed within each phase of service as set forth in Exhibit C.1 (Schedule of Compensation for Design Services), and/or reimbursable expenses incurred during the previous month. Invoices are due and payable upon receipt. No interest or late payment charge shall ever be due.

3. ADDITIONAL SERVICES

Payments on account of the Architect's Additional Services and for reimbursables expenses shall be made monthly upon presentation of the Architect's Statement of Services rendered or expenses incurred.

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EXHIBIT "D"

ARCHITECTURE

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 Architect (hereinafter called "Architect") shall not start work under this contract until the Architect 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 Architect will be granted only after submission to the Purchasing Agent of original, signed certificates of insurance or, alternately, at the City's request, certified copies of the required insurance policies.
- 1.2 All insurance policies required hereunder shall be endorsed to include the following provision: "It is agreed that this policy is not subject to cancellation, non-renewal, material change, or reduction in coverage without first providing the Risk Manager, City of Plano, at least ten (10) days prior written notice."

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

- 1.3 No acceptance and/or approval of any insurance by the City shall be construed as relieving or excusing the Architect 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 Architect'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.

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- 1.5 The Architect 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 Architect 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 Architect 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 Architect, and the Architect 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 Architect. Architect may be required to provide proof of financial ability to cover deductibles, or may be required to post a bond to cover deductibles.

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

- 2.1 The Architect 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 Architect 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.

2.2 Professional Errors and Omissions

The Architect 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

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ARCHITECTURE

City of Plano - Insurance Checklist

("X" means the coverage is required.)

Coverages Required

Limits (Figures Denote Minimums)

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

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**Architectural Services Agreement
Haggard Library Basement and Harrington Library Renovations
Design Phase
Project No. 5728**

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EXHIBIT "E"

AFFIDAVIT OF NO PROHIBITED INTEREST

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

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

Name of Contractor

By: _____
Signature

Print Name

Title

Date

STATE OF TEXAS §
 §
COUNTY OF _____ §

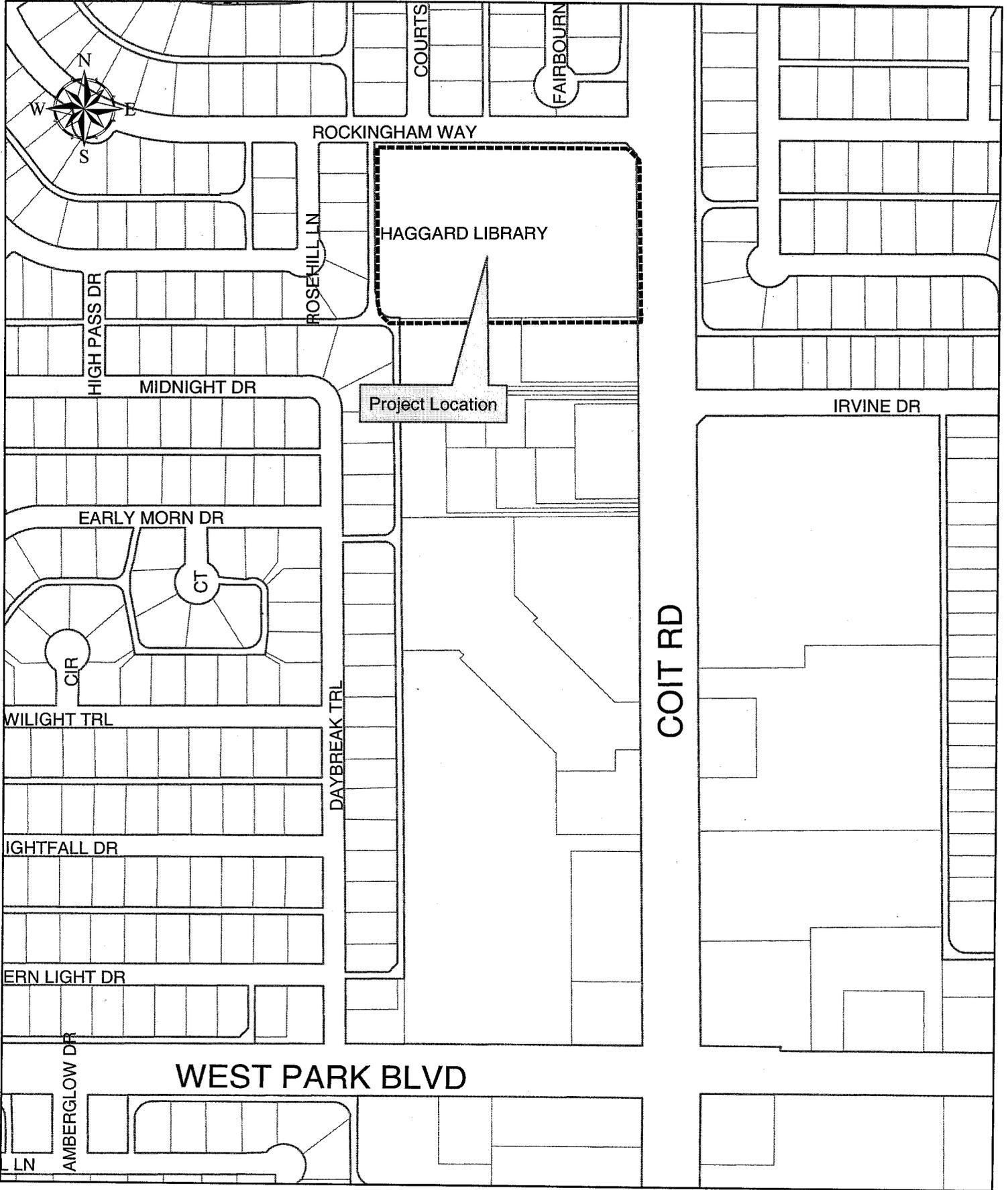
SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2006.

Notary Public, State of Texas

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**Architectural Services Agreement
Haggard Library Basement and Harrington Library Renovations
Design Phase
Project No. 5728**

HAGGARD LIBRARY

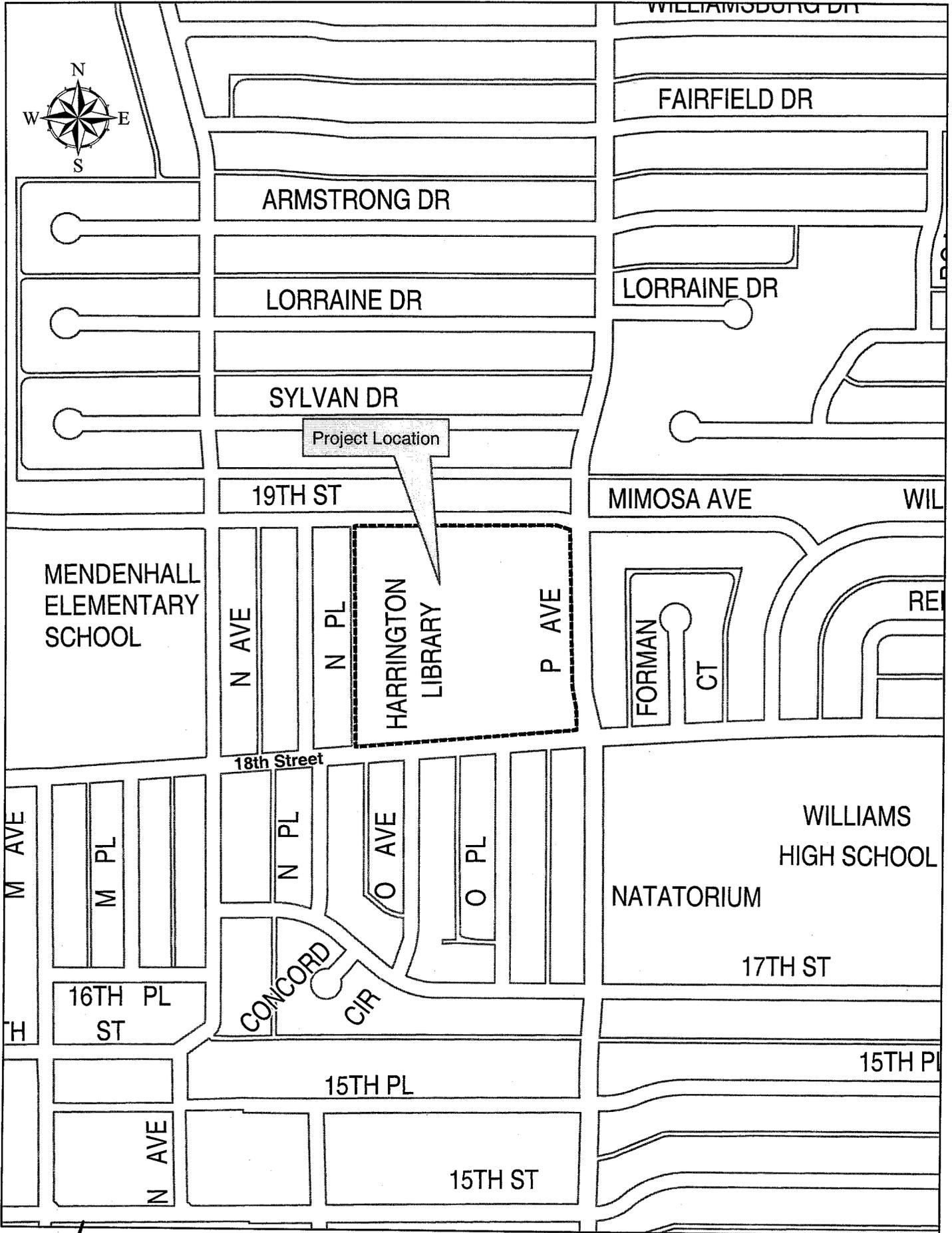


LOCATION MAP

10/18/06

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HARRINGTON LIBRARY



LOCATION MAP



**CITY OF PLANO
COUNCIL AGENDA ITEM**

| | | | | | |
|---------------------------------------|----------------------------------|------------------------------------|-----------------------------------------|-----------------------------------------|-----------------------------------------|
| CITY SECRETARY'S USE ONLY | | Reviewed by Purchasing | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable | |
| <input type="checkbox"/> Consent | <input type="checkbox"/> Regular | <input type="checkbox"/> Statutory | Reviewed by Budget | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable |
| Council Meeting Date: 11/13/06 | | Reviewed by Legal | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable | |
| Department: | Parks and Recreation | | Initials | Date | |
| Department Head | Don Wendell | Executive Director | <i>[Signature]</i> | 11-06-06 | |
| Dept Signature: | <i>[Signature: Don Wendell]</i> | City Manager | <i>[Signature]</i> | 11.07.06 | |
| Agenda Coordinator (include phone #): | | Linda Benoit (7255) | | | |

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

CAPTION

To approve and authorize a contract with Newman, Jackson, Bieberstein, Inc. to provide Landscape Architectural Services for master planning and conceptual planning for Chisholm Trail North: Park Boulevard to Legacy Drive in an amount not to exceed \$30,701 and authorizing the City Manager or his designee to execute any and all documents necessary to effectuate the contract.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

| FISCAL YEAR: 2006-07 | Prior Year (CIP Only) | Current Year | Future Years | TOTALS |
|-----------------------------|--------------------------|-----------------|-----------------|------------------|
| Budget | 0 | 200,000 | 1,800,000 | 2,000,000 |
| Encumbered/Expended Amount | 0 | 0 | 0 | 0 |
| This Item | 0 | -30,701 | 0 | -30,701 |
| BALANCE | 0 | 169,299 | 1,800,000 | 1,969,299 |

FUND(s): **PARK IMPROVEMENT CIP**

COMMENTS: Funds are included in the 2006-07 Park Improvement CIP. This item, in the amount of \$30,701 will leave a current year balance of \$1,969,299 for the Chisholm Trail project.

STRATEGIC PLAN GOAL: Landscape architectural services relate to the City's Goal of "Premier City for Families."

SUMMARY OF ITEM

The attached Landscape Architectural Services Agreement with Newman, Jackson, Bieberstein, Inc. is for the creation of a master plan and conceptual plan for the portion of Chisholm Trail Park from Park Boulevard north to Legacy Drive.

The plans will provide recommendations for improvements on Chisholm Trail Park. The plans will identify aesthetic treatments of culverts, bridges and storm sewer outlets. In addition, the plans will identify needed repairs, explore pond edge stabilization for Big Lake, address erosion issues along the creek and explore a possible restroom facility between Harrington Park and Jack Carter Park. The plan will also provide concepts for seating and gathering areas, tree planting, lighting and other features.



CITY OF PLANO COUNCIL AGENDA ITEM

Newman, Jackson, Bieberstein, Inc. is on the City's list of selected consultants for 2006-2007. The fee is consistent with master planning fees for other projects of this type and size.

Funding was approved in the 2005 Bond Election for the planning, design and development of improvements on Chisholm Trail. The total project budget for Chisholm Trail is \$2,000,000.

List of Supporting Documents:

Location Map

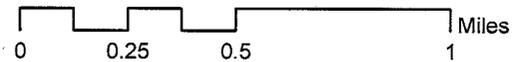
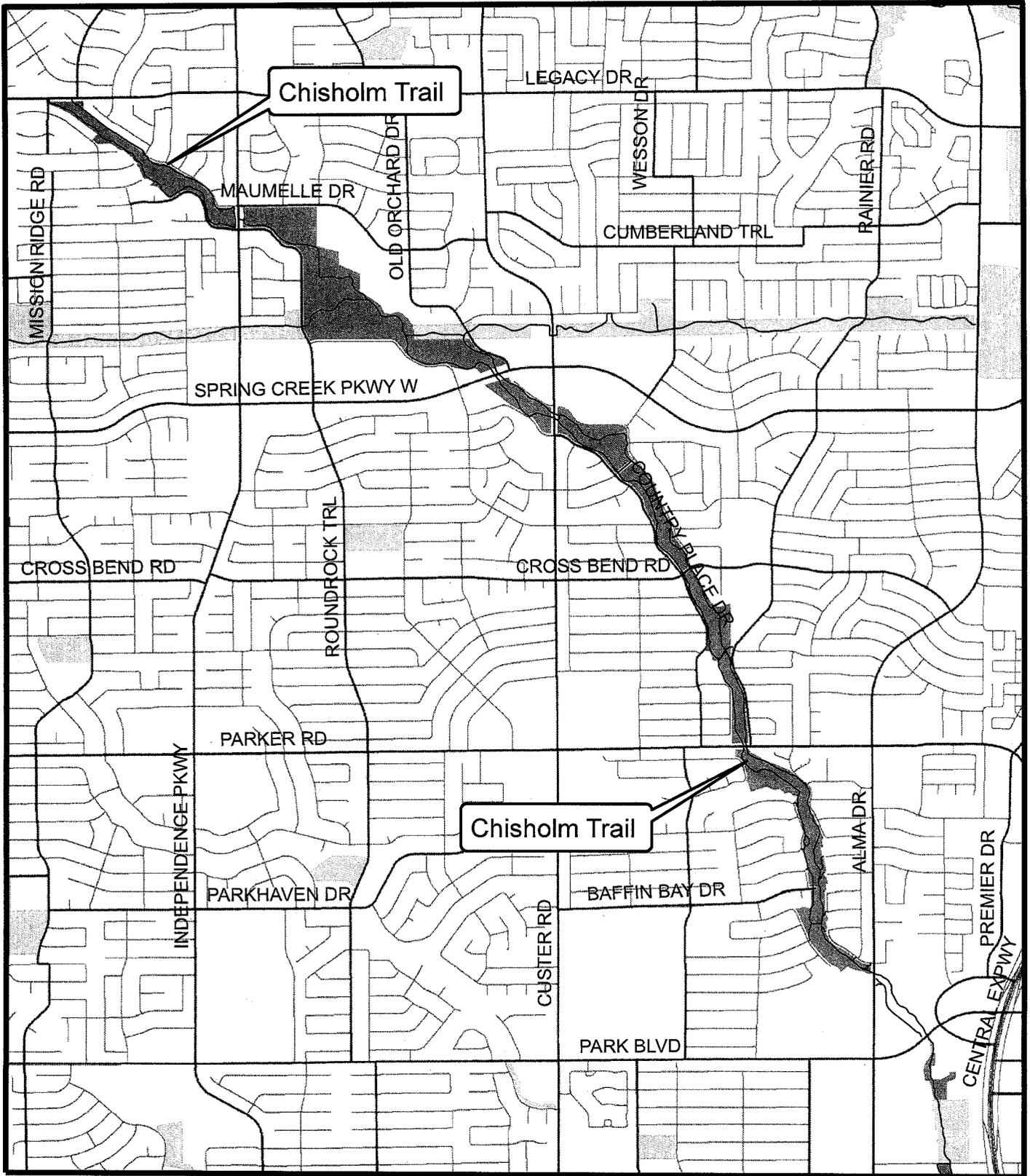
Landscape Architectural Services Agreement

Other Departments, Boards, Commissions or Agencies

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Chisholm Trail North Park Blvd to Legacy Dr Project #5768



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CHISHOLM TRAIL NORTH: PARK BOULEVARD TO LEGACY DRIVE

PROJECT NO. 5768

LANDSCAPE ARCHITECT 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 **NEUMAN, JACKSON, BIEBERSTEIN, INC.**, a **TEXAS** Corporation, licensed to do business in the State of Texas, hereinafter referred to as "Architect", to be effective from and after the date as provided herein.

WITNESSETH:

WHEREAS, the City desires to engage the services of the Architect to perform landscape architectural services in connection with the **CHISHOLM TRAIL NORTH: PARK BOULEVARD TO LEGACY DRIVE** project located in the City of Plano, Collin County, Texas, hereinafter referred to as the "Project"; and

WHEREAS, the Architect desires to render such Architectural 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 Architect

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

II. Scope of Services

The parties agree that Architect 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 contract modifications orders may be authorized from time to time by the City.

III. Schedule of Work

The Architect 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 Architect, to completion as described in the Completion Schedule, attached hereto as Exhibit "B" and thereby made a part of this Agreement.

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IV. Compensation and Method of Payment

The parties agree that Architect 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 Architect and available in City's files.

VI. Insurance

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

VII. Indemnity

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

In its sole discretion, City shall have the right to approve defense counsel to be retained by Architect in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. City reserves the right to provide a portion or all of its own defense; however, City is under no obligation to do so. Any such action by City is not to be construed as a waiver of Architect's obligation to defend City or as a waiver of Architect's obligation to indemnify City pursuant to this Agreement. Architect shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If Architect fails to retain counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Architect shall be liable for all costs incurred by City.

VIII. Independent Contractor

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

IX. Assignment and Subletting

The Architect 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 Architect 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 Architect from its full obligations to the City as provided by this Agreement.

X. Audits and Records/Prohibited Interest

The Architect agrees that at any time during normal business hours and as often as City may deem necessary, Architect 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 Architect 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 Architect shall execute the affidavit shown in Exhibit "E". Architect 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 Architect. In the event of such termination, Architect shall deliver to City all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items prepared by Architect in connection with this Agreement. Architect 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.

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XII. Architect's Opinion of Probable Construction Costs

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

XIII. Ownership of Documents

Original drawings and specifications are the property of the Architect; however, the Project is the property of the City and Architect 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, Architect 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 Architect'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, Architect 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
Parks & Recreation Department
P.O. Box 860358
Plano, TX 75086-0358

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

Karl von Bieberstein, Vice President
Newman, Jackson, Bieberstein, Inc.
12770 Coit Road, Suite 210
Dallas, TX 75251

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.

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D. Successors and Assigns:

City and Architect, 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.

ARCHITECT
Newman, Jackson, Bieberstein, Inc.
A Texas Corporation

DATE: _____

BY: _____
Karl von Bieberstein
Vice President

CITY OF PLANO, TEXAS

DATE: _____

BY: _____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee
CITY ATTORNEY

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ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF _____§

This instrument was acknowledged before me on the _____ day of _____, _____, by **Karl von Bieberstein, Vice President**, of **Newman, Jackson, Bieberstein, Inc.**, a Texas corporation, licensed to do business in the State of Texas, on behalf of said corporation.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

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

Notary Public, State of Texas

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EXHIBIT A - Scope of Services

Chisholm Trail North: Park Blvd to Legacy Dr Project # 5768 Park and Recreation Department City of Plano

1.0 SCOPE

The Consultant's area and scope shall consist of site and related park area improvements to Chisholm Trail from Park Boulevard northward to Legacy Drive. in Plano, Texas.

- 1.1 This proposal is based on man-hour labor and material costs to recommend and master plan aesthetic improvements to Chisholm Trail and related park spaces along the trail to include:
 - 1.1.1 Repairs, expansion, and limited re-routing recommendations to the existing trail;
 - 1.1.2 Improvements to trail related items such as aesthetic treatments to culverts, bridges, and storm sewer outlets;
 - 1.1.3 Recommend consistent designs for guard rails, trail signage and a distance marker system.
 - 1.1.4 Recommend location and design of new seating areas and overlooks;
 - 1.1.5 Recommend lighting in selected areas;
 - 1.1.6 At the Big Lake area, recommend new lake edge treatment, aquatic vegetation, piers, and lighting;
 - 1.1.7 Recommendations for playground upgrade at the Big Lake area;
 - 1.1.8 Recommendations for addressing erosion issues and creek stabilization;
 - 1.1.9 Recommendations for a restroom facility between Harrington Park and Jack Carter Park;
 - 1.1.10 Tree planting recommendations along the trail;
 - 1.1.11 Turf recommendations (natives versus ornamentals) including appropriate maintenance approaches for varying zones along the trail;
- 1.2 Phases of the work shall consist of Data Collection / Base Mapping, Site Analysis / Documentation, Development of Preliminary Master Plan, and Development of the Final Master Plan.

2.0 BASIC SERVICES

The Consultant services shall consist of the four (4) phases described in Paragraph's 2.1. through 2.4 as follows:

2.1 Data Collection / Base Mapping

Landscape Architectural Services Agreement
Chisholm Trail North: Park Boulevard to Legacy Drive
Proj #5768

Page 8

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EXHIBIT A - Scope of Services

- 2.1.1 Base maps of the area will be created from existing trail and adjacent park information including planning level topography and aerial photographs provided by the City. It is not anticipated that updated topographic surveys will be required for this phase of the project and none have been provided as part of this proposal.
- 2.1.2 Utilizing the information provided by the City, the Consultant will prepare a base map of the project area and obtain plans for the existing bridges along the trail route.
- 2.1.3 The Consultant will collect existing hydraulic data on Spring Creek from the City of Plano to aid in the development of erosion control and trail realignment recommendations.

2.2 Site Analysis / Documentation

- 2.2.1 Consultant shall visit the site to confirm and evaluate existing conditions and shall document with photographs the various areas of concern of the trail and adjacent park areas. At least one of these visits will be with City representatives who will facilitate the identification of problem areas along the trail.
- 2.2.2 From the photo analysis and documentation the Consultant will prepare an Opportunities and Constraints plan of the project area that documents the existing trail conditions.

2.3 Preliminary Master plan

- 2.3.1 Consultant shall prepare preliminary master plan documents for the elements related to Chisholm Trail identified in paragraph 1.1 above.
- 2.3.2 Consultant shall prepare Preliminary Master Plan level estimates of project cost.
- 2.3.3 Consultant shall review the preliminary documents with City Staff for input and shall prepare rendered illustrative plans and enlarged details in sufficient number as required to convey the intent of the recommendations.
- 2.3.4 Consultant will assist the City in conducting an initial meeting with project stakeholders to review the preliminary master plan recommendations and receive additional stakeholder input.

EXHIBIT A - Scope of Services

- 2.3.5 Consultant shall consider project stakeholder input and prepare revised preliminary master plan documents and details reflecting stakeholders and City's input. The plans shall also include a phasing plan for implementation of the recommendations.
- 2.3.6 Consultant will assist the City in conducting a second meeting with project stakeholders and members of the Parks Board to review revised preliminary master plan documents and to receive approval to proceed into development of the final master plan documents.
- 2.3.7 Deliverables for Chisholm Trail Master Plan during this phase shall include:
- 2.3.7.1 One (1) color "strip map" plot of the project area illustrating recommendations and alternatives for initial reviews
 - 2.3.7.2 One (1) color "strip map" plot of the project area illustrating refined recommendations from input received from the City and project stakeholders.
 - 2.3.7.3 Enlargements and sections as required to convey design intent for recommended modifications to culverts, bridges, bridge rails, railings, signage, mile markers, etc. as outlined in paragraph 1.1 above.

2.4 Final Master Plan

Based on the approved Preliminary Master Plan Documents and Preliminary Cost Estimate, Consultant shall prepare for approval by the City, a final master plan document for the recommended enhancements to Chisholm Trail generally consisting of:

- Refined master plan drawings, details, and phasing plans of the recommendations presented and approved in the preliminary master plan phase;
- Cost estimates of the recommendations;
- Brief narrative of the recommendations.

2.4.1 Deliverables include a final color plot "strip map" of Chisholm Trail from Legacy south to Park Boulevard illustrating the master plan recommendations as well as electronic files in dwg or pdf format for use by the City.

2.4.2 A brief narrative of the recommendations as well as cost estimates and phasing.

EXHIBIT A - Scope of Services

3.0 LIMITATIONS

The Consultant understands that the following services are not required at this time and have not been provided for as part of this proposal:

- Existing utility mapping and/or adjustments;
- Topographic surveying, boundary surveys, property lines, or easements;
- Creation of field surveyed base plans for Chisholm Trail;
- Wetlands determination and 404 permitting;
- U.S. Army Corps of Engineers permitting;
- FEMA map revisions or permitting;
- Environmental assessment or any additional environmental services;
- Lighting design including electrical services;
- Traffic study;
- Easement and ROW dedication documents;
- Water and sanitary sewer services;
- Geotechnical reports and recommendations will be provided by the Owner;
- Detailed design drawings and construction plans;
- Preparing presentation models or renderings beyond those described in Basic Services;
- Flood studies;
- Preparation of SWPPP plans;
- Inspection of erosion control devices or maintaining erosion control or SWPPP documents during construction are not a part of this agreement.

4.0 ADDITIONAL SERVICES

Additional services must receive written authorization from the City before being performed and will be compensated for as mutually agreed between Consultant and City.

5.0 STATEMENT of JURISDICTION

The Texas Board of Architectural Examiners has jurisdiction over complaints regarding the professional practices of persons registered as landscape architects in Texas.

Texas Board of Architectural Examiners
333 Guadalupe, Suite 2-350
Austin, TX 78701-3942
Phone (512) 305-9000
Fax (512) 305-8900

EXHIBIT "B" - SCHEDULE

Chisholm Trail North: Park Blvd to Legacy Dr Project #5768

Work shall be performed in accordance with the following schedule:

- Consultant receives NTP and begins data collection;
- Initial kick-off meetings will be scheduled to occur within ten (10) days of NTP; Data collection complete within ten (10) days of kick-off meeting;
- Site Analysis / Site Documentation
 - Site visit with city staff – will occur within five (5) days of kick-off meetings; Consultant documents site observations and begins work on opportunities and constraints plan;
 - Completion of O&C plan and site documentation – within fourteen (14) days of site visit. Consultant proceeds into Preliminary master plan phase;
- Preliminary Master Plan
 - Consultant develops preliminary master plan recommendations
 - Initial review of recommendations with City staff – within thirty (30) days of beginning of Preliminary Master Plan Phase;
 - Initial review of recommendations with project stakeholders and Park board representatives – within fourteen (14) days of initial review with city staff;
 - Consultant receives approval to proceed into Final Master Plan
- Final Master Plan
 - Consultant incorporates input from Preliminary master plan into final MP documents, includes brief narrative, and assembles into a small booklet for review with City staff – within twenty-one (21) days of receiving approval to proceed into final master plan phase;
 - Consultant incorporates staff comments and prepares a Power Point presentation for review with Plano City Council – within fourteen (14) days of city staff review;
 - All Master Plan deliverables to city staff – within twenty-one (21) days of Council presentation.

EXHIBIT "C"

NJB Fee Proposal Summary Sheet
Plano Parks - Chisholm Trail Master Plan
Chisholm Trail North: Park Blvd to Legacy Dr; Project # 5768

| Task | Chisholm Trail |
|--------------------------------------------|-----------------|
| Basic Services | |
| Data Collection / Base Mapping | \$1,390 |
| Site Analysis / Documentation | \$3,400 |
| Preliminary Master Plan | \$12,165 |
| Final Master Plan | \$6,960 |
| Sub-total Basic Services | \$23,915 |
| Allowances | |
| Project expenses | \$1,286 |
| Sub-consultants | |
| Civil Engineering (MI) | \$5,500 |
| Sub-total Consultants | \$5,500 |
| Total Basic Services and Allowances | \$30,701 |

EXHIBIT "D"

LANDSCAPE ARCHITECT

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 Architect (hereinafter called "Architect") shall not start work under this contract until the Architect 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 Architect will be granted only after submission to the Purchasing Agent of original, signed certificates of insurance or, alternately, at the City's request, certified copies of the required insurance policies.
- 1.2 All insurance policies required hereunder shall be endorsed to include the following provision: "It is agreed that this policy is not subject to cancellation, non-renewal, material change, or reduction in coverage without first providing the Risk Manager, City of Plano, at least ten (10) days prior written notice."

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

- 1.3 No acceptance and/or approval of any insurance by the City shall be construed as relieving or excusing the Architect 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 Architect'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 Architect 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 Architect 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 Architect 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 Architect, and the Architect 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 Architect. Architect may be required to provide proof of financial ability to cover deductibles, or may be required to post a bond to cover deductibles.

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

- 2.1 The Architect 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 Architect 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.

2.2 Professional Errors and Omissions

The Architect 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

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LANDSCAPE ARCHITECT

City of Plano - Insurance Checklist

("X" means the coverage is required.)

Coverages Required

Limits (Figures Denote Minimums)

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

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

INSURANCE AGENT'S STATEMENT

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

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

Full limits of coverage available for:

General Liability _____ Professional Liability _____
Automobile Liability _____

- 27. Liability policies are (indicate):

OCCURRENCE []

CLAIMS MADE []

Signature

Date

Insurance Agent (Print)

Name of Insured

Date

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EXHIBIT "E"

AFFIDAVIT OF NO PROHIBITED INTEREST

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

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

Name of Contractor

By:

Signature

Print Name

Title

Date

STATE OF TEXAS §
 §
COUNTY OF _____ §

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

Notary Public, State of Texas

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**CITY OF PLANO
COUNCIL AGENDA ITEM**

| | | | | | |
|------------------------------------------------------------------|----------------------------------|------------------------------------|-----------------------------------------|-----------------------------------------|-----------------------------------------|
| CITY SECRETARY'S USE ONLY | | Reviewed by Purchasing | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable | |
| <input type="checkbox"/> Consent | <input type="checkbox"/> Regular | <input type="checkbox"/> Statutory | Reviewed by Budget | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable |
| Council Meeting Date: 11/13/06 | | Reviewed by Legal | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable | |
| Department: | Parks and Recreation | | Initials | Date | |
| Department Head | Don Wendell | Executive Director | <i>[Signature]</i> | 11-6-06 | |
| Dept Signature: | <i>[Signature]</i> | City Manager | <i>[Signature]</i> | 11.7.06 | |
| Agenda Coordinator (include phone #): Linda Benoit (7255) | | | | | |

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

CAPTION

To approve and authorize a contract with Newman, Jackson, Bieberstein, Inc. to provide Landscape Architectural Services for master planning and conceptual planning for Chisholm Trail South: Park Boulevard to President George Bush Turnpike in an amount not to exceed \$29,071 and authorizing the City Manager or his designee to execute any and all documents necessary to effectuate the contract.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

| FISCAL YEAR: 2006-07 | Prior Year (CIP Only) | Current Year | Future Years | TOTALS |
|-----------------------------|--------------------------|-----------------|-----------------|------------------|
| Budget | 0 | 200,000 | 1,800,000 | 2,000,000 |
| Encumbered/Expended Amount | 0 | 0 | 0 | 0 |
| This Item | 0 | -29,071 | 0 | -29,071 |
| BALANCE | 0 | 170,929 | 1,800,000 | 1,970,929 |

FUND(s): **PARK IMPROVEMENT CIP**

COMMENTS: Funds are included in the 2006-07 Park Improvement CIP. This item, in the amount of \$29,071 will leave a current year balance of \$170,929 for the Chisholm Trail project.

STRATEGIC PLAN GOAL: Landscape architectural services relate to the City's Goal of "Premier City for Families."

SUMMARY OF ITEM

The attached Landscape Architectural Services Agreement with Newman, Jackson, Bieberstein, Inc. is for the creation of a master plan and conceptual plan for the portion of Chisholm Trail Park from Park Boulevard south to President George Bush Turnpike.

The plans will provide a long term vision for the extension of Chisholm Trail Park and how it will relate to existing and proposed developments in the area. The plan will identify possible acquisitions or easements needed for extension of the trail. The plan will also provide concepts for seating areas, tree planting, lighting and other features.

Newman, Jackson, Bieberstein, Inc. is on the City's list of selected consultants for 2006-2007. The fee is consistent with master planning fees for other projects of this type and size.



**CITY OF PLANO
COUNCIL AGENDA ITEM**

Funding was approved in the 2005 Bond Election for the planning, design and development of improvements on Chisholm Trail. The total project budget for Chisholm Trail is \$2,000,000.

List of Supporting Documents:

Location Map

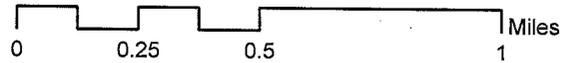
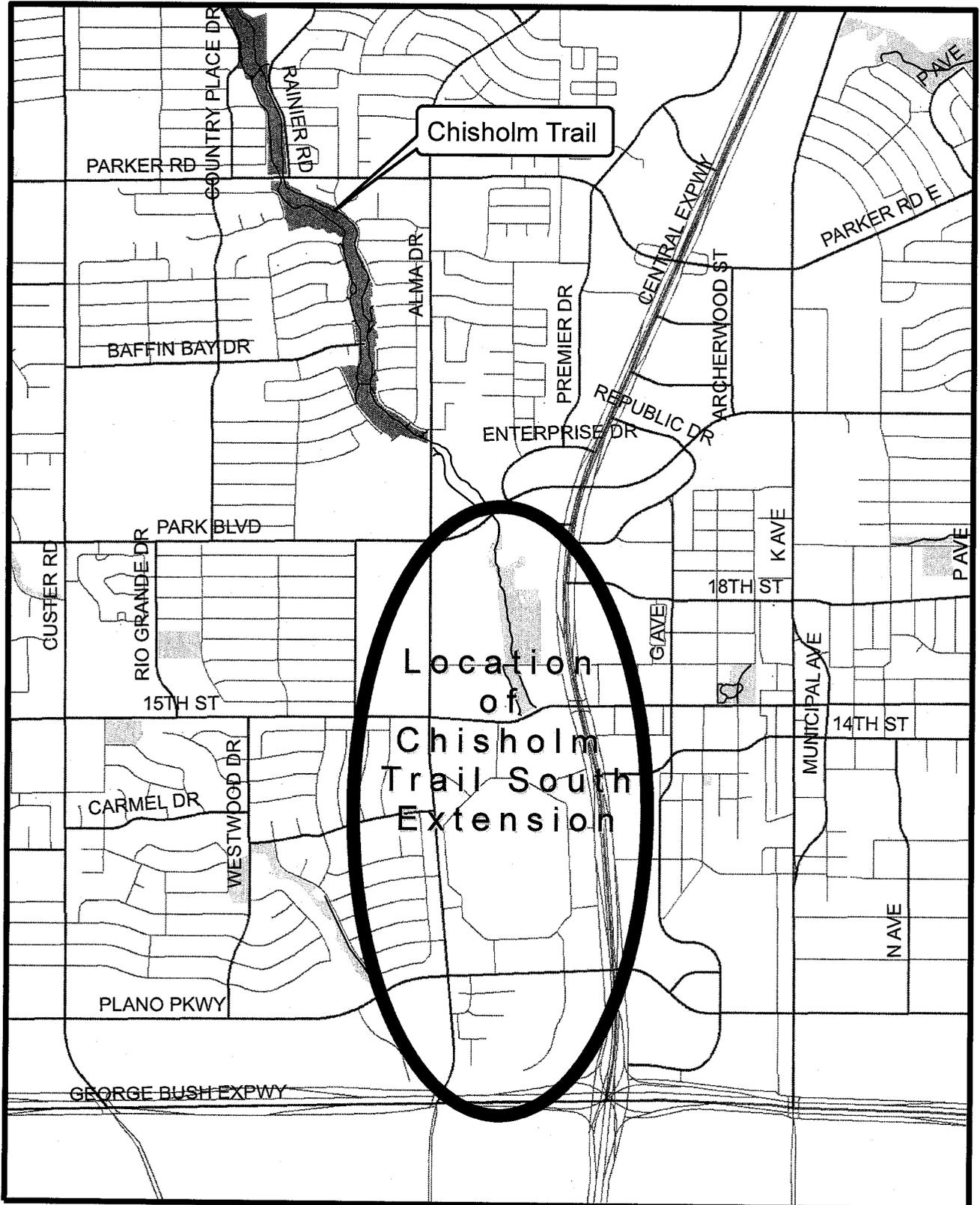
Landscape Architectural Services Agreement

Other Departments, Boards, Commissions or Agencies

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Chisholm Trail South
Park Blvd to President George Bush Turnpike
Project # 5767



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**CHISHOLM TRAIL SOUTH:
PARK BOULEVARD TO PRESIDENT GEORGE BUSH TURNPIKE**

PROJECT NO. 5767

LANDSCAPE ARCHITECT 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 **NEUMAN, JACKSON, BIEBERSTEIN, INC.**, a **TEXAS** Corporation, licensed to do business in the State of Texas, hereinafter referred to as "Architect", to be effective from and after the date as provided herein.

WITNESSETH:

WHEREAS, the City desires to engage the services of the Architect to perform landscape architectural services in connection with the **CHISHOLM TRAIL SOUTH: PARK BOULEVARD TO PRESIDENT GEORGE BUSH TURNPIKE** project located in the City of Plano, Collin County, Texas, hereinafter referred to as the "Project"; and

WHEREAS, the Architect desires to render such Architectural 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 Architect

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

II. Scope of Services

The parties agree that Architect 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 contract modifications orders may be authorized from time to time by the City.

III. Schedule of Work

The Architect agrees to commence work immediately upon execution of this Agreement, and to proceed diligently with said work, except for delays beyond the

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reasonable control of Architect, 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 Architect 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 Architect and available in City's files.

VI. Insurance

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

VII. Indemnity

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

In its sole discretion, City shall have the right to approve defense counsel to be retained by Architect in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. City reserves the right to provide a portion or all of its own defense; however, City is under no obligation to do so. Any such action by City is not to be construed as a waiver of Architect's obligation to defend City or as a waiver of Architect's obligation to indemnify City pursuant to this Agreement. Architect shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If Architect fails to retain counsel within such time period, City

shall have the right to retain defense counsel on its own behalf, and Architect shall be liable for all costs incurred by City.

VIII. Independent Contractor

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

IX. Assignment and Subletting

The Architect 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 Architect 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 Architect from its full obligations to the City as provided by this Agreement.

X. Audits and Records/Prohibited Interest

The Architect agrees that at any time during normal business hours and as often as City may deem necessary, Architect 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 Architect 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 Architect shall execute the affidavit shown in Exhibit "E". Architect 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 Architect. In the event of such

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termination, Architect shall deliver to City all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items prepared by Architect in connection with this Agreement. Architect 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. Architect's Opinion of Probable Construction Costs

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

XIII. Ownership of Documents

Original drawings and specifications are the property of the Architect; however, the Project is the property of the City and Architect 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, Architect 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 Architect'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, Architect 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
Parks & Recreation Department
P.O. Box 860358
Plano, TX 75086-0358

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

Karl von Bieberstein, Vice President
Newman, Jackson, Bieberstein, Inc.
12770 Coit Road, Suite 210
Dallas, TX 75251

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.

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D. Successors and Assigns:

City and Architect, 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.

ARCHITECT
Newman, Jackson, Bieberstein, Inc.
A Texas Corporation

DATE: _____

BY: _____
Karl von Bieberstein
Vice President

CITY OF PLANO, TEXAS

DATE: _____

BY: _____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee
CITY ATTORNEY

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ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF _____§

This instrument was acknowledged before me on the _____ day of _____, _____, by **Karl von Bieberstein, Vice President, of Newman, Jackson, Bieberstein, Inc.**, a Texas corporation, licensed to do business in the State of Texas, on behalf of said corporation.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

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

Notary Public, State of Texas

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EXHIBIT "A" – SCOPE OF SERVICES

Chisholm Trail South: Park Blvd to President George Bush Turnpike Project #5767 Park and Recreation Department City of Plano

1.0 SCOPE

The Consultant's area and scope shall consist of site and related park area improvements to Chisholm Trail from Park Boulevard southward to the Plano city limit line with Richardson, Texas.

- 1.1 This proposal is based on man-hour labor and material costs to prepare a master plan and conceptual plan for the extension of Chisholm Trail from Park Boulevard southward to the Plano Richardson city limit line.
- 1.2 Phases of the work shall consist of Data Collection / Base Mapping, Site Analysis / Documentation, Development of Master Plan, and Development of the Conceptual Plan.

2.0 BASIC SERVICES

The Consultant services shall consist of the four (4) phases described in Paragraph's 2.1. through 2.4 as follows:

2.1 Data Collection / Base Mapping

- 2.1.1 Base maps of the area will be created from existing aerial photographs and GIS data of Spring Creek and the adjacent Collin Creek Mall provided by the City. It is not anticipated that updated topographic surveys will be required for this phase of the project and none have been provided as part of this proposal.
- 2.1.2 Utilizing the information provided by the City, the Consultant will prepare a base map of the project area and obtain plans for the existing bridges along the trail route.
- 2.1.3 The Consultant will collect existing hydraulic data on Spring Creek from the City of Plano to aid in the development of erosion control and trail realignment recommendations.

2.2 Site Analysis / Documentation

- 2.2.1 Consultant shall visit the site to confirm and evaluate existing conditions and shall document with photographs the various areas of concern of the trail and adjacent park areas. At least one of

EXHIBIT "A" – SCOPE OF SERVICES

these visits will be with City representatives who will facilitate the identification of problem areas along the trail.

2.2.2 From the photo analysis and documentation the Consultant will prepare an Opportunities and Constraints plan of the project area that documents the existing conditions and their bearing on future trail extension alignment and overall improvements to the project area.

2.2.3 Using the Opportunities and Constraints plan, the Consultant will meet with City staff to review trail alignment issues, discuss the anticipated design parameters, and to finalize strategy for the initial stakeholders meeting.

2.3 Master plan

2.3.1 Consultant shall prepare preliminary master plan documents that will consider the following:

2.3.1.1 Identification of possible land acquisitions for the trail on both sides of Spring Creek;

2.3.1.2 Identification of creek stabilization areas and the recommendation of methods of stabilization that will preserve the existing tree cover;

2.3.1.3 Recommendations for trail routing through Harrington Park, Collin Creek Mall, and connection to the City of Richardson's Trail System beneath the President George Bush Tollway. Recommendations will consider views, vistas, street crossings and necessary trail amenities;

2.3.1.4 Recommendations for trail related items such as aesthetic treatments to culverts, bridges, and storm sewer outlets;

2.3.1.5 Recommendations for consistent designs for guard rails, trail signage and a distance marker system;

2.3.1.6 Recommendations for crossings of 15th Street and for connections to Collin Creek Mall;

2.3.1.7 Recommend location and design of new seating areas and overlooks;

2.3.1.8 Recommend lighting in selected areas;

2.3.1.9 Tree planting recommendations along the trail;

2.3.1.10 Turf recommendations (natives versus ornamentals) including appropriate maintenance approaches for varying zones along the trail;

2.3.2 Consultant shall prepare Master Plan level estimates of project cost.

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EXHIBIT "A" – SCOPE OF SERVICES

- 2.3.3 Consultant shall review the preliminary documents with City Staff for input and shall prepare rendered illustrative plans and enlarged details in sufficient number as required to convey the intent of the recommendations.
- 2.3.4 Consultant will assist the City in conducting an initial meeting with project stakeholders to review the preliminary master plan recommendations and receive additional stakeholder input.
- 2.3.5 Consultant shall consider project stakeholder input and prepare revised preliminary master plan documents and details reflecting stakeholders and City's input. The plans shall also include a phasing plan for implementation of the recommendations.
- 2.3.6 Consultant will assist the City in conducting a second meeting with project stakeholders and members of the Parks Board to review revised preliminary master plan documents and to receive approval to proceed into development of the conceptual plan documents.
- 2.3.7 Deliverables for this portion of the Chisholm Trail Master Plan during this phase shall include:
 - 2.3.7.1 One (1) color "strip map" plot of the project area illustrating recommendations and alternatives for initial reviews
 - 2.3.7.2 One (1) color "strip map" plot of the project area illustrating refined recommendations from input received from the City and project stakeholders.
 - 2.3.7.3 Enlargements and sections as required to convey design intent for recommended modifications to culverts, bridges, bridge rails, railings, signage, mile markers, etc. as outlined in paragraph 2.3.1 above.

2.4 Conceptual Plan

Based on the approved Master Plan Documents and Preliminary Cost Estimate, Consultant shall prepare for approval by the City, a Conceptual Plan document for the master plan that creates a vision of the area from Park Boulevard southward to the Plano Richardson city limit.

- 2.4.1 The conceptual plan will be an illustrative document that will consider those items outlined in 2.3.1.above but will also include the following additional considerations:

EXHIBIT "A" – SCOPE OF SERVICES

- 2.4.1.1 Identification of areas that might be acquired for other special features, amenities, trail connections, and extensions;
 - 2.4.1.2 Potential link to a future adjacent civic facility;
 - 2.4.1.3 Identification of possible land uses and zoning on adjacent properties;
 - 2.4.1.4 Uncovering the portion of Spring Creek that has been buried beneath the Collin Creek Mall parking area, converting it into an amenity, and locating the Chisholm Trail along it.
- 2.4.2 Consultant has allowed for four (4) review meetings with City staff and project stakeholders during the development of the conceptual plan. These meetings include:
- 2.4.2.1 A work session with City staff to review conceptual plan proposals;
 - 2.4.2.2 A meeting with City staff and project stakeholders to review and discuss initial conceptual plan recommendations;
 - 2.4.2.3 A second meeting with City staff and project stakeholders to review revised recommendations from input received during the first stakeholder meeting;
 - 2.4.2.4 A meeting with the Planning and Zoning Commission to review the conceptual plan;
 - 2.4.2.5 Presentation of the plan to City Council
- 2.4.3 Consultant will prepare master plan level estimates of the plan recommendations and suggest a phased strategy for plan implementation.
- 2.4.4 Consultant will prepare a brief narrative of the conceptual plan recommendations.
- 2.4.5 Deliverables include a final color plot "strip map" of the Conceptual Plan as well as electronic files in dwg or pdf format for use by the City.

3.0 LIMITATIONS

The Consultant understands that the following services are not required at this time and have not been provided for as part of this proposal:

- Existing utility mapping and/or adjustments;
- Topographic surveying, boundary surveys, property lines, or easements;
- Creation of field surveyed base plans for Chisholm Trail;

EXHIBIT "A" – SCOPE OF SERVICES

- Wetlands determination and 404 permitting;
- U.S. Army Corps of Engineers permitting;
- FEMA map revisions or permitting;
- Environmental assessment or any additional environmental services;
- Lighting design including electrical services;
- Traffic study;
- Easement and ROW dedication documents;
- Water and sanitary sewer services;
- Geotechnical reports and recommendations will be provided by the Owner;
- Detailed design drawings and construction plans;
- Preparing presentation models or renderings beyond those described in Basic Services;
- Flood studies;
- Preparation of SWPPP plans;
- Inspection of erosion control devices or maintaining erosion control or SWPPP documents during construction are not a part of this agreement.

4.0 ADDITIONAL SERVICES

Additional services must receive written authorization from the City before being performed and will be compensated for as mutually agreed between Consultant and City.

5.0 STATEMENT of JURISDICTION

The Texas Board of Architectural Examiners has jurisdiction over complaints regarding the professional practices of persons registered as landscape architects in Texas.

Texas Board of Architectural Examiners
333 Guadalupe, Suite 2-350
Austin, TX 78701-3942
Phone (512) 305-9000
Fax (512) 305-8900

EXHIBIT "B" - SCHEDULE

Chisholm Trail South: Park Blvd to President George Bush Turnpike Project #5767

Work shall be performed in accordance with the following schedule:

- Consultant receives NTP and begins data collection;
- Initial kick-off meetings will be scheduled to occur within ten (10) days of NTP; Data collection complete within ten (10) days of kick-off meeting;
- Site Analysis / Site Documentation
 - Site visit with city staff – will occur within five (5) days of kick-off meetings; Consultant documents site observations and begins work on opportunities and constraints plan;
 - Completion of O&C plan and site documentation – within fourteen (14) days of site visit. Consultant proceeds into Preliminary master plan phase;
- Master Plan
 - Consultant develops master plan recommendations
 - Initial review of recommendations with City staff – within thirty (30) days of beginning of Master Plan Phase;
 - Initial review of recommendations with project stakeholders and Park board representatives – within fourteen (14) days of initial review with city staff;
 - Consultant receives approval to proceed into Final Master Plan
- Conceptual Plan
 - Consultant incorporates input from master plan into conceptual plan documents, includes brief narrative, and prepares for review with City staff – within thirty (30) days of receiving approval to proceed into conceptual plan phase;
 - Consultant incorporates stakeholder comments and prepares for a second review with project stakeholders – within fourteen (14) days of city staff review;
 - Consultant incorporates staff comments and prepares a presentation for review with project stakeholders – within twenty-one (21) days of initial stakeholder review;
 - Consultant incorporates stakeholder input and prepares for review with P&Z commission – within fourteen (14) days of second stakeholder meeting;
 - Consultant incorporates P&Z input and prepares for review with city council – within fourteen (14) days of second P&Z meeting;
 - All Master Plan deliverables to city staff – within twenty-one (21) days of Council presentation.

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EXHIBIT "C"

NJB Fee Proposal Summary Sheet
Chisholm Trail South: Park Blvd to President George Bush Turnpike
Project #5767

| Task | Chisholm Trail |
|--------------------------------------------|-----------------|
| Basic Services | |
| Data Collection / Base Mapping | \$945 |
| Site Analysis / Documentation | \$2,570 |
| Master Plan | \$8,160 |
| Conceptual Plan | \$11,270 |
| Sub-total Basic Services | \$22,945 |
| Allowances | |
| Project expenses | \$1,126 |
| Sub-consultants | |
| Civil Engineering (MI) | \$5,000 |
| Sub-total Consultants | \$5,000 |
| Total Basic Services and Allowances | \$29,071 |

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EXHIBIT "D"

LANDSCAPE ARCHITECT

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 Architect (hereinafter called "Architect") shall not start work under this contract until the Architect 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 Architect will be granted only after submission to the Purchasing Agent of original, signed certificates of insurance or, alternately, at the City's request, certified copies of the required insurance policies.
- 1.2 All insurance policies required hereunder shall be endorsed to include the following provision: "It is agreed that this policy is not subject to cancellation, non-renewal, material change, or reduction in coverage without first providing the Risk Manager, City of Plano, at least ten (10) days prior written notice."

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

- 1.3 No acceptance and/or approval of any insurance by the City shall be construed as relieving or excusing the Architect 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 Architect'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.

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- 1.5 The Architect 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 Architect 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 Architect 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 Architect, and the Architect 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 Architect. Architect may be required to provide proof of financial ability to cover deductibles, or may be required to post a bond to cover deductibles.

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

- 2.1 The Architect 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 Architect 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.

2.2 Professional Errors and Omissions

The Architect 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

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LANDSCAPE ARCHITECT

City of Plano - Insurance Checklist

("X" means the coverage is required.)

Coverages Required

Limits (Figures Denote Minimums)

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

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

INSURANCE AGENT'S STATEMENT

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

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

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

- 27. Liability policies are (indicate):

OCCURRENCE []

CLAIMS MADE []

Signature

Date

Insurance Agent (Print)

Name of Insured

Date

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EXHIBIT "E"

AFFIDAVIT OF NO PROHIBITED INTEREST

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

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

Name of Contractor

By:

Signature

Print Name

Title

Date

STATE OF TEXAS §
 §
COUNTY OF _____ §

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

Notary Public, State of Texas



**CITY OF PLANO
COUNCIL AGENDA ITEM**

| | | | | | |
|--------------------------------------------------------------------|----------------------------------|------------------------------------|-----------------------------------------|-----------------------------------------|-----------------------------------------|
| CITY SECRETARY'S USE ONLY | | Reviewed by Purchasing | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable | |
| <input type="checkbox"/> Consent | <input type="checkbox"/> Regular | <input type="checkbox"/> Statutory | Reviewed by Budget | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable |
| Council Meeting Date: | 11/13/06 | | Reviewed by Legal | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable |
| Department: | Technology Services | | Initials | Date | |
| Department Head | David Stephens | Executive Director | <i>[Signature]</i> | <i>[Signature]</i> | |
| Dept Signature: | <i>[Signature]</i> | City Manager | <i>[Signature]</i> | <i>[Signature]</i> | |
| Agenda Coordinator (include phone #): Lisa Prunty Ext. 7342 | | | | | |

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

CAPTION

A change order to the contract with Motorola, Inc. increasing the contact by \$69,630 for additional Wireless Backhaul Canopy Coverage, Change Order #2. Contract #RA01-06 (HGAC)

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

| FISCAL YEAR: 06-07 | Prior Year (CIP Only) | Current Year | Future Years | TOTALS |
|----------------------------|--------------------------|-----------------|-----------------|--------------|
| Budget | 0 | 750,000 | 0 | 750,000 |
| Encumbered/Expended Amount | 0 | -674,086 | 0 | -674,086 |
| This Item | 0 | -69,630 | 0 | -69,630 |
| BALANCE | 0 | 6,284 | 0 | 6,284 |

FUND(S): TECHNOLOGY IMPROVEMENT FUND (029-94005)

COMMENTS: Funds are included in the 2006-07 Technology Improvement budget. The remaining balance will be used throughout the year for the extension of the mesh network.

STRATEGIC PLAN GOAL: Additional coverage for the Motorola Wireless Network project relates to the City's Goal of "Service Excellence".

SUMMARY OF ITEM

Technology Services recommends Council approve an expenditure of \$69,630 to Motorola, Inc. through the Houston Galveston Area Council (HGAC) for the purchase of additional Wireless Backhaul Canopy Coverage. Canopy Technology is installed on the City's water towers and due to the difficulty involved with installation on the top of these structures we are proposing a change from the original design to provide a full 360 degree canopy coverage to reduce future installation cost as the network is expanded. The City is authorized to purchase from the Houston Galveston Area Council (HGAC) Contract List pursuant to Section 271 Subchapter D of the Local Government Code, and by doing so satisfies any State Law requiring the local government to seek competitive bids for the items. HGAC# RA01-06.

| | |
|----------------------------------------------------------------------|----------------------------------------------------|
| List of Supporting Documents: Staff memo, Change Order, Agreement | Other Departments, Boards, Commissions or Agencies |
|----------------------------------------------------------------------|----------------------------------------------------|

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Interoffice Memo

Date: 11/1/06
To: David Stephens, Director Technology Services
Cc:
From: Chester M. Helt, Infrastructure Manager
RE: Motorola Change Order No. 2 – Additional Canopy Coverage

We have an ongoing contract with Motorola for the building of a pilot project for their Moto-mesh technology. This contract includes hotspot coverage and a mobility corridor. In addition it includes backhaul provisions using the Motorola Canopy technology. We are installing this canopy technology on the City's water towers at Preston Road, Parkwood, Coit Road, and at the Southeast Industrial water towers. Due to the difficulty involved with the installation of these units on the top of these structures, we are proposing accepting a change order from Motorola to install a full array of the canopy devices. The original design was limited in only installing the canopy units as required to provide the current backhaul requirements. This change order will provide the City with a full array of the canopy units on each of these water towers and will reduce the future costs for installing the remaining units as the network is expanded. The total for change order no. 2 is \$ 69,630.00.

l-2



CHANGE ORDER

[type co# here]

Change Order No. #002

Date: October 26, 2006

Project Name: WIRELESS BACKHAUL

Customer Name: THE CITY OF PLANO

Customer Project Mgr: GLEN GRAY

The purpose of this Change Order is to: *(highlight the key reasons for this Change Order)*

Change order will add appropriate Canopy AP modules to the Preston, Parkwood, Coit and Southeast Industrial water towers to complete the Canopy arrays. This will complete a 360 degree Canopy coverage and will add a total of 12 APs to the current project as described below.

PO Number 103056

Contract Date: 06/27/06

In accordance with the terms and conditions of the contract identified above between The City of Plano, Texas and Motorola, Inc., the following changes are approved:

Contract Price Adjustments

| | |
|------------------------------------------------------------------------------------------------------------------------------|---------------|
| Original Contract Value: | \$ 535,000.00 |
| Previous Change Order amounts for Change Order numbers <input type="text" value="1"/> through <input type="text" value="1"/> | \$75,000.00 |
| This Change Order: | \$ 69,630.00 |
| New Contract Value: | \$679,630.00 |

Completion Date Adjustments

| | |
|-----------------------------------------------------|-----|
| Original Completion Date: | N/A |
| Current Completion Date prior to this Change Order: | N/A |
| New Completion Date: | N/A |

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CHANGE ORDER

[type co# here]

Changes in Equipment: *(additions, deletions or modifications)*
 Add 3 Canopy APs to the Coit Water Tower
 Add 2 Canopy APs to the Parkwood Water Tower
 Add 2 Canopy APs to the Preston Water Tower
 Add 5 Canopy APs to the SE Industrial Water Tower
 Note: 2 additional APs will be installed on the Parkwood Water Tower on the Phase I project.

Changes in Services: *(additions, deletions or modifications)*
 Motorola and Scientel will install, configure, align and test these new canopy units while installing the other backhaul hardware to the water towers..

Schedule Changes: *(describe change or N/A)*
 N/A

Pricing Changes: *(describe change or N/A)*
 N/A

Customer Responsibilities: *(describe change or N/A)*

Payment Schedule for this Change Order:
(describe new payment terms applicable to this change order)
 Net 30 days

Unless amended above, all other terms and conditions of the Contract shall remain in full force. If there are any inconsistencies between the provisions of this Change Order and the provisions of the Contract, the provisions of this Change Order will prevail.

IN WITNESS WHEREOF the parties have executed this Change Order as of the last date signed below.

Motorola, Inc.

By: *Bekky Smart*
 Printed Name: *Bekky SMART*
 Title: *Acct. Manager*
 Date: *10/31/06*

Customer

By: *David Stephens*
 Printed Name: *DAVID STEPHENS*
 Title: *DIRECTOR, TECHNOLOGY SERVICES*
 Date: *10/30/06*

Reviewed by: _____
 Motorola Project Manager

Date: _____

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CHANGE ORDER

[type co# here]

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MOTOROLA

1-800-247-2346

INSTALLATION AGREEMENT

(PLEASE PRINT)

SIC CODE: _____

CUSTOMER NAME: City of Plano

CUSTOMER/AGREEMENT ORDER # P.O. # 103056

DIVISION: Western

ATTN: DAVID STEPHENS

CUSTOMER #:

BILLING ADDRESS: 1520 AVENUE K

BILL TO EQUIP AT TAG #:

CITY / STATE / ZIP: Plano, Texas

CUSTOMER CONTACT: David Stephens

CUSTOMER PHONE #: 972-941-7660

FIXED EQUIP. INSTALLATION LOCATION & DESCRIPTION

CUSTOMER IS RESPONSIBLE FOR OBTAINING PHONE LINES

ARE PHONE LINES REQUIRED?

No

REFERENCE CHANGE ORDER # 002 ATTACHED ADDING 12 IAP'S FOR A 360 DEGREE PATTERN

ADDITIONAL EQUIPMENT ADDED TO PRESTON, PARKWOOD, COIT AND SOUTHEAST INDUSTRIAL WATER TOWERS

MOBILE EQUIPMENT AT CUSTOMERS LOCATION AT SERVICE CENTER NEW EQUIPMENT EXISTING EQUIPMENT

STANDARD SEDAN QUANTITY N/A
PICK-UP TRUCK QUANTITY N/A
HEAVY DUTY TRUCK QUANTITY N/A
POSITIVE GROUND QUANTITY N/A
OTHER QUANTITY N/A

ANTENNA & TOWER INFORMATION-MOUNTING STRUCTURE, LOCATION

REPEATER ANTENNA SITE INFORMATION

- 1 ROOF NORMAL SAND ANTENNA TO BE MOUNTED ON
- 2 GROUND STONEROCK EXISTING STRUCTURE
- 3 OTHER OTHER TYPE _____

IF CUSTOMER OWNED REPEATER/ANTENNA SITE GIVE LOCATION AND NUMBER N/A
IF COMMUNITY REPEATER GIVE NUMBER AND LOCATION N/A

SPLIT SUBCONTRACT: YES NO
(PLEASE SPECIFY SVC CTR NAME(S) EQUIPMENT AND DOLLARS)

SERVICE CENTER:

BECKY SMARTT FOR JOHN MARTIN *Becky Smartt* 972-977-8022
MOTOROLA SERVICE REPRESENTATIVE SIGNATURE

MOTOROLA SERVICE REPRESENTATIVE SIGNATURE

TELEPHONE #

PAGER #

THE CURRENT REVISION OF 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/P.O. #

David Stephens
TITLE

DATE 10/30/06

STIC 330E REV. (6/02)

CRC USE ONLY

GCC SEQ # _____

FINANCIAL APPROVAL _____

LOG CREDIT ISSUED _____

PROCESSOR'S INIT _____

David Stephens

Service Terms and Conditions

Motorola, Inc., through its Commercial, Government, and Industrial Solutions Sector ("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 agrees to provide to Customer either (1) maintenance, support and/or other services under a Motorola Service Agreement, or (2) installation services under a Motorola Installation Agreement.

Section 2 DEFINITIONS AND INTERPRETATION

"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 will take precedence over any cover page, and the cover page will take precedence over any attachments, unless the cover page or attachment specifically states otherwise. "Equipment" means the communication equipment that is specified in the attachments or is subsequently added to this Agreement. "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 will become binding only when accepted in writing by Motorola. The term of this Agreement will begin 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 attachment. At Customer's request, Motorola may also provide additional services at Motorola's then-applicable rates for such 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 such 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 such Equipment will terminate at the end of the month in which Motorola receives such 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 opinion, be properly or economically serviced for any reason including excessive wear, unavailability of parts, the state of technology, or practical infeasibility, Motorola may modify the scope of Services related to such Equipment; remove such Equipment from the Agreement; or increase the price to Service such Equipment.

4.7. Customer must promptly notify Motorola directly 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; 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, magnetic tapes, etc.; 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 multicooper. 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 such 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 such 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 specifically 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 agrees to reimburse Motorola for all property taxes, sales and use taxes, excise taxes, and other taxes or assessments 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 following completion of those Services. In the event of a breach of this warranty, Motorola'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.

0.7

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

This limitation of liability provision shall apply notwithstanding any contrary provision in this Agreement. 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 the previous twelve (12) months of Service provided under this Agreement. **ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT TO THE FULL EXTENT SUCH DAMAGES MAY BE DISCLAIMED BY LAW, 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.** Except for money due upon an open account, no action may be brought for a breach of this Agreement more than one (1) year after the accrual of such cause of action. This limitation of liability will survive the expiration or termination of this Agreement.

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 inadvertent omission of the reference to this Agreement shall not affect its applicability. In no event shall either party be bound by any terms contained in a Customer purchase order, acknowledgment, or other writings unless: (i) such purchase order, acknowledgment, or other writings specifically refer to this Agreement; (ii) clearly indicate the intention of both parties to override and modify this Agreement; and (iii) such purchase order, acknowledgment, or other writings are 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 such information or data to any person, or use such information or data itself for any purpose other than performing its obligations under this Agreement. The obligations set forth in this Section will survive the expiration or termination of this Agreement.

13.2. Unless otherwise agreed in writing, no commercial, financial 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 such 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

During the term of this Agreement and continuing for a period of two (2) years thereafter, Customer will not hire, engage on contract, solicit the employment of, or recommend employment to any third party of any employee of Motorola or its subcontractors without the prior written authorization of Motorola. This provision applies only to those employees of Motorola or its subcontractors who are responsible for rendering services under this Agreement. If this provision is found to be overly broad under applicable law, it shall be modified as necessary to conform to such law.

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 such property, and return it to Motorola upon request. Such 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 governed and 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 such as strikes, material shortages, or acts of God that are beyond that party's reasonable control.

17.5. Motorola may assign its rights and obligations, and may subcontract any portion of its performance, under this Agreement.

17.6. **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.

17.7. 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 such services on a time and materials basis at Motorola's then effective hourly rates.

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**CITY OF PLANO
COUNCIL AGENDA ITEM**

| | | | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|----------------------------------------------------|-----------------------------------------|------------------------------------------------------------------------------------|
| CITY SECRETARY'S USE ONLY | | Reviewed by Purchasing | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable |
| <input type="checkbox"/> Consent | <input type="checkbox"/> Regular | <input type="checkbox"/> Statutory | Reviewed by Budget | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> Not Applicable |
| Council Meeting Date: | 11/13/06 | | Reviewed by Legal <i>MS</i> | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> Not Applicable |
| Department: | Technology Services | | Initials | Date |
| Department Head | David Stephens | Executive Director | <i>MS</i> | 10.31.06 |
| Dept Signature: | <i>David Stephens</i> | City Manager | <i>MS</i> | 10/31/06 |
| Agenda Coordinator (include phone #): Lisa Prunty x-7342 | | | | |
| ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input checked="" type="checkbox"/> OTHER APPROVAL OF ASSIGNMENT | | | | |
| CAPTION | | | | |
| To approve Assignment and Consent from Global Data Systems to Calence, LLC.; and authorizing the City Manager or his designee to execute all necessary documents. | | | | |
| FINANCIAL SUMMARY | | | | |
| <input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP | | | | |
| FISCAL YEAR: | 2005-06 | Prior Year (CIP Only) | Current Year | Future Years |
| Budget | | 0 | 230,000 | 0 |
| Encumbered/Expended Amount | | 0 | -35,058 | 0 |
| This Item | | 0 | -190,000 | 0 |
| BALANCE | | 0 | 4,942 | 0 |
| FUND(S): TECHNOLOGY FUND (062), TECHNOLOGY SERVICES FUND (066) | | | | |
| COMMENTS: Funds are included in the 2005-06 Technology Fund budget(s) for Network Security Upgrades. The balance of funds will be used for other items related to the project. STRATEGIC PLAN GOAL: Upgrades and improvements to network security relates to the City's Goal of "Service Excellence". | | | | |
| SUMMARY OF ITEM | | | | |
| Council approved an expenditure of \$190,000 to Global Data Systems for Netqos Network Management Software on 9/26/06. Global Data Systems has been acquired by Calence, LLC. Assignment and Consent for the existing quote # 09072006-003 and purchase order #362889 is requested. | | | | |
| List of Supporting Documents: Memo,Quote | | Other Departments, Boards, Commissions or Agencies | | |
| | | | | |

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ASSIGNMENT AND CONSENT

On September 26, 2006, Global Data Systems, Inc. ("GDS"), GDS Data Systems of Texas, LLC ("GDS-Texas"), and GD Data Systems of Houston, Inc. ("GDS-Houston", and together with GDS and GDS-Texas, the "GDS Companies") entered into a Non-Binding Letter of Intent with Calence, LLC ("Calence") to sell certain assets of GDS-Texas and GDS-Houston to Calence (the "Transaction"). The parties currently are in the process of negotiating the final terms of the Transaction. In contemplation of the anticipated Transaction, and even though the GDS Companies have no obligation to do so, the GDS Companies desire to assign **Quote #09072006-003** and **Purchase Order # 362889 both in the amount of \$190,000.00** (collectively, the "Contract") with **City of Plano** ("Client") to Calence, effective immediately. Calence is willing to accept such assignment, and Client is willing to consent to such assignment, on the terms and conditions sent forth herein.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The GDS Companies hereby assign all of their respective rights, interests, and obligations in the Contract (and in any proceeds thereof) to Calence (the "Assignment"), provided that such Assignment shall not result in a novation or substitution of contracting parties that would extinguish the liability of any of the GDS Companies for continued performance, and that the GDS Companies shall remain absolutely and unconditionally liable to Client for Calence's performance of the Contract notwithstanding such Assignment.

2. The GDS Companies shall, at their sole expense, defend, indemnify and hold harmless Calence and any of its parents, affiliates and subsidiaries from any and all third party claims, lawsuits, actions, demands, losses or causes of action, damages, benefits, judgments, settlements, costs (including reasonable attorneys' fees), expenses, taxes, contributions, penalties or fines (each, a "Claim") arising under or in connection with the Contract, except for any Claims that arise from Calence's gross negligence or willful misconduct. Calence shall have the right to assume and control the response, defense, or settlement of any such Claim. The GDS Companies may participate in such defense and settlement at their own cost through their own counsel.

3. Client hereby consents to the Assignment.

Executed effective as of October ____, 2006.

GLOBAL DATA SYSTEMS, INC.

By _____
Name _____
Its _____

CALENCE, LLC

By _____
Name _____
Its _____

GDS DATA SYSTEMS OF TEXAS, LLC

By _____
Name _____
Its _____

CITY OF PLANO

By _____
Name _____
Its _____

GD DATA SYSTEMS OF HOUSTON, INC.

By _____
Name _____
Its _____

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**CITY OF PLANO
COUNCIL AGENDA ITEM**

| | | | | | |
|---------------------------------------|----------------------------------|------------------------------------|-----------------------------------------|-----------------------------------------|-----------------------------------------|
| CITY SECRETARY'S USE ONLY | | Reviewed by Purchasing | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable | |
| <input type="checkbox"/> Consent | <input type="checkbox"/> Regular | <input type="checkbox"/> Statutory | Reviewed by Budget | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable |
| Council Meeting Date: | 11/13/06 | | Reviewed by Legal <i>MS</i> | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable |
| Department: | Technology Services | | Initials | Date | |
| Department Head | David Stephens | Executive Director | <i>[Signature]</i> | 12-24-06 | |
| Dept Signature: | <i>David Stephens</i> | City Manager | <i>[Signature]</i> | 12/24/06 | |
| Agenda Coordinator (include phone #): | | Lisa Prunty, Ext. 7342 | | | |

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

CAPTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING AN AGREEMENT BETWEEN THE CITY OF PLANO AND SUNGARD H.T.E. INC., A SOLE SOURCE VENDOR, FOR THE MAINTENANCE AND SUPPORT OF H.T.E. SOFTWARE APPLICATIONS; AUTHORIZING THEIR EXECUTION BY THE CITY MANAGER OR, IN HIS ABSENCE, AN EXECUTIVE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

| FISCAL YEAR: 2006-07 | Prior Year (CIP Only) | Current Year | Future Years | TOTALS |
|-----------------------------|--------------------------|------------------|-----------------|------------------|
| Budget | 0 | 2,510,000 | 0 | 2,510,000 |
| Encumbered/Expended Amount | 0 | 0 | 0 | 0 |
| This Item | 0 | -100,536 | 0 | -100,536 |
| BALANCE | 0 | 2,409,464 | 0 | 2,409,464 |

FUND(S): TECHNOLOGY SERVICES FUND (066)

COMMENTS: FUNDS ARE INCLUDED IN THE 2006-07 TECHNOLOGY SERVICES APPROVED BUDGET. THE REMAINING BALANCE WILL BE USED THROUGHOUT THE YEAR FOR OTHER MAINTENANCE AGREEMENTS.

STRATEGIC PLAN GOAL: MAINTENANCE AND SOFTWARE SUPPORT AGREEMENTS RELATE TO THE CITY'S GOAL OF "SERVICE EXCELLENCE".

SUMMARY OF ITEM

Technology Services recommends Council approve an agreement for software support services with Sungard H.T.E., Inc., for a sum of \$100,536.22. Maintenance and support for the Sungard H.T.E. software applications is only available from one source, Sungard H.T.E., Inc. and therefore, is exempt from competitive bid as provided for in Section 252.022(a) (7) of the Texas Local Government Code.

| | |
|--------------------------------------------------------------------------------------|-----------------------------------------------------------|
| List of Supporting Documents: Resolution; Staff memo; Support Services Agreements | Other Departments, Boards, Commissions or Agencies N/A |
|--------------------------------------------------------------------------------------|-----------------------------------------------------------|

Memorandum

Date: October 18, 2006
To: David Stephens, Director of Technology Services
From: Danny Housewright, Systems and Programming Manager
Subject: Annual Maintenance for H.T.E. Applications

We have received the annual renewal of maintenance and support for the H.T.E. software applications that various City Departments use. These applications are essential to the business operations of Customer and Utility Services, Building Inspections, Property Standards, and Environmental Waste Services. Inquiry access to information stored in the H.T.E. applications is used by a number of departments across the city. Therefore, the continuation of maintenance and support of these applications is very important to the City of Plano.

This maintenance and support can come only from H.T.E. since they do not allow any third party companies to maintain or modify any code. In fact, our software license agreements would become invalid if the City or any other source made any changes to H.T.E. programs. Therefore, H.T.E. is a sole source provider of these services.

Annual maintenance and support with H.T.E. is necessary in order to receive help in resolving issues with the H.T.E. software applications and to continue to receive upgrades and enhancements to the H.T.E. products.

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RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING AGREEMENT BETWEEN THE CITY OF PLANO AND SUNGARD HTE, INC., A SOLE SOURCE VENDOR, FOR THE MAINTENANCE AND SUPPORT OF H.T.E. SOFTWARE APPLICATIONS; AUTHORIZING THEIR EXECUTION BY THE CITY MANAGER OR, IN HIS ABSENCE, AN EXECUTIVE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Plano has been presented with renewal maintenance agreements from SunGard HTE, Inc. for maintenance and support of H.T.E. software applications used by various City Departments in an amount not to exceed \$100,536.22, substantial copy of which is attached hereto and incorporated herein as Exhibit "A" (hereinafter called "Agreement"); and

WHEREAS, the City Council finds that the maintenance and support for the H.T.E. software applications is only available from one source, SunGard HTE, Inc., and, therefore, is exempt from competitive bid as provided for in Section 252.022(a)(7) of the Texas Local Government Code; and

WHEREAS, upon full review and consideration of the Agreements and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the City Manager or, IN HIS ABSENCE, an Executive Director should be authorized to execute them on behalf of the City of Plano.

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

Section I. The City Council of the City of Plano, Texas, hereby finds and determines that maintenance and support for the H.T.E. software applications used by various City departments is available from only one source, and, therefore, exempt from competitive bid or proposal as provided for in Section 252.022(a)(7) of the Texas Local Government Code.

Section II. The Agreements, having been reviewed by the City Council of the City of Plano and found to be acceptable and to be in the best interest of the City of Plano and its citizens, are hereby in all things approved.

Section III. The City Manager or, in his absence, an Executive Director, is hereby authorized to execute the Agreements and all other documents in connection

therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreements attached hereto as Exhibit "A".

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

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

Pat Evans, MAYOR

ATTEST:

Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

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**SUNGARD HTE INC. SUPPORT SERVICES AGREEMENT
CONTRACT NO. PLAN-20061100**

This SunGard HTE Inc. Support Services Agreement ("Agreement") is entered into by and between **SunGard HTE Inc. (SunGard HTE)**, a Florida Corporation, with its principal place of business at: 1000 Business Center Drive, Lake Mary, Florida 32746;

and
City of Plano
(Customer),
with its principal place of business at
P.O. Box 860279
Plano, TX 75086-0279

1.

| Schedule of Licensed Programs Covered Under this Agreement | Support Services Fee for October 1, 2006 - September 30, 2007 |
|---------------------------------------------------------------|---------------------------------------------------------------------|
| Qrep End User - CG (4 users) | \$ 1,160.00 |
| LG Viewer Web - LV (20 units) | \$ 2,324.40 |
| Qrep Administrator - CG | \$ 290.00 |
| Qrep End User - CG (6 users) | \$ 1,740.00 |
| Qrep Administrator - CG (2 users) | \$ 580.00 |
| Qre End User - CG (2 users) | \$ 580.00 |
| Work Orders/ Facilites Management - WF | \$ 15,550.00 |
| Qrep Catalogs - CJ (CX, LX, CR, WF) (4 units) | \$ 1,160.00 |
| Retrofit Modification Option - MOD (36) | \$ 3,600.00 |
| Qrep Catalogs - CJ (BP) | \$ 290.00 |
| Document Management Service - DX | \$ 960.00 |
| Contact Management - CZ | \$ 11,090.00 |
| Click2Gov Core Module - K1 | \$ 1,240.00 |
| Click2Gov Building Permits - K3 | \$ 3,440.00 |
| Click2Gov BP Wireless - KB | \$ 2,670.00 |
| CIS Voice Reponse Selectron - V2 | \$ 1,750.00 |
| Delinquency Call Out Listing Interface - DL | \$ 580.00 |
| CIX IVR Credit Card Interface - CY | \$ 580.00 |
| GTG GIS Software - G1 (15 units) | \$ 2,520.15 |
| | November 1, 2006 - September 30, 2007 |
| BP Voice Response Selectron - BV | \$ 1,494.17 |
| NAVI - Building Permits - BPJ | \$ 8,350.83 |
| NAVI - Code Enforcement - CEJ | \$ 5,087.50 |
| NAVI - Cash Receipts - CRJ | \$ 4,885.83 |
| NAVI - Customer Information Systems - CXJ | \$ 23,934.17 |
| NAVI - Land/Parcel Management - LXJ | \$ 5,179.17 |
| | |
| Payment Received (HUG Credit) | \$ (500.00) |
| | |
| Total | \$ 100,536.22 |

2. **TERM.** The Term of this Agreement shall be per the above schedule ("Initial Term"). This Agreement can be renewed for successive one (1) year terms by payment of the then-current annual Support Services Fee. SunGard HTE will invoice Customer when the Support Services Fees are due.

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3. **SUPPORT SERVICES.** For so long as Customer has purchased Support Services and is current in its payments to SunGard HTE, Customer shall be entitled to receive, and SunGard HTE agrees to provide, the following services which are hereinafter referred to as "Support Services" for the Licensed Programs listed in Paragraph 1 hereof:

3.1 **Program Fix Service.** Customer shall promptly report to SunGard HTE any errors or defects in the Licensed Program's which prevents the Licensed Programs from operating substantially in accordance with their documentation and shall further provide such information as may be required by SunGard HTE to replicate such errors or defects. Customer agrees to provide dial-in access to Customer's computer in order for SunGard HTE to investigate reported errors or defects. SunGard HTE will address any such replicable errors or defects with an effort commensurate with their severity and will deliver to Customer a remedial release or workaround as it becomes available. In the event the problem Customer reported as an error or defect was in fact not in the Licensed Programs, then Customer shall pay SunGard HTE, at SunGard HTE's then current list price therefor, for time spent as a result of Customer's report.

3.2 **Software Upgrades and Updates.** Customer shall receive, at no additional cost, upgrades and updates to the Licensed Programs which are generally made available at no cost by SunGard HTE to customers who have purchased Support Services. Customer shall receive one original of any upgrade or update to the Licensed Programs delivered hereunder in electronic form or on media, according to the general form of distribution implemented by SunGard HTE. Customer agrees that any upgrades or updates provided by SunGard HTE shall be held by Customer upon all of the terms and shall be subject to all of the conditions contained in the license agreement granting Customer the right to use the Licensed Programs.

3.3 **Telephone Support.** SunGard HTE shall make available a toll free telephone support line, twenty-four (24) hours a day, seven (7) days per week, for use by Customer's representatives who shall have received training on the Licensed Programs and who shall be relatively proficient in the operation of the Licensed Programs.

3.4 **Exclusions.** Support Services do not include on-site services nor Licensed Programs that are not at the latest release level or the level immediately prior to the latest release, or for which Customer has not installed all distributed corrective code, or Licensed Programs that have been modified or customized, or that have been damaged by negligence, misuse, use with inappropriate software or equipment or by other external causes.

4. **SUPPORT SERVICES FEES.**

4.1 Support Services Fees for the Initial Term hereof are as provided in Paragraph 1, and are due and payable upon execution of this Agreement.

4.2 Support Services Fees for Renewal Terms are due and payable prior to the first day of the Renewal Term, and are subject to change upon each renewal date.

4.3 Support Services Fees stated herein do not include sales (or equivalent) taxes. Taxes due, if any, will be added to Customer's invoice.

4.4 Support Services Fees are not refundable in whole or in part, except in the event of Customer's termination for cause as provided in Paragraph 9.3 hereof.

5. **MODIFICATION MAINTENANCE SERVICES.** For so long as Customer has purchased Modification Maintenance Services and is current in its payments to HTE under this Agreement, Customer shall be entitled to receive, and HTE agrees to provide, the following service:

5.1 **Modified Program Compatibility.** For each non Licensed Program in library HTEMOD that was written by HTE or any Licensed Program that has had custom modifications performed by HTE at the customer's request, HTE will perform all necessary programming to ensure that the program is compatible with each new software release, version, or Program Temporary Fix made available by HTE.

6. **MODIFICATION MAINTENANCE FEES.**

6.1 Modification Maintenance Fees are determined on an annual basis. This determination is based upon the number of modified programs prior to each renewal period multiplied by the then current rate charged per program.

6.2 Modification Maintenance Fees are not refundable in whole or in part.

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7. **WARRANTIES AND REMEDIES.** HTE warrants that the Support Services provided under this Agreement shall be performed professionally, in a workmanlike manner and by employees with appropriate skills and expertise. Except as provided in this paragraph, CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, IN THE EVENT HTE BREACHES THIS WARRANTY, IS TO TERMINATE THIS AGREEMENT PURSUANT TO THE TERMS OF PARAGRAPH 9 BELOW.
8. **LIMITATION OF LIABILITY.** SunGard HTE's liability to Customer for any losses or damages, whether direct or indirect, arising out of this Agreement, shall not exceed the Support Services Fees paid for the Initial Term or Renewal Term then in effect. In no event shall SunGard HTE be liable for any indirect, special, or consequential damages, or economic loss in connection with, or arising out of, this Agreement.
9. **TERMINATION.** This Agreement may be terminated as follows:
 - 9.1 Upon Customer's failure to renew this Agreement at the expiration of the Initial Term or any Renewal Term.
 - 9.2 By SunGard HTE, if Customer fails to pay Support Services Fees on or before the due date, then this Agreement shall terminate if non-payment continues for more than ten (10) days after receipt of notice in writing from SunGard HTE to Customer of such non-payment setting forth the sum then due and how such sum was determined.
 - 9.3 Except as provided in Paragraph 9.2 hereof, by the non-breaching party, in the event this Agreement is breached by a party and that party fails to cure the breach within thirty (30) days after having been given written notice thereof.
 - 9.4 If Customer terminates this Agreement and subsequently desires to reinstate Support Services, SunGard HTE's then-current policy with regard to reinstatement shall apply.
10. **GENERAL TERMS. Choice of Law/Dispute Resolution.** This Agreement shall be governed by laws of the State of Florida. Prior to either party commencing any legal action under this Agreement, the parties agree to try in good faith to settle any dispute amicably between them. If a dispute has not been settled after forty-five (45) days of good-faith negotiations, then either party may commence legal action against the other. Each party hereto agrees to submit to the personal jurisdiction and venue of the state and/or federal courts in or for Seminole County, Florida for resolution of all disputes in connection with this Agreement.

Binding Agreement. The individual signing this Agreement for Customer warrants that he/she has been duly authorized to bind Customer to all rights, duties, remedies, obligations and responsibilities hereunder and that the Agreement is a valid and binding obligation of Customer.

Assignment. This Agreement and the rights, title, and interest herein, may not be assigned or transferred by Customer without the prior written consent of SunGard HTE, which consent may be withheld. SunGard HTE may assign its rights, title and interest herein by providing prior written notice to Customer.

Successors Bound. The terms and conditions of this Agreement shall extend and inure to the benefit and be binding on the respective successors and permitted assigns of Customer and SunGard HTE.

Force Majeure. Neither party shall be held responsible for failure to fulfill its obligations under this Agreement due to causes beyond its reasonable control.

Severability. If any term or provision of this Agreement or the application thereof to any entity, person or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to entities, persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each remaining term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Notices. Any notice provided for herein shall be in writing and sent by registered or certified mail, postage prepaid, addressed to the party for which it is intended at the address set forth on the first page of the Agreement or to such other address as either party shall from time to time indicate in writing. Any notice given pursuant to this paragraph shall be deemed given when received or five (5) calendar days from the date of the mailing, whichever occurs first.

Headings. Numbered topical headings, articles, paragraphs, subparagraphs or titles in this Agreement are inserted for the convenience of organization and reference and are not intended to affect the interpretation or construction of the terms hereof.

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Non-Hiring Statement. During the term of this Agreement and for a period of twenty-four (24) months after the termination of this Agreement, the Customer may not offer to hire or in any way employ or compensate any of the employees of SunGard HTE or persons who have been employed by SunGard HTE within the immediate past twenty-four (24) months without prior written consent of SunGard HTE.

Non-waiver. Waiver of any breach or default hereunder shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or of another provision of this Agreement.

Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to Support Services, and there are no representations, conditions, warranties, or collateral agreements, expressed or implied, statutory or otherwise, with respect to this Agreement other than as contained herein. This Agreement supersedes all previous communications, representations or agreements, either written or oral, between the parties. This Agreement may not be modified or supplemented in any way except by written agreement signed by persons authorized to sign agreements on behalf of Customer and of SunGard HTE. Preprinted conditions which vary from the terms and conditions herein, and which are contained in any purchase order or other document submitted hereafter by Customer, are of no force or effect.

The parties, each acting with due authority, have executed this Agreement by setting forth their respective signatures:

CITY OF PLANO, TX

SUNGARD HTE INC.

Authorized Signature

Thomas Huber

Tom Huber Authorized Signature
President and CEO SunGard HTE Inc.

Print Name & Title

Print Name & Title

Date

10/13/06

Date

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**CITY OF PLANO
COUNCIL AGENDA ITEM**

| | | | | | |
|---------------------------------------|----------------------------------|------------------------------------|------------------------------|-----------------------------------------|-----------------------------------------|
| CITY SECRETARY'S USE ONLY | | Reviewed by Purchasing | <input type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable | |
| <input type="checkbox"/> Consent | <input type="checkbox"/> Regular | <input type="checkbox"/> Statutory | Reviewed by Budget | <input type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable |
| Council Meeting Date: | 11/13/06 | | Reviewed by Legal | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable |
| Department: | Technology Services | | (initials) | Date | |
| Department Head | David Stephens | | Executive Director | (initials) | 11.6.06 |
| Dept Signature: | (signature) | | City Manager | (initials) | 11.6.06 |
| Agenda Coordinator (include phone #): | | Lisa Prunty ext. 7342 | | | |

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

CAPTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN AGREEMENT BY AND BETWEEN COMMVAULT SYSTEMS, INC. AND THE CITY OF PLANO; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR, IN HIS ABSENCE, AN EXECUTIVE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

| FISCAL YEAR: 2006-07 | Prior Year (CIP Only) | Current Year | Future Years | TOTALS |
|-----------------------------|--------------------------|------------------|-----------------|------------------|
| Budget | 0 | 2,523,440 | 0 | 2,523,440 |
| Encumbered/Expended Amount | 0 | -132,586 | 0 | -132,586 |
| This Item | 0 | -51,490 | 0 | -51,490 |
| BALANCE | 0 | 2,339,364 | 0 | 2,339,364 |

FUND(S): TECHNOLOGY SERVICES FUND (066)

COMMENTS: Funds are included in the 2006-07 Technology Services budget for the maintenance agreement in the amount of \$51,490. The remaining balance will be used throughout the year for other maintenance agreements.

STRATEGIC PLAN GOAL: Maintenance agreements relate to the City's Goal of "Service Excellence".

SUMMARY OF ITEM

Technology Services recommends Council approve an Agreement for software support services with CommVault Systems, Inc. for a sum of \$51,490. Maintenance and support for the CommVault Management Software applications is only available from one source, CommVault Systems, Inc. and therefore, is exempt from competitive bid as provided for in Section 252.022(a) (7) of the Texas Local Government Code.

| | |
|----------------------------------------------------------------------|----------------------------------------------------|
| List of Supporting Documents: Resolution; Memo; Support Agreement | Other Departments, Boards, Commissions or Agencies |
|----------------------------------------------------------------------|----------------------------------------------------|

0-1

Interoffice Memo

Date: 11/01/06
To: David Stephens, Director Technology Services
Cc:
From: Chester M. Helt, Infrastructure Manager
RE: Commvault Annual Software Maintenance

We are recommending that the attached Commvault Maintenance be acquired as listed in the attached document from Commvault. This maintenance is for a one year term and provides us on-site support for our Commvault Software should we have any software problems for a total price of \$ 51,490.00.

We have also attached the sole source letter from Commvault stating that the City may only purchase this maintenance directly from Commvault.

0-2

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN AGREEMENT BY AND BETWEEN COMMVAULT SYSTEMS, INC. AND THE CITY OF PLANO; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR, IN HIS ABSENCE, AN EXECUTIVE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council has been presented a proposed agreement for an enterprise network backup software support agreement between CommVault Systems, Inc., and the City of Plano, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and,

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

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

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

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

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

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

Pat Evans, MAYOR

ATTEST:

Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

RES-APPROVAL

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CommVault®
 Quotation for City of Plano
 Plano, TX
 October 19, 2006

Maintenance Agreement

Licensed Products CommCell ID = F51C4 Production

- 1 CommServe StorageMgr
- 4 CSS-CommVault Snapshot-Windows
- 3 DA-Active Directory
- 2 DA-Exch Mailbox
- 4 DA-Image (Windows)
- 1 DA-Linux Server
- 1 DA-SharePoint Portal
- 35 DA-SQL
- 154 DA-Windows Server
- 3 Drive Management Software
- 4 Library Management Software
- 3 MediaAgent (Windows)
- 8 SAN MediaAgent (Windows)
- 1 Shared Library Mgmt Software
- 8 Shared Storage with iDDs
- 8 SNMP Extension
- 1 SNMP Integration

Licensed Products CommCell ID = F51C5 eCommerce

- 1 CommServe StorageMgr
- 6 DA-SQL
- 31 DA-Windows Server
- 1 Drive Management Software
- 1 Library Management Software
- 1 MediaAgent (Windows)

Licensed Products CommCell ID = F5F3F

- 1 CommServe StorageMgr
- 1 DA-Active Directory
- 1 DA-SharePoint Portal
- 2 DA-SQL
- 7 DA-Windows Server
- 1 Drive Management Software
- 1 Library Management Software
- 1 MediaAgent (Windows)

Pricing

| | |
|------------------------------------------------------------------------------|--------------------|
| Galaxy Software Premier Support Coverage: (24 hours a day, 7 days a week) | \$54,609.00 |
| Credit for Overlapping Maintenance: | -\$3,119.00 |
| TOTAL AMOUNT DUE FOR PREMIER COVERAGE: | \$51,490.00 |

Term Date: 12/28/2006 - 12/27/2007

SUBJECT TO SALES TAX, IF APPLICABLE: PLEASE REMIT UPON RECEIVING INVOICE

CommVault®
 2 Crescent Place, Building D
 Oceanport, NJ 07757

Service Contracts Department
 servicecontracts@commvault.com
 P – (877) 780-3077, select option 3
 F – (732) 870-4690

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SUPPORT AGREEMENT

Customer Name: City of Plano

Customer Address: 1520 Avenue K
Plano, TX 75074

Customer Contact: Gary Pedersen

Agreement Number: CITY-GXY-PLA1

Term Dates: 12/28/2006 - 12/27/2007

This Support Agreement consists of the Support Terms and Conditions attached hereto and the Schedules set forth below (together the "Agreement"):

- Schedule 1- Product(s)
- Schedule 2- Support Offering(s)

By signing below, Customer acknowledges that it has read, understands and agrees to be bound by all terms and conditions contained in this Agreement.

| | |
|---------------------|-------------------------------------------------------------------------------------|
| <u>Customer</u> | <u>CommVault®</u> |
| |  |
| <u>by</u> | <u>by</u> |
| <u>printed name</u> | <u>Ricardo Maltez</u> |
| <u>title</u> | <u>Service Contract Manager</u> |
| <u>date</u> | <u>10/19/2006</u> |

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Exhibit A to Resolution _____
COMMVault®
SUPPORT AGREEMENT

SCHEDULE 1

| |
|------------------------------------------------------|
| Customer Name: City of Plano CITY-GXY-PLA1 |
|------------------------------------------------------|

Supported Products and Charges

| Start Date | Quantity | Description | CCID # | Annual Charge | |
|------------|-----------------------------|------------------------------------|------------------|--------------------|----------|
| 12/28/2006 | 1 | CommServe StorageMgr | F51C4 Production | \$45,651.00 | |
| | 4 | CSS-CommVault Snapshot-Windows | | | |
| | 3 | DA-Active Directory | | | |
| | 2 | DA-Exch Mailbox | | | |
| | 4 | DA-Image (Windows) | | | |
| | 1 | DA-Linux Server | | | |
| | 1 | DA-SharePoint Portal | | | |
| | 35 | DA-SQL | | | |
| | 154 | DA-Windows Server | | | |
| | 3 | Drive Management Software | | | |
| | 4 | Library Management Software | | | |
| | 3 | MediaAgent (Windows) | | | |
| | 8 | SAN MediaAgent (Windows) | | | |
| | 1 | Shared Library Mgmt Software | | | |
| | 8 | Shared Storage with iDDs | | | |
| | 8 | SNMP Extension | | | |
| | 1 | SNMP Integration | | | |
| | 1 | CommServe StorageMgr | F51C5 eCommerce | | 6,091.00 |
| | 6 | DA-SQL | | | |
| | 31 | DA-Windows Server | | | |
| | 1 | Drive Management Software | | | |
| | 1 | Library Management Software | | | |
| | 1 | MediaAgent (Windows) | | | |
| | 1 | CommServe StorageMgr | F5F3F | | 2,867.00 |
| 1 | DA-Active Directory | | | | |
| 1 | DA-SharePoint Portal | | | | |
| 2 | DA-SQL | | | | |
| 7 | DA-Windows Server | | | | |
| 1 | Drive Management Software | | | | |
| 1 | Library Management Software | | | | |
| 1 | MediaAgent (Windows) | | | | |
| | | Credit for Overlapping Maintenance | | -\$3,119.00 | |
| | Total Items=241 | | | \$51,490.00 | |

The initial term of the above services shall start on 12/28/2006 and end on 12/27/2007.

| | | |
|--------------------------------------------------------------------|--------------------------------------|-------------|
| Total Annual Contract Charge = Total of All Pages | Total Amount Due: | \$51,490.00 |
| | <i>(Due upon receipt of invoice)</i> | |
| Out of Coverage Rates: \$300.00 per Hour - *2-Hour Minimum* | | |

Customer Contact at Equipment Locations:

| NAME/TITLE | PHONE, FAX, EMAIL | ADDRESS |
|---------------|---------------------------------|----------------------------------|
| Gary Pedersen | 9729417649 Garyped@Plano.gov | 1520 Avenue K Plano, TX 75074 |

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**COMMVault®
SUPPORT AGREEMENT**

SCHEDULE 2

| |
|------------------------------------------------------|
| Customer Name: City of Plano CITY-GXY-PLA1 |
|------------------------------------------------------|

Select Services and Coverage Times for Products Included on This Sheet:

| | |
|------------------|-----------------------------------------------------------------|
| COVERAGE: | |
| A | Standard (7a.m – 7p.m, Monday through Friday, no holidays) |
| B X | Premier (24 hours, 7 days, Monday through Sunday, all holidays) |
| C | Other: _____ |

CommVault® Contacts

| | | |
|-------------------------------------------------------------------|------------------------------------------------------------------------------------------------|-------------------------------------|
| Designated Support Center Address: | All correspondence from customer in reference to this agreement shall be addressed to: | |
| CommVault® 2 Crescent Place, Building D Oceanport, NJ 07757 | CommVault® 2 Crescent Place, Building D Oceanport, NJ 07757 Attention: Ricardo Maltez | |
| Customer Call Center Telephone Number (877) 780-3077 | Email servicecontracts@commvault.com | Fax Number (732) 870-4690 |
| | Telephone Number (732) 870 - 4040 | |

Service Support Contacts

| | <u>Name</u> | <u>Office Telephone Number</u> |
|--------------------------------------|-----------------|--------------------------------|
| Contract Representative | Lisa Taylor | (732) 870 - 4040 |
| Contract Manager | Ricardo Maltez | (732) 870 - 4098 |
| License Manager | Rodney Pennella | (732) 870 - 4051 |
| | | |

0.7

| | | | |
|-----------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|----------|------------------|
|  | Remit Payment To: CommVault® ATTN: FINANCE DEPARTMENT 2 CRESCENT PLACE, BLD B OCEANPORT, NJ 07757-0900 (732) 870-4000 | INVOICE: | CITY-GXY-PLA1 |
| | | DATE: | October 19, 2006 |
| | | | |

PRO FORMA MAINTENANCE RENEWAL

Bill TO: City of Plano
 1520 Avenue K
 Plano, TX 75074

PLEASE DIRECT ALL QUESTIONS TO:
 Lisa Taylor
 C/O COMMVAULT®
 2 CRESCENT PLACE, BLDG B.
 OCEANPORT, NJ 07757
 (732) 870 - 4040
 SERVICECONTRACTS@COMMVAULT.COM

| MTCE TYPE | END USER | CCID(s) | RENEWAL TERM | | Renewal Amount |
|--------------------------------------------------|---------------|-------------------------|--------------|------------|--------------------|
| | | | FROM | TO | |
| PREMIER | City of Plano | F51C4 F51C5 F5F3F | 12/28/2006 | 12/27/2007 | \$51,490.00 |
| TOTAL DUE FOR PREMIER MAINTENANCE RENEWAL | | | | | \$51,490.00 |

THANK YOU FOR YOUR BUSINESS

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CommVault®
2 Crescent Place
Oceanport, N.J. 07757-0900
Phone: (732) 870-4000
Fax: (732) 870-4592

Credit Card Authorization

Company Name: _____

Company Address: _____

Phone Number: _____

Fax Number: _____

I hereby authorize CommVault® to charge my credit card the following amount:

Invoice Number: _____

Inv Total: _____ Sales Tax: _____ Shipping & Handling: _____

Total Charge To Credit Card: _____

Credit Card Number: _____

Exp. Date: _____

Print Name: _____

Cardholder or authorized user

Signature: _____

Cardholder or authorized user

THANK YOU FOR YOUR BUSINESS

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**CITY OF PLANO
COUNCIL AGENDA ITEM**

| | | | | | |
|---------------------------------------|----------------------------------|------------------------------------|-----------------------------------------|-----------------------------------------|-----------------------------------------|
| CITY SECRETARY'S USE ONLY | | Reviewed by Purchasing | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable | |
| <input type="checkbox"/> Consent | <input type="checkbox"/> Regular | <input type="checkbox"/> Statutory | Reviewed by Budget <i>C.S.</i> | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable |
| Council Meeting Date: | 11/13/06 | | Reviewed by Legal <i>AM</i> | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable |
| Department: | Purchasing | | Initials | Date | |
| Department Head | Mike Ryan | <i>[Signature]</i> | Executive Director | | |
| Dept Signature: | OHS - CJ Howard | <i>[Signature]</i> | City Manager | <i>[Signature]</i> | |
| Agenda Coordinator (include phone #): | Glenna Hayes x 7074 | | | | |

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

CAPTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, RATIFYING THE TERMS AND CONDITIONS OF AN AGREEMENT BY AND BETWEEN DATABASE TECHNOLOGIES INC. AND THE CITY OF PLANO FOR NEEDS ASSESSMENT/EVALUATION REPORT OF COLLIN COUNTY'S PUBLIC SAFETY RESOURCES ABILITY TO RESPOND TO A CHEMICAL, BIOLOGICAL, RADIOLOGICAL OR NUCLEAR EVENT; APPROVING ITS EXECUTION BY THE CITY MANAGER OR IN HIS ABSENCE, AN EXECUTIVE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

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

FUND(s):

COMMENTS: THIS ITEM HAS NO FISCAL IMPACT AT THIS TIME. THE EXPENDITURE FOR THE ITEM WAS MADE IN FY 2003-04. THIS ITEM SERVES ONLY TO RATIFY PREVIOUS EXPENDITURES.

STRATEGIC PLAN GOAL: Software subscription licensing purchases relate to the City's goal of "Service Excellence."

SUMMARY OF ITEM

Ratification of previous expense for a needs assessment/evaluation report of Collin County's public safety resources ability to respond to a chemical, biological, radiological or nuclear event, performed by Database Technologies Inc. (B103-03)

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

P-1



DATE: September 6, 2006

TO: Mayor and Members of Council
Thomas H. Muehlenbeck, City Manager

FROM: Bruce D. Glasscock, Executive Director

SUBJECT: Ratification of Expenditure

On September 22, 2003 the City Council approved a \$42,685 contract with Database Technology, Inc to complete a county-wide needs and capabilities assessment of the County's combined public safety resources and the ability to respond to chemical, biological, radiological and/or nuclear events.

The agenda item indicated the City of Plano would be reimbursed from remaining funds in a Department of Justice Grant and Collin County would reimburse the City for \$22,685. The Department of Justice through a grant reimbursed the City \$21,000. The County was only able to obtain \$15,000 in grant funding to cover their share of the cost.

This left a \$6,685 shortfall which the City had to cover. Since this amount is 25% over the original contract authorization Council is requested to ratify this expenditure.

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RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, RATIFYING THE TERMS AND CONDITIONS OF AN AGREEMENT BY AND BETWEEN DATABASE TECHNOLOGIES INC. AND THE CITY OF PLANO FOR NEEDS ASSESSMENT/EVALUATION REPORT OF COLLIN COUNTY'S PUBLIC SAFETY RESOURCES ABILITY TO RESPOND TO A CHEMICAL, BIOLOGICAL, RADIOLOGICAL OR NUCLEAR EVENT; APPROVING ITS EXECUTION BY THE CITY MANAGER OR IN HIS ABSENCE, AN EXECUTIVE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on September 22, 2003 the City Council was originally presented an agreement by and between Database Technologies Inc. and the City of Plano, and approved a \$42,685.00 expenditure to complete a county-wide needs and capabilities assessment of the County's combined public safety resources and the ability to respond to chemical, biological, radiological and/or nuclear events; and

WHEREAS, the agenda item indicated the City of Plano would be reimbursed from remaining funds in a Department of Justice Grant and Collin County would reimburse the City for \$22,685.00. The DOJ through a grant reimbursed the City in the amount of \$21,000.00, and the County was only able to obtain \$15,000.00 in grant funding to cover their share of the cost. This left a \$6,685.00 shortfall which the City had to cover. Since this amount is 25% over the original contract authorization, Council is requested to ratify this expenditure; 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 ratified and 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 interests of the City of Plano and its citizens, is hereby in all things ratified and execution by the City Manager, or in his absence, an Executive Director, on behalf of the City of Plano is hereby approved.

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

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

Pat Evans, MAYOR

ATTEST:

Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

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**CITY OF PLANO
COUNCIL AGENDA ITEM**

| | | | | | |
|---------------------------------------|----------------------------------|------------------------------------|-----------------------------------------|-----------------------------------------|-----------------------------------------|
| CITY SECRETARY'S USE ONLY | | Reviewed by Purchasing | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable | |
| <input type="checkbox"/> Consent | <input type="checkbox"/> Regular | <input type="checkbox"/> Statutory | Reviewed by Budget | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable |
| Council Meeting Date: 11.13.06 | | Reviewed by Legal <i>wb</i> | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable | |
| Department: | Library Administration | | | Initials | Date |
| Department Head | Joyce Baumbach | | | Executive Director | <i>[Signature]</i> 10-30-06 |
| Dept Signature: | <i>Joyce Baumbach</i> | | | City Manager | <i>[Signature]</i> 10/30/06 |
| Agenda Coordinator (include phone #): | | Kim Kreidler 972.769.4356 | | | |

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

CAPTION

Authorizing the purchase of a service agreement from 3M Library Systems, suppliers of maintenance for 3M equipment in the amount of \$44,734.49 for the Plano Public Library System; authorizing the City Manager or his designee to take such action and execute such documents as necessary to effectuate the purchase approved herein; and providing an effective date.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

| FISCAL YEAR: 2006-07 | Prior Year (CIP Only) | Current Year | Future Years | TOTALS |
|-----------------------------|--------------------------|-----------------|-----------------|---------|
| Budget | 0 | 123,000 | 0 | 123,000 |
| Encumbered/Expended Amount | 0 | 0 | 0 | 0 |
| This Item | 0 | -44,734 | 0 | -44,734 |
| BALANCE | 0 | 78,266 | 0 | 78,266 |

FUND(S): GENERAL FUND

COMMENTS: Funding for this item is included in the approved FY 2006-07 Operating Budget. Remaining funds will be used for other maintenance agreements.

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

SUMMARY OF ITEM

Approval of this service agreement with 3M Library Systems is requested in the amount of \$44,734.49. 3M Safety and Security Systems is the sole supplier of equipment to work with existing security systems at the Plano Public Libraries. Sole source purchases are exempt from the competitive bid process as provided in V.T.C.A., Local Government Code, Section 252.022 (a) (7).

| | |
|---------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------|
| List of Supporting Documents: 1. Sole Source Letter From 3M Dated 10/03/06 1. Affidavit of No Prohibited Interest Dated 10/9/06 | Other Departments, Boards, Commissions or Agencies |
|---------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------|

Q-1

3M Library Systems
3M Center, Building 46-6E-37
St. Paul, MN 55144-1000
800-328-0067
Fax: 888-263-1916
www.3m.com/library



October 3, 2006

Haggard/Plano Public Library
Attn: Mary Ann Dunnavant
2501 COIT ROAD
Plano, TX 75075

Re: Service Agreement: US38157

Dear Mary Ann,

This letter is in reference to your inquiry regarding 3M as the sole authorized service provider for the 3M Library detection equipment located at Plano Public Library System Facilities.

There are no companies authorized to provide service other than 3M's authorized service provider.

Thank you for your continued business with 3M. If I can be of further assistance, please feel free to contact me the telephone number listed below.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kelly L. Castillo'.

Kelly L. Castillo
Contracts Administrator
1-800-328-0067, opt 1, opt 2
Fax: 888-263-1916

Q-2

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, AUTHORIZING THE PURCHASE OF A SERVICE AGREEMENT FROM 3M LIBRARY SYSTEMS, SUPPLIERS OF MAINTENANCE FOR 3M EQUIPMENT IN THE AMOUNT OF \$44,734.49 FOR THE PLANO PUBLIC LIBRARY SYSTEM; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO TAKE SUCH ACTION AND EXECUTE SUCH DOCUMENTS AS NECESSARY TO EFFECTUATE THE PURCHASE APPROVED HEREIN; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Plano, Texas desires to purchase a service agreement (See Exhibit "A") for self-check machines, security gates and check-in workstations previously purchased and installed by 3M Library Systems for the City of Plano, Plano Public Library System; and

WHEREAS, 3M Library Systems is the only company that provides service agreements for 3M equipment (see Exhibit "B"); and

WHEREAS, 3M Library Systems has provided a signed "Affidavit of No Prohibited Interest (see Exhibit "C") in compliance with the City of Plano Code of Ordinances Ch.2, art. IV, section 2-103, and; Section 11.02, City Charter of Plano; and

WHEREAS, the City Council is of the opinion that the services are available only from one source, 3M Library Systems, and therefore the purchase is exempt from competitive bid as provided for in V.T.C.A., Local Government Code, Section 252.022 (a) (7); and

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

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

Section I. The City Council hereby finds and determines that 3M Library Systems is the sole source for the maintenance of the self-check machines, check-in workstations and security gates to be purchased by the City, and thus, the

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purchase of such equipment is exempt from competitive bid as provided for in V.T.C.A., Local Government Code, Section 252.022 (a) (7).

Section II. The City Manager or his designee is hereby authorized to take such action and execute such documents as necessary to effectuate the purchase of the service agreement not to exceed the amount of \$44,734.49 from 3M Library Services, which is the sole source supplier of such services.

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

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

Pat Evans, MAYOR

ATTEST:

Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

Diane Wetherbee, CITY ATTORNEY

Q-4

3M Library Systems
3M Center
Building 42-6E-37
St. Paul, MN 55144-1000
800-328-0067
www.3M.com/library



SERVICE AGREEMENT EXPIRATION NOTICE

October 04, 2006

Service Agreement: US38157
Service Agreement Expiration Date: November 6, 2006

3M Account # : HAS0727

PLANO PUBLIC LIBRARY
Attn: KAREN FARRELL
HAGGARD BRANCH
2501 COIT ROAD
PLANO TX 75075-3712

Dear KAREN,

Does your library have funds budgeted for emergencies? Most libraries don't.

That's why I'm writing you about your 3M Service Agreement. Your coverage will expire on the date listed above and your 3M Library Systems equipment will no longer be covered. So if your systems ever need repair, your library will somehow have to find the funds to cover it.

Complete equipment coverage

3M's high technology equipment is extremely complex. And even though great care goes into every product we build, it's impossible to manufacture a system that is 100% reliable for as long as you own it. That's why there is not a smarter investment than a 3M Service Agreement.

Our Service Agreement covers virtually all labor, parts and any other equipment modifications necessary to get - and keep - your systems working.

In short, we take care of practically everything. No matter what the problem, or where you are in the United States.

Same day telephone response

We typically give a telephone response on the same day you call. Even if you call "after hours", we will try to get back to you that day. What's more, we normally have a technician at your site within 12 working hours.

No expensive surprises

No one knows your 3M equipment better than our own 3M service providers. They are available to you, of course, without a 3M Service Agreement.

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3M Library Systems
3M Center
Building 42-6E-37
St. Paul, MN 55144-1000
800-328-0067
www.3M.com/library

Our rates are \$200 per hour plus a callout charge of \$285 to \$385 depending on your service zones. You will also be charged the cost of any necessary replacement parts. So you can see that just a single service call could more than cover the cost of a whole years Service Agreement coverage. Is it really worth it to take a chance?

Renewing is easy

Give yourself some peace of mind and renew your 3M Service Agreement today. Just fax or mail a renewal purchase order to the number or address indicated below. Or use your Visa or MasterCard (just call the number below for information on doing this). We can guarantee your renewal price for only 30 days beyond the date on this notice, make sure you renew soon!

Sincerely,

Service Sales Representative
Telephone: 800-328-0067, Opt 1, Opt 2
Fax: 888-263-1916

Return to: 3M Library Systems Contracts
Attn: Contract Administrator
PO Box 33900
St. Paul, MN 55133-3900

P.S. If someone else is responsible for responding to this notice, please forward this letter to them! Thank You!

3M Library Systems
 3M Center
 Building 42-6E-37
 St. Paul, MN 55144-1000
 800-328-0067
 www.3M.com/library

3M Product(s) Located at:

PLANO PUBLIC LIBRARY
 MARIBELLE DAVIS BRANCH
 7501 INDEPENDENCE PKWY
 PLANO TX 75025

3M Acct #: PBW3775

| Model | Model Type | Serial ID | Start Date | End Date | Amount |
|------------------|------------|-----------|------------|----------|------------|
| Detection System | 3802BC | 3823862 | 11/7/06 | 11/6/07 | \$1,331.00 |
| Selfcheck | 6210 | 6211289 | 11/7/06 | 11/6/07 | \$3,512.00 |
| Software | 3174 | 6211289 | 11/7/06 | 11/6/07 | \$0.00 |
| Software | 3174 | 6211677 | 11/7/06 | 11/6/07 | \$0.00 |
| Selfcheck | 6210 | 6211677 | 11/7/06 | 11/6/07 | \$3,512.00 |
| Workstation | 995 | 950444 | 11/7/06 | 11/6/07 | \$721.00 |
| Workstation | 995 | 951281 | 11/7/06 | 11/6/07 | \$721.00 |

3M Product(s) Located at:

PLANO PUBLIC LIBRARY
 CHRISTOPHER PARR BRANCH
 6200 WINDHAVN PKWY

3M Acct #: PCG6916

| Model | Model Type | Serial ID | Start Date | End Date | Amount |
|------------------|------------|-----------|------------|----------|------------|
| Detection System | 3802BC | 3826214 | 11/7/06 | 11/6/07 | \$1,331.00 |
| Selfcheck | 6210 | 6210404 | 11/7/06 | 11/6/07 | \$3,512.00 |
| Software | 3173 | 6210404 | 11/7/06 | 11/6/07 | \$0.00 |
| Software | 3225 | 6420040 | 11/23/06 | 11/6/07 | \$0.00 |
| Selfcheck | 6420F | 6420040 | 11/23/06 | 11/6/07 | \$1,472.49 |
| Workstation | 995 | 950939 | 11/7/06 | 11/6/07 | \$721.00 |

Q-8

3M Library Systems
 3M Center
 Building 42-6E-37
 St. Paul, MN 55144-1000
 800-328-0067
 www.3M.com/library

3M Product(s) Located at: PLANO PUBLIC LIBRARY
 HARRINGTON BRANCH
 1501 18TH ST
 3M Acct #: RST6977 PLANO TX 75074-6001

| Model | Model Type | Serial ID | Start Date | End Date | Amount |
|------------------|------------|-----------|------------|----------|------------|
| Detection System | 3802DM | 3820386 | 11/7/06 | 11/6/07 | \$1,331.00 |
| Selfcheck | 6210 | 6211171 | 11/7/06 | 11/6/07 | \$3,512.00 |
| Software | 3174 | 6211171 | 11/7/06 | 11/6/07 | \$0.00 |
| Selfcheck | 6210 | 6211984 | 11/7/06 | 11/6/07 | \$3,512.00 |
| Software | 3174 | 6211984 | 11/7/06 | 11/6/07 | \$0.00 |
| Workstation | 995 | 950019 | 11/7/06 | 11/6/07 | \$721.00 |

3M Product(s) Located at: PLANO PUBLIC LIBRARY
 SCHIMELPFENIG BRANCH
 5024 CUSTER RD
 3M Acct #: SBQ0170 PLANO TX 75023

| Model | Model Type | Serial ID | Start Date | End Date | Amount |
|------------------|------------|-----------|------------|----------|------------|
| Detection System | 3802DM | 3820345 | 11/7/06 | 11/6/07 | \$1,331.00 |
| Selfcheck | 6210 | 6211288 | 11/7/06 | 11/6/07 | \$3,512.00 |
| Software | 3174 | 6211288 | 11/7/06 | 11/6/07 | \$0.00 |
| Selfcheck | 6210 | 6211602 | 11/7/06 | 11/6/07 | \$3,512.00 |

Q-9

3M Library Systems
3M Center
Building 42-6E-37
St. Paul, MN 55144-1000
800-328-0067
www.3M.com/library

3M Product(s) Located at:

PLANO PUBLIC LIBRARY
SCHIMELPFENIG BRANCH
5024 CUSTER RD
PLANO TX 75023

3M Acct #: SBQ0170

| | | | | | |
|-------------|------|---------|---------|---------|----------|
| | 3174 | | | | |
| Software | | 6211602 | 11/7/06 | 11/6/07 | \$0.00 |
| | 995 | | | | |
| Workstation | | 950290 | 11/7/06 | 11/6/07 | \$721.00 |

TOTAL \$44,734.49

Please Add Applicable Tax: \$
Payment Terms are "Net 30"

Notes:

8/23/06 REVISED QUOTE - CONSOLIDATED US39638 EFFECTIVE 11/23/06.

Q-10

3M Library Systems
 3M Center
 Building 42-6E-37
 St. Paul, MN 55144-1000
 800-328-0067
 www.3M.com/library

Terms and Conditions

WHAT WE WILL DO:

In consideration of payment of the Service Agreement price, 3M will:

HARDWARE: furnish labor and replacement parts necessary to maintain the Equipment specified in this Service Agreement in proper operating condition during the term of this Agreement, provided the Equipment is installed as authorized by 3M and used as directed. This Agreement covers Equipment failure during normal usage. 3M agrees to provide:

- On-site remedial maintenance during On-Site Coverage Hours (8:00AM – 5:00 PM Local Time) when 3M is notified that the Equipment is not in good working order. 3M will provide a toll-free telephone number for Customer to place, and 3M will receive, Equipment maintenance service calls twenty-four (24) hours per day, seven (7) days per Week.

- All labor, service parts and Equipment modifications 3M deems necessary to maintain the Equipment in good working order as specified when the equipment was originally purchased. All service parts will be furnished on an exchange basis and will be new parts or parts of equal quality. For certain Equipment, 3M reserves the right to replace the entire unit with new equipment or equipment of equal quality when 3M determines that replacement is more economical than on-site repair. All Equipment and service parts removed for replacement become the property of 3M.

SOFTWARE: furnish over-the-phone software support and remote troubleshooting of the 3M Software specified in this Agreement, provided that the 3M Software is installed and used as directed by 3M. 3M agrees to provide:

- All software configuration modifications and updates 3M deems necessary to maintain the 3M Software in good working order.

- A toll-free telephone number for Customer to place, and 3M to receive, software support calls. Over-the-phone software support calls may be placed twenty-four (24) hours per day, seven (7) days per week. Calls will be addressed during 3M Software Support Coverage Hours (7:00 AM – 6:00PM Central Time).

WHAT IS NOT COVERED:

The basic maintenance fee does not include, and 3M is not obligated to repair damage/failure caused by:

HARDWARE: (i) failure of Customer to provide, during the entire term of this Agreement and while the Equipment is in use, a proper operating environment and supply of power as prescribed by 3M; (ii) accident; (iii) Acts of God, including but not limited to fire, flood, water, wind and lightning; (iv) neglect, abuse or misuse of the Equipment; (v) failure of Customer to follow 3M's published operating instructions; (vi) modification, service or repair of the Equipment by other than 3M authorized personnel; (vii) use of Equipment for purposes other than the purpose for which it was designed; (viii) painting or refinishing the Equipment; (ix) removal/ relocation of the Equipment; (x) replacement of broken or damaged cabinetry; to include items such as lattices, base covers, book check covers, etc.; (xi) electrical work external to the Equipment; (xii) cosmetic restoration (e.g., filling of holes in floor or walls, plugging or wire run openings, removal of tape residue, etc.) after removal or relocation of the Equipment for any reason; (xiii) restoration of the Equipment performance when it has been degraded by placement of unauthorized interference sources within the affected range of said Equipment; (xiv) service requests related to use of markers (strips/tags) other than those manufactured by 3M, (xv) replacement of components to give the equipment capabilities beyond which 3M deems necessary to maintain the equipment's operation as originally purchased.

SOFTWARE: (i) modification, or repair of the 3M Software by other than 3M authorized personnel; (ii) use of the 3M Software for purposes other than the purpose for which it was designed; (iii) virus / hacker activity; and (iv) Non-3M Software related updates and upgrades including, but not limited to, Operating System, Anti-Virus, Intrusion Detection software updates and upgrades.

RENEWAL: This Agreement is NOT automatically renewable. If a renewal agreement is offered by 3M, the Agreement price quoted will reflect the age of the product and the service costs at the time of renewal.

ENTIRE AGREEMENT: This instrument sets forth the entire agreement between the parties, and no representation, promise or condition not contained herein shall modify these terms whether made prior to or subsequent to the execution of this Agreement.

3M Safety and Security Systems Division
 3M Center, Building 225-4N-14
 St. Paul, MN 55144-1000
 www.3M.com/library

Printed in U.S.A.

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 78-8123-7221-3 Rev 3

Q-2

3M Library Systems
3M Center, Building 46-6E-37
St. Paul, MN 55144-1000
800-328-0067
Fax: 888-263-1916
www.3m.com/library



October 3, 2006

Haggard/Plano Public Library
Attn: Mary Ann Dunnavant
2501 COIT ROAD
Plano, TX 75075

Re: Service Agreement: US38157

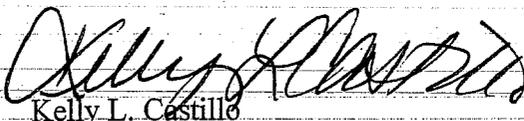
Dear Mary Ann,

This letter is in reference to your inquiry regarding 3M as the sole authorized service provider for the 3M Library detection equipment located at Plano Public Library System Facilities.

There are no companies authorized to provide service other than 3M's authorized service provider.

Thank you for your continued business with 3M. If I can be of further assistance, please feel free to contact me the telephone number listed below.

Sincerely,



Kelly L. Castillo
Contracts Administrator
1-800-328-0067, opt 1, opt 2
Fax: 888-263-1916

Q-13

AFFIDAVIT OF NO PROHIBITED INTEREST

3M represents, to the best of its knowledge, that no officer or employee of the City of Plano, Texas has or will have during the term of this contract a prohibited interest, as that is defined in City of Plano Charter section 11.02 and the City of Plano's Code of Conduct, in 3M Company.

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.

3M Company

By: Othella Suggs
(Signature)

Othella SUGGS
(Print Name)

Senior Paralegal
(Title)

Date: 10/9/06

STATE OF MINNESOTA §

COUNTY OF RAMSEY §

SUBSCRIBED AND SWORN TO before me this 9th day of

October, 2006

Catherine Leclair
Notary Public in and for the State of ~~Texas~~

Minnesota



Q-14

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING AND AUTHORIZING THE REFUNDS OF PROPERTY TAX OVERPAYMENTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 31.11 of the Texas Property Tax Code authorizes refunds of certain payments of taxes upon application to the City; and

WHEREAS, under said Section 31.11 of the Texas Property Tax Code, refunds must be presented to the governing body of the taxing unit for approval; and

WHEREAS, the City Council has been presented a list of tax payments made, a copy of which is attached hereto, made a part hereof and marked Attachment "A", which payments are requested to be refunded because such payments were erroneous or excessive; and

WHEREAS, upon full review and consideration of the above, and all matters attendant and related thereto, the City Council is of the opinion that the tax payments should be refunded.

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

Section I. The City Council of the City of Plano, Texas, finds and determines that the tax payments listed in Attachment "A" were paid erroneously or were in excess of taxes due and shall be refunded in accordance with Section 31.11 of the Texas Property Tax Code.

Section II. The Tax Assessor/Collector for the City of Plano, Texas, or her designee, is hereby authorized to take the necessary action to effectuate the refunds approved under this Resolution.

R-2

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

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

Pat Evans, MAYOR

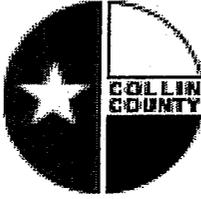
ATTEST:

Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

A-3



**KENNETH L. MAUN
TAX ASSESSOR COLLECTOR**

COLLIN COUNTY
1800 N. GRAVES ST., STE 170
P.O. Box 8006

McKinney, TX 75070-8006

(972) 547-5020

METRO (972) 424-1460 ext. 5020

FAX (972) 547-5053

Email: taxassessor@co.collin.tx.us

RECEIVED

OCT 27 2006

UTILITY SERVICES DEPT.

October 24, 2006

Plano City
Jean Spencer
P.O. Box 860358
Plano, TX 75086-0358

Dear Ms. Spencer:

Please place a request for approval of the following "Overpayment Refund Listing" on the agenda for the next Plano City Meeting. The amount of refunds requested for overpayment listing's is: **\$5.45**

Each listing and the amounts are as follows:

| | | |
|--------|--------|---------|
| OPAP#1 | | OPAP#8 |
| OPAP#2 | | OPAP#9 |
| OPAP#3 | \$5.45 | OPAP#10 |
| OPAP#4 | | OPAP#11 |
| OPAP#5 | | OPAP#12 |
| OPAP#6 | | OPAP#13 |
| OPAP#7 | | OPAP#14 |

The listings represent refunds caused by adjustments made by Collin County Central Appraisal District. All requests for refunds of ad valorem taxes are substantiated by documentation that is available upon request.

Please notify our office upon Council approval for that we may issue and mail the checks.

If you have any questions, please let me know.

Sincerely,

Kenneth L. Maun
Tax Assessor Collector

KLM:br
Enclosure

12-4



**CITY OF PLANO
COUNCIL AGENDA ITEM**

| | | | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|----------------------------------------------------|------------------------------|---------------------------------------------------------------------------------|
| CITY SECRETARY'S USE ONLY | | Reviewed by Purchasing | <input type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable |
| <input type="checkbox"/> Consent | <input type="checkbox"/> Regular | <input type="checkbox"/> Statutory | Reviewed by Budget <i>KR</i> | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> Not Applicable |
| Council Meeting Date: | 11/13/06 | | Reviewed by Legal <i>AB</i> | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> Not Applicable |
| Department: | Budget | | Initials | Date |
| Department Head | Karen Rhodes | | Executive Director | |
| Dept Signature: | <i>Karen M. Rhodes</i> | | City Manager | <i>[Signature]</i> 11/13/06 |
| Agenda Coordinator (include phone #): Anita Bell #7194 | | | | |
| ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input checked="" type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER | | | | |
| CAPTION | | | | |
| A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, AMENDING RESOLUTION 2005-8-12(R), SECTION IV, TO PERMIT LOANS TO BE MADE AVAILABLE TO PARTICIPANTS UNDER THE 457 DEFERRED COMPENSATION PLAN; AND PROVIDING AN EFFECTIVE DATE. | | | | |
| FINANCIAL SUMMARY | | | | |
| <input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP | | | | |
| FISCAL YEAR: | Prior Year (CIP Only) | Current Year | Future Years | TOTALS |
| Budget | 0 | 0 | 0 | 0 |
| Encumbered/Expended Amount | 0 | 0 | 0 | 0 |
| This Item | 0 | 0 | 0 | 0 |
| BALANCE | 0 | 0 | 0 | 0 |
| FUND(s): | | | | |
| COMMENTS: This item has no fiscal impact. | | | | |
| SUMMARY OF ITEM | | | | |
| This amendment will allow participants to borrow from their 457 Deferred Compensation account pursuant to the terms and conditions of the Plan. | | | | |
| List of Supporting Documents: | | Other Departments, Boards, Commissions or Agencies | | |
| | | | | |

A-1

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, AMENDING THE ICMA-RC DEFERRED COMPENSATION PLAN AS ORIGINALLY ADOPTED BY RESOLUTION 2005-8-12(R) TO AMEND SECTION IV AND ALLOW THE PLAN TO PERMIT LOANS TO PARTICIPANTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the establishment of a Deferred Compensation Plan through ICMA Retirement Corporation was adopted by City Council on August 22, 2005; and

WHEREAS, the Employer has determined that the Deferred Compensation Plan administered through ICMA-RC should now be allowed to permit loans to its participants; and

WHEREAS, upon full review and consideration of the above, and all matters attendant and related thereto, the City Council is of the opinion that loans to participants should be allowed.

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

Section I. The City Council of the City of Plano, Texas, finds and determines that Section IV of Resolution 2005-8-12(R) should be amended and allow the plan to permit loans to participants.

Section II. The City Manager, or his designee, shall be the coordinator for this program; and is authorized to execute all necessary agreements with ICMA Retirements Corporation incidental to the administration of the Plan. Administration of the loan program will be assigned to ICMA Retirement Corporation.

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

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

Pat Evans, MAYOR

ATTEST:

Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

A-2



CITY OF PLANO COUNCIL AGENDA ITEM

| | | | | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|----------------------------------|----------------------------------------------------|-----------------------------------------|----------------------------------------------------|
| CITY SECRETARY'S USE ONLY | | | Reviewed by Purchasing | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Not Applicable |
| <input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory | | | Reviewed by Budget | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable |
| Council Meeting Date: | | 11/13/06 | Reviewed by Legal <i>WS</i> | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable |
| Department: | Engineering | | Initials | Date | |
| Department Head | Alan L. Upchurch | | Executive Director | <i>[Signature]</i> 11-3-06 | |
| Dept Signature: | <i>[Signature]</i> | | City Manager | <i>[Signature]</i> 11/3/06 | |
| Agenda Coordinator (include phone #): | | | Irene Pegues (7198) <i>[Signature]</i> | | |
| ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input checked="" type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER | | | | | |
| CAPTION | | | | | |
| To approve the terms and conditions of an Interlocal Agreement by and between the City of Plano and Collin County, Texas, for the Widening of Plano Parkway from Dallas North Tollroad to Park Boulevard. | | | | | |
| FINANCIAL SUMMARY | | | | | |
| <input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP | | | | | |
| FISCAL YEAR: | 2006-07 | Prior Year (CIP Only) | Current Year | Future Years | TOTALS |
| Budget | 0 | 0 | 0 | 0 | 0 |
| Encumbered/Expended Amount | 0 | 0 | 0 | 0 | 0 |
| This Item | 0 | 1,409,613 | 0 | 0 | 1,409,613 |
| BALANCE | 0 | 1,409,613 | 0 | 0 | 1,409,613 |
| FUND(S): STREET IMPROVEMENT CIP | | | | | |
| COMMENTS: This item allows the City to enter into an Interlocal Agreement with Collin County for the Plano Parkway – Tollway to Park project. If this request is approved, Collin County will remit to the City \$1,409,613 for widening of Plano Parkway – Dallas North Tollway to Park Boulevard. | | | | | |
| STRATEGIC PLAN GOAL: Road widening relates to the City's Goal of Safe, Efficient Travel. | | | | | |
| SUMMARY OF ITEM | | | | | |
| This agreement provides for Collin County to remit to the City the sum of \$1,409,613.00 for the Widening of Plano Parkway from Dallas North Tollroad to Park Boulevard. The County funding is being reallocated to this project from savings from four other projects - Hedgcoxe, Jupiter and two Tollroad Service Road projects. Half of the County funds will be provided after a notice to proceed is issued, the remaining half when the project is half completed. These funds were allocated from the 1999 Collin County Bond Program. | | | | | |
| List of Supporting Documents: | | | Other Departments, Boards, Commissions or Agencies | | |
| Location Map | | | N/A | | |

2-1

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN INTERLOCAL COOPERATION AGREEMENT BY AND BETWEEN THE CITY OF PLANO AND COLLIN COUNTY, TEXAS, PROVIDING TERMS AND CONDITIONS FOR THE WIDENING OF PLANO PARKWAY FROM DALLAS NORTH TOLLROAD TO PARK BOULEVARD; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER, OR IN HIS ABSENCE AN EXECUTIVE DIRECTOR; 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 by and between the City of Plano, Texas, and Collin County, Texas, providing terms and conditions for the Widening of Plano Parkway from Dallas North Tollroad to Park Boulevard, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and

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

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

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

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

t-2

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

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

Pat Evans, MAYOR

ATTEST:

Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

t-3

**INTERLOCAL AGREEMENT
BETWEEN COLLIN COUNTY AND THE CITY OF PLANO
CONCERNING THE WIDENING OF PLANO PARKWAY
FROM DALLAS NORTH TOLLROAD TO PARK BOULEVARD**

1999 BOND PROJECTS #99-68 AND #99-148

WHEREAS, the County of Collin, Texas ("County"), and the City of Plano, Texas ("City"), desire to enter into an agreement concerning the Widening of Plano Parkway from Dallas North Tollroad to Park Boulevard (the "Project"), in Plano, Collin County, Texas; and

WHEREAS, the 1999 Collin County Bond Program includes the widening of Hedgcoxe Road from Custer to Preston, Project #99-148, with County allocation of \$2,482,000.00. The total project cost is \$3,132,867.73, and the County's 50% participation is \$1,566,433.86; thus leaving \$915,566.14 available for other projects; and

WHEREAS, the 1999 Collin County Bond Program also includes the widening of Jupiter Road, from north of Spring Creek Parkway to Timberbrook Drive, and Los Rios Boulevard, from Jupiter Road east to Morton Vale, Project #99-68, with a County allocation of \$1,408,000.00. The total project cost is \$2,701,834.84, and the County's 50% participation is \$1,350,917.42; thus leaving \$57,082.58 available for other projects; and

WHEREAS, the 1999 Collin County Bond Program includes the widening of Midway Road from Plano Parkway to Spring Creek Parkway, Project #99-63, with a County allocation of \$1,591,000.00. The total commitment by the County is \$1,300,000.00; thus leaving \$291,000.00 for other projects; and

WHEREAS, the 1999 Collin County Bond Program includes the widening of the Tollroad Service Roads from Parker Road to Headquarters Drive, with a total County allocation of \$1,782,000.00. The total commitment by the County is \$1,170,017.39; thus leaving \$611,982.61 for other projects; and

WHEREAS, the County agrees with the City's proposal to reallocate the County's remaining allocation for Hedgcoxe Road (\$915,566.00), Jupiter Road (\$57,082.00), Midway Road (\$291,000.00) and the Tollroad Service Road project (\$145,965.00) to the widening of Plano Parkway from Dallas North Tollroad to Park Boulevard, for a total County participation of \$1,409,613.00; and

WHEREAS, the Interlocal Cooperation Act (Texas Government Code Chapter 791) authorizes any local government to contract with one or more local governments to perform governmental functions and services under the terms of the Act; and

WHEREAS, the City and County have determined that the improvements may be constructed most economically by implementing this agreement.

NOW, THEREFORE, this agreement is made and entered into by the County and the City upon and for the mutual consideration stated herein.

t-4

WITNESSETH:

ARTICLE I.

The City shall arrange to construct the widening of Plano Parkway to a six-lane divided thoroughfare from Dallas North Tollroad to Park Boulevard. The project will widen Plano Parkway to a six-lane divided thoroughfare a total distance of approximately one mile. The improvements shall also include construction of underground storm sewers as part of the road improvements. All improvements shall be designed to meet or exceed the current Collin County design standards and shall be constructed in accordance with the plans and specifications approved by the City.

ARTICLE II.

The City shall prepare plans and specifications for the improvements, accept bids and award a contract to construct the improvements and administer the construction contract. In all such activities, the City shall comply with all state statutory requirements. The City shall provide the County with a copy of the executed construction contract(s) for the Project.

ARTICLE III.

The City will acquire one± acres of real property in the vicinity of the improvements for use as right-of-way.

ARTICLE IV.

The City estimates the total actual cost of the project to be \$2,819,297.00. The County agrees to fund one half of the total cost to construct the improvements in an amount not to exceed \$1,409,613.00. The County shall remit 50 percent of this amount, \$704,806.50, to the City within thirty (30) days after the City issues a Notice to Proceed to the lowest responsible bidder and the City requests payment. The County will remit the remaining 50 percent within thirty (30) days after receipt of notice from the City that the Project is 50 percent complete. Following completion of the Project, the City shall provide a final accounting of expenditures for the Project. If the actual cost to construct the Project is less than the estimated amount set forth herein, the City shall remit the County 50 percent of the difference between the estimated cost and the actual cost. The Commissioners' Court may revise this payment schedule based on the progress of the Project. The "total cost of the Project" shall include land acquisition, engineering, construction, inspection, testing, street lighting, and construction administration costs including contingencies.

ARTICLE V.

If the total cost to construct the Project exceeds the amount estimated in Article IV above, the County and City shall share the excess costs equally; however, the County's participation in the Project shall not exceed \$1,409,613.00.

ARTICLE VI.

There remains an unallocated amount of \$348,333.89 from the Tollroad Service Road Project. The City and County agree that the \$348,333.89 balance will be applied to another City/County project to be mutually agreed upon at a later date.

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ARTICLE VII.

The City shall prepare for the County an itemized statement specifying Project costs that have been incurred to date and submit detailed Project cost and progress reports every thirty (30) days until Project completion.

ARTICLE VIII.

The City and County agree that the party paying for the performance of governmental functions or services shall make those payments only from current revenues legally available to the paying party.

ARTICLE IX.

INDEMNIFICATION. To the extent allowed by law, each party agrees to release, defend, indemnify, and hold harmless the other (and its officers, agents, and employees) from and against all claims or causes of action for injuries (including death), property damages (including loss of use), and any other losses, demands, suits, judgments and costs, including reasonable attorneys' fees and expenses, in any way arising out of, related to, or resulting from its performance under this agreement, or caused by its negligent acts or omissions (or those of its respective officers, agents, employees, or any other third parties for whom it is legally responsible) in connection with performing this agreement.

ARTICLE X.

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

ARTICLE 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 by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation having the force and effect of the law, the remaining portions of the agreement shall be enforced as if the invalid provision had never been included.

ARTICLE XII.

ENTIRE AGREEMENT. This agreement embodies the entire agreement between the parties and may only be modified in writing executed by both parties.

ARTICLE XIII.

SUCCESSORS AND ASSIGNS. This agreement shall be binding upon the parties hereto, their successors, heirs, personal representatives and assigns. Neither party will assign or transfer an interest in this agreement without the written consent of the other party.

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ARTICLE XIV.

IMMUNITY. It is expressly understood and agreed that, in the execution of this agreement, neither party waives, nor shall be deemed hereby to have waived any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and 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 shall not create any rights in parties not signatories hereto.

ARTICLE XV.

TERM. This agreement shall be effective upon execution by both parties and shall continue in effect annually until final acceptance of the Project. This agreement shall automatically renew annually during this period.

APPROVED AS TO FORM:

COUNTY OF COLLIN, TEXAS

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: Ron Harris
Title: County Judge
Date: _____

Executed on this _____ date of _____, 2006, by the County of Collin, pursuant to Commissioners' Court Order No. _____

ATTEST:

CITY OF PLANO, TEXAS

By: _____
Name: Elaine Bealke
Title: City Secretary
Date: _____

By: _____
Name: Thomas H. Muehlenbeck
Title: City Manager
Date: _____

Executed on behalf of the City of Plano pursuant to City Council Resolution No. _____

APPROVED AS TO FORM:

By: Diane Wetherbee
Name: Diane Wetherbee
Title: City Attorney
Date: 11/13/06

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**CITY OF PLANO
COUNCIL AGENDA ITEM**

| | | | | | |
|------------------------------------------------------------------|----------------------------------|------------------------------------|-----------------------------------------|----------------------------------------------------|-----------------------------------------|
| -CITY SECRETARY'S USE ONLY | | Reviewed by Purchasing | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Not Applicable | |
| <input type="checkbox"/> Consent | <input type="checkbox"/> Regular | <input type="checkbox"/> Statutory | Reviewed by Budget | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable |
| Council Meeting Date: 11/13/06 | | Reviewed by Legal <i>WS</i> | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable | |
| Department: Engineering | | | Initials | Date | |
| Department Head: Upchurch | | Executive Director | <i>[Signature]</i> | <i>11/8/06</i> | |
| Dept Signature: <i>[Signature]</i> | | City Manager | <i>[Signature]</i> | <i>11.7.06</i> | |
| Agenda Coordinator (include phone #): Irene Pegues (7198) | | | | Project No.5741 | |

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

CAPTION

Approving the terms and conditions of a Local Transportation Project Advance Funding Agreement by and between the City of Plano and the State of Texas for construction of Windhaven Parkway from the West City Limits to Spring Creek Parkway.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

| FISCAL YEAR: 2006-07 | Prior Year (CIP Only) | Current Year | Future Years | TOTALS |
|-----------------------------|--------------------------|-----------------|-----------------|-----------------|
| Budget | 0 | 200,000 | 600,000 | 800,000 |
| Encumbered/Expended Amount | 0 | 0 | 0 | 0 |
| This Item | 0 | -53,280 | -600,000 | -653,280 |
| BALANCE | 0 | 146,720 | 0 | 146,720 |

FUND(S): STREET IMPROVEMENT CIP

COMMENTS: This funding agreement has a fiscal impact of \$53,280 at this time and an estimated \$600,000 in the future. The City of Plano's total estimated share of the project is \$653,280. Currently there is \$200,000 available leaving a current year balance of \$146,720 for the Windhaven - City Limit to Spring Creek project. Additional funding is available from future funding in the amount of \$600,000.

STRATEGIC PLAN GOAL: Funding agreements for street improvements relate to the City's Goal of Safe, Efficient Travel.

SUMMARY OF ITEM

City Council approved a Master Agreement Governing Local Transportation Projects Advance Funding Agreement with TxDOT on May 29, 2001 (Resolution No. 2001-5-2000), which provides state funding for local transportation projects. This agreement requires that a Local Project Advance Funding Agreement (LPAFA) be prepared for each individual project. The attached LPAFA is for the construction of Windhaven Parkway from the West City Limits to Spring Creek Parkway.

The City's share of the project will be 20% of an estimated total cost of \$3,000,000 (\$600,000). In addition, the City will pay for TxDOT's expenses on this project, estimated to be \$53,280. Federal funding will pay for the remainder.

| | |
|--------------------------------------------------------|-----------------------------------------------------------|
| List of Supporting Documents: LPAFA Location Map | Other Departments, Boards, Commissions or Agencies N/A |
|--------------------------------------------------------|-----------------------------------------------------------|

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A LOCAL TRANSPORTATION PROJECT ADVANCE FUNDING AGREEMENT BETWEEN THE STATE OF TEXAS AND THE CITY OF PLANO FOR WINDHAVEN PARKWAY FROM WEST PLANO CITY LIMITS TO SPRING CREEK PARKWAY; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER, OR IN HIS ABSENCE AN EXECUTIVE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council has been presented a proposed Local Transportation Project Advance Funding Agreement for Project CSJ: 0918-24-961, development and construction to widen the existing road to a six lane urban divided on Windhaven Parkway from West Plano City Limits to Spring Creek Parkway in the City of Plano, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and

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

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

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

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

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

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

Pat Evans, MAYOR

ATTEST:

Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

CSJ: 0918-24-961
District #18
Code Chart 64#33100
Windhaven Pkwy: From W.
Plano City Limits To Spring
Creek Parkway
Collin County
Funding Cat: STP-MM

STATE OF TEXAS §

COUNTY OF TRAVIS §

**LOCAL TRANSPORTATION PROJECT
ADVANCE FUNDING AGREEMENT
For a STP-MM Project
(Off State System)**

THIS Local Project Advance Funding Agreement (LPAFA) is made by and between the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called the "State", and the City of Plano, acting by and through its duly authorized officials, hereinafter called the "Local Government."

WITNESSETH

WHEREAS, a Master Agreement between the Local Government and the State has been adopted and states the general terms and conditions for transportation projects developed through this LPAFA; and,

WHEREAS, the Texas Transportation Commission passed Minute Order 109460 that provides for the development of, and funding for, the project describe herein; and,

WHEREAS, the Governing Body of the Local Government has approved entering into this LPAFA by resolution or ordinance dated _____, which is attached hereto and made a part hereof as Attachment A for development of the specific project which is identified in the location map shown as Attachment B.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, to be by them respectively kept and performed as hereinafter set forth, it is agreed as follows:

AGREEMENT

1. The period of this LPAFA is as stated in the Master Agreement, without exception.
2. Termination of this LPAFA shall be under the conditions as stated in the Master Agreement, without exception.
3. Amendments to this LPAFA shall be made as described in the Master Agreement, without exception.
4. Scope of Work.
The scope of work for this LPAFA is described as development and construction to widen the existing road to a six lane urban divided on Windhaven Parkway from West Plano City Limits to Spring Creek Parkway in the City of Plano.
5. Right of Way and Real Property shall be the responsibility of the Local Government, as stated in the Master Agreement, without exception.

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CSJ: 0918-24-961
District #18
Code Chart 64#33100
Windhaven Pkwy: From W.
Plano City Limits To Spring
Creek Parkway
Collin County

6. Adjustment of utilities will be provided by the Local Government as required and as stated in the Master Agreement without exception.
7. Environmental Assessment and Mitigation will be carried out as stated in the Master Agreement, without exception.
8. Compliance with Texas Accessibility Standards and ADA will be as stated in the Master Agreement, without exception.
9. Architectural and Engineering Services will be provided by the Local Government. The Local Government is responsible for performance of any required architectural or preliminary engineering work. The design shall conform to AASHTO standards and State specifications will be used. The State shall review and comment on the work as required to accomplish the public purposes of the State. The Local Government will cooperate fully with the State in accomplishing these local public purposes to the degree permitted by State and Federal law.
10. Construction Responsibilities will be carried out by the Local Government.
11. Project Maintenance will be undertaken as provided for in the Master Agreement, without exception.
12. Local Project Sources and Uses of Funds
 - a. Project Cost Estimate: A Project Cost Estimate is provided in Attachment C. Any work done prior to federal authorization will not be eligible for reimbursement. It is the Local Government's responsibility to verify with the State that the Federal Letter of Authority has been issued for the work covered by this Agreement.
 - b. A Source of Funds estimate is also provided in Attachment C. Attachment C shows the percentage and absolute dollar amount to be contributed to the project by federal, state, and local sources.
 - c. The Local Government is responsible for all non-federal and non-state funding, including all project cost overruns, unless provided for through amendment of this agreement.
 - d. After execution of this LPAFA, but prior to the performance of any work by the State, the Local Government will remit a check or warrant made payable to the "Texas Department of Transportation" in the amount specified in Attachment C as the local contribution for State review of Preliminary Engineering and Environment Assessment. The Local Government will pay at a minimum its funding share for this estimated cost of preliminary engineering and environmental assessment as stated in the Local Project Sources and Uses of Funds provision of the Master Agreement.
 - e. Sixty (60) days prior to the date set for receipt of the construction bids, the Local Government shall remit its remaining financial share for the State's estimated construction oversight cost and any others costs owing.
 - f. In the event the State determines that additional funding is required by the Local Government at any time during the development of the Project, the State will notify the Local Government in writing. The Local Government will make payment to the State within thirty (30) days from receipt of the State's written notification.
 - g. Whenever funds are paid by the Local Government to the State under this Agreement, the Local Government shall remit a check or warrant made payable to the "Texas Department of

CSJ: 0918-24-961
District #18
Code Chart 64#33100
Windhaven Pkwy: From W.
Plano City Limits To Spring
Creek Parkway
Collin County

Transportation Trust Fund." The check or warrant shall be deposited by the State in an escrow account to be managed by the State. Funds in the escrow account may only be applied by the State to the Project. If, after final Project accounting, excess funds remain in the escrow account, those funds may be applied by the State to the Local Government's contractual obligations to the State under another advance funding agreement.

- h. If any existing or future local ordinances, commissioners court orders, rules, policies, or other directives, including but not limited to outdoor advertising billboards and storm water drainage facility requirements, are more restrictive than State or Federal Regulations, or if any other locally proposed changes, including but not limited to plats or replats, result in increased costs, then any increased costs associated with the ordinances or changes will be paid by the local government. The cost of providing right of way acquired by the State shall mean the total expenses in acquiring the property interests either through negotiations or eminent domain proceedings, including but not limited to expenses related to relocation, removal, and adjustment of eligible utilities.
- i. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.
13. Document and Information Exchange. The Local Government agrees to electronically deliver to the State all general notes, specifications, contract provision requirements and related documentation in a Microsoft® Word or similar document. If requested by the State, the Local Government will use the State's document template. The Local Government shall also provide a detailed construction time estimate including types of activities and month in the format required by the State. This requirement applies whether the Local Government creates the documents with its own forces or by hiring a consultant or professional provider.
14. Incorporation of Master Agreement Provisions. This LPAFA incorporates all of the governing provisions of the Master Advance Funding Agreement (MAFA) in effect on the date of final execution of this LPAFA, unless such MAFA provision is specifically excepted herein.
15. Insurance. If this agreement authorizes the Local Government or its contractor to perform any work on State right of way, before beginning work the entity performing the work shall provide the State with a fully executed copy of the State's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on the State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and the State may recover damages and all costs of completing the work.
16. Signatory Warranty. The signatories to this agreement warrant that each has the authority to enter into this agreement on behalf of the party represented.

IN TESTIMONY HEREOF, the parties hereto have caused these presents to be executed in duplicate counterparts.

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CSJ: 0918-24-961
District #18
Code Chart 64#33100
Windhaven Pkwy: From W.
Plano City Limits To Spring
Creek Parkway
Collin County

THE LOCAL GOVERNMENT

By: _____
(Signature)

Title: _____

Date: _____

THE STATE OF TEXAS

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

By: _____
Janice Mullenix
Director of Contract Services Section
Office of General Counsel
Texas Department of Transportation

Date: _____

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CSJ: 0918-24-961
District #18
Code Chart 64#33100
Windhaven Pkwy: From W.
Plano City Limits To Spring
Creek Parkway
Collin County

ATTACHMENT A

**RESOLUTION OF LOCAL GOVERNMENT
APPROVING THIS LPAFA**

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CSJ: 0918-24-961
District #18
Code Chart 64#33100
Windhaven Pkwy: From W.
Plano City Limits To Spring
Creek Parkway
Collin County

ATTACHMENT B
PROJECT LOCATION MAP

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CSJ: 0918-24-961
 District #18
 Code Chart 64#33100
 Windhaven Pkwy: From W. Plano City Limits To Spring Creek
 Parkway
 Collin County

ATTACHMENT C

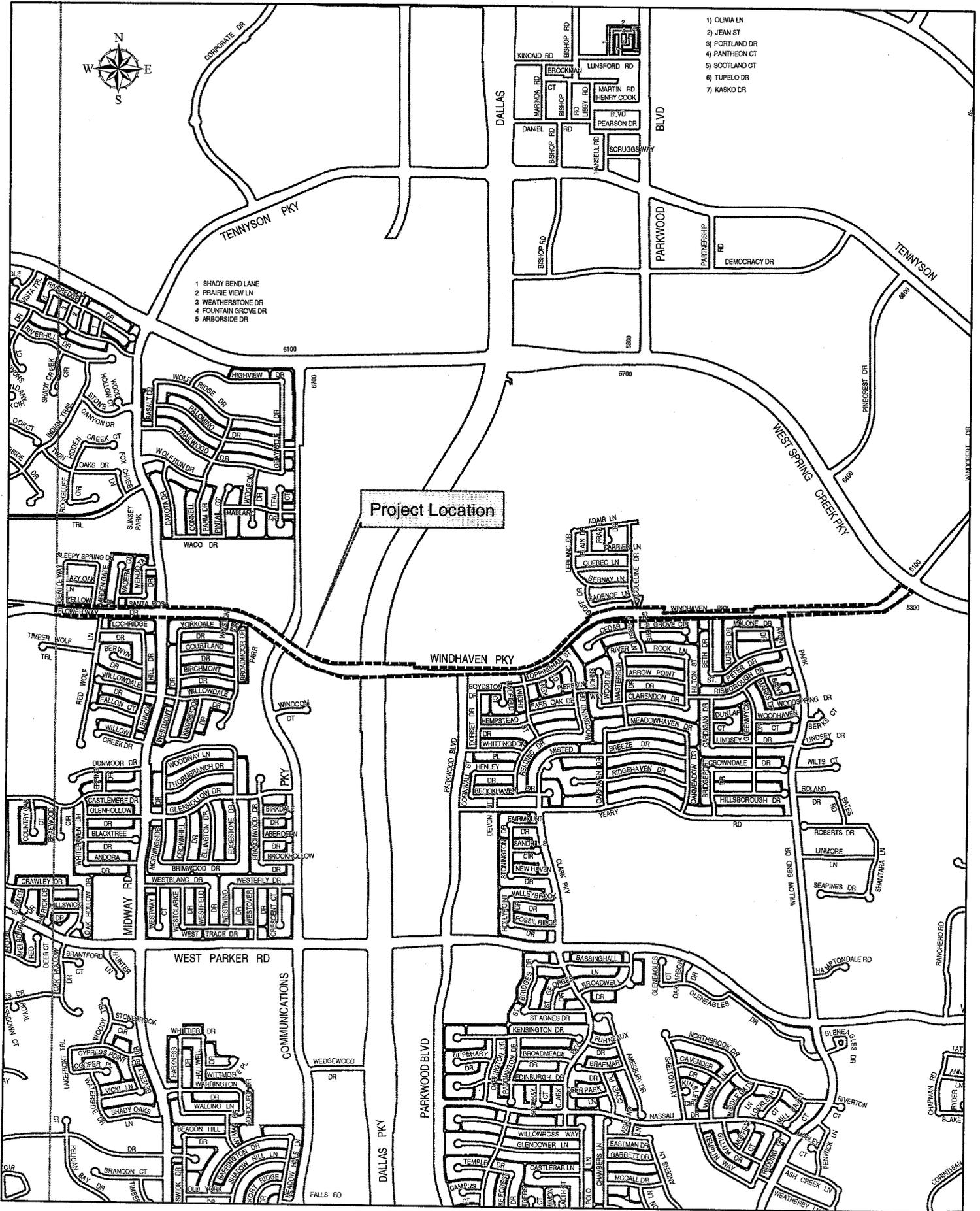
PROJECT BUDGET ESTIMATE AND SOURCE OF FUNDS

| | | Project Budget | | | CSJ: | 0918-24-961 |
|--------------------------------------------------|-----------------------|-----------------------|---------------------|---------------------|----------------------|-------------|
| Description | Total Estimated Cost | Federal Participation | State Participation | Local Participation | | |
| | 100% | 80.0% | 0.0% | 20.0% | Actual Participation | |
| Land (no cash contribution) | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | |
| Utilities (no cash contribution) | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | |
| Environmental Cost | \$40,000.00 | \$32,000.00 | \$0.00 | \$8,000.00 | \$8,000.00 | |
| Preliminary Engineering - State Review | \$148,000.00 | \$118,400.00 | \$0.00 | \$29,600.00 | \$29,600.00 | |
| Plans, Specs & Estimate (PS&E) | \$296,000.00 | \$236,800.00 | \$0.00 | \$59,200.00 | \$59,200.00 | |
| Construction | \$2,397,600.00 | \$1,918,080.00 | \$0.00 | \$479,520.00 | \$479,520.00 | |
| Engineering & Contingency | \$118,400.00 | \$94,720.00 | \$0.00 | \$23,680.00 | \$23,680.00 | |
| Total | \$3,000,000.00 | \$2,400,000.00 | \$0.00 | \$600,000.00 | \$600,000.00 | |
| 1st payment due prior to PS&E review by state | | | | | \$29,600.00 | |
| 2nd payment due 60 days prior to project letting | | | | | \$23,680.00 | |

Total Participation required from the local government = \$600,000.00

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WINDHAVEN PARKWAY



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LOCATION MAP



**CITY OF PLANO
COUNCIL AGENDA ITEM**

| | | | | | |
|--------------------------------------------------------------------|----------------------------------|------------------------------------|-----------------------------------------|-----------------------------------------|-----------------------------------------|
| CITY SECRETARY'S USE ONLY | | Reviewed by Purchasing | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable | |
| <input type="checkbox"/> Consent | <input type="checkbox"/> Regular | <input type="checkbox"/> Statutory | Reviewed by Budget C.S. | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable |
| Council Meeting Date: 11/13/06 | | Reviewed by Legal <i>JK</i> | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable | |
| Department: | Human Resources | | Initials | Date | |
| Department Head | LaShon Ross | | Executive Director | <i>JK</i> 11-3-06 | |
| Dept Signature: | <i>LaShon Ross</i> | | City Manager | <i>JK</i> 11/3/06 | |
| Agenda Coordinator (include phone #): Tracey Cummings X5300 | | | | | |

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

CAPTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN INTERLOCAL AGREEMENT BY AND BETWEEN CITY OF PLANO AND UNIVERSITY OF TEXAS AT DALLAS FOR EDUCATIONAL SERVICES AT A FEE NOT TO EXCEED EIGHT THOUSAND NINE HUNDRED NINETY-FIVE DOLLARS (\$8,995); AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR, IN HIS ABSENCE, AN EXECUTIVE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

| FISCAL YEAR: 2006/2007 | Prior Year (CIP Only) | Current Year | Future Years | TOTALS |
|-------------------------------|--------------------------|-----------------|-----------------|----------------|
| Budget | 0 | 144,176 | 0 | 144,176 |
| Encumbered/Expended Amount | 0 | 0 | 0 | 0 |
| This Item | 0 | -8,995 | 0 | -8,995 |
| BALANCE | 0 | 135,181 | 0 | 135,181 |

FUND(s): **GENERAL**

COMMENTS: THIS ITEM APPROVES A FIVE MONTH CONTRACT. FUNDS ARE AVAILABLE IN THE FY 2006-07 PROFESSIONAL DEVELOPMENT CENTER BUDGET. FUNDS ARE NOT TO EXCEED EIGHT THOUSAND NINE HUNDRED NINETY-FIVE DOLLARS (\$8,995) FOR THE FIVE (5) MONTH TERM.

STRATEGIC PLAN GOAL: THIS ITEM RELATES TO THE CITY'S GOAL OF "SERVICE EXCELLENCE."

SUMMARY OF ITEM

Interlocal Agreement between the City of Plano and University of Texas at Dallas to offer a Graduate Certificate Program in Local Government Management for a term of one semester lasting five (5) months.

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

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN INTERLOCAL AGREEMENT BY AND BETWEEN CITY OF PLANO AND UNIVERSITY OF TEXAS AT DALLAS FOR EDUCATIONAL SERVICES AT A FEE NOT TO EXCEED EIGHT THOUSAND NINE HUNDRED NINETY-FIVE DOLLARS (\$8,995); AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR, IN HIS ABSENCE, AN EXECUTIVE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council has been presented a proposed Agreement by and between City of Plano and University of Texas at Dallas, a substantial copy of which is attached hereto as Attachment "A" and incorporated herein by reference (hereinafter called "Agreement"); and,

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

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

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

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

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

RESOLUTION NO. _____

Page 2

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

Pat Evans, MAYOR

ATTEST:

Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ATTACHMENT "A"

**INTERLOCAL AGREEMENT BY AND BETWEEN
THE CITY OF PLANO, TEXAS AND THE UNIVERSITY OF TEXAS AT DALLAS FOR
GRADUATE PROGRAM IN LOCAL GOVERNMENT MANAGEMENT**

THIS AGREEMENT is made and entered by and between the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, hereinafter referred to as "Plano", and **THE UNIVERSITY OF TEXAS AT DALLAS**, hereinafter referred to as "University", as follows:

WITNESSETH:

WHEREAS, Plano is a political subdivision and University a "special district" within the meaning of Interlocal Cooperation Act, Texas Government Code, Chapter 791, as amended (the "Act"); and

WHEREAS, the Act provides authority for entities such as Plano and University to enter into interlocal agreements with each other to perform governmental functions and services as set forth in the Act; and

WHEREAS, Plano wishes to offer its employees a Graduate Certificate in Local Government Management (the "Program"); and

WHEREAS, University is an institution of higher education that offers graduate level education courses and desires to offer the Program to Plano employees; and

WHEREAS, Plano has current revenues available to satisfy the fees and/or expenses incurred pursuant to this Agreement; and

WHEREAS, the Program will provide Plano employees with additional knowledge and skills to more effectively serve the citizens.

NOW, THEREFORE, Plano and University, for and in consideration of the recitals set forth above and terms and conditions below, agree as follows:

**I.
TERM**

This Agreement shall begin on January 1, 2007 and conclude on May 31, 2007. This Agreement may be terminated by either party after providing thirty (30) days written notice to the other party.

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II. THE PROGRAM

The parties agree that University shall offer graduate level education courses as identified in **Exhibit "A"** attached hereto and incorporated herein by reference. The parties understand and agree that any deviations or modifications in the terms of the Agreement may be authorized from time to time, but said authorization must be made in writing.

III. ROLES AND GENERAL RESPONSIBILITIES OF THE PARTIES

1. City shall designate a program liaison who will manage program details and work with the University's program manager in content and logistics planning. The City shall provide University with required student-employee information for the purpose of registration and documentation. City shall also provide appropriate training facilities and all reasonably necessary equipment, including AV equipment.
2. University shall provide curriculum design, program delivery, assembly of program materials, development of materials for participants, administration and tabulation of course evaluations, and a program manager to work with City.

IV. CONSIDERATION / FEES

A. In consideration for providing the Program as specified in **Exhibit "A"** attached hereto, Plano shall pay University the sum of **ONE THOUSAND TWO HUNDRED AND EIGHTY FOUR DOLLARS AND SEVENTY ONE CENTS (\$1,284.71) PER RESIDENT STUDENT AND TWO THOUSAND ONE HUNDRED AND NINE DOLLARS AND SEVENTY ONE CENTS (\$2,109.71) PER NON-RESIDENT STUDENT FOR EACH THREE (3) HOUR COURSE**. Total compensation under this agreement shall not exceed the sum of **EIGHT THOUSAND NINE HUNDRED AND NINETY FIVE DOLLARS (\$8,995.00)** unless amended in writing by both parties.

B. By the first day of class, University must receive a purchase order from Plano referencing the particular program. The purchase order must list the names of the students enrolled in the program for the semester, the number of classes and the number of credit hours for each student and the agreed upon tuition amounts. In addition, the purchase order must list City's contact person's name, phone number, fax number and the billing address. A copy of the purchase order must be forwarded to the University's Bursar's Office.

After the receipt of the purchase order, the University Bursar's Office will transfer the tuition obligation from the individual students' records to Plano. Upon the completion of the semester, University will send an invoice to Plano for the total costs as reflected on the purchase order. Payments hereunder shall be made to University

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within thirty (30) days of receiving University's invoice. Payments due to the University will not be contingent upon grades or attendance. In the event that the student is terminated from Plano's employment after the purchase order has been honored, Plano is still obligated to the University. Any subsequent changes to the contract or the purchase order must be approved by the University's Program representative and must be documented via an amendment to the agreement and/or purchase order.

C. University recognizes that this Agreement shall commence upon the effective date herein and continue in full force and effect until termination in accordance with its provisions. University and Plano 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.

V. TERMINATION

Either party may terminate this Agreement at any time without cause or penalty by giving thirty (30) days advance written notice. Plano shall pay all fees and costs, if any, incurred by University pursuant to this Agreement through the effective date of termination.

VI. RELEASE AND HOLD HARMLESS

University, to the extent authorized under the constitution and laws of the State of Texas, agrees to be responsible for its own acts of negligence and Plano, to the extent allowed by law and without waiving any rights or protections provided therein, agrees to be responsible for its own acts of negligence which may arise in connection with any and all claims for damages, cost, and expenses to person or persons and property that may arise out of or be occasioned by this agreement for any of its activities or from any act or omission of any employee or invitee of University or Plano.

In the event of joint and concurrent negligence, University and Plano agree that responsibility shall be apportioned comparatively. This obligation shall be construed for the benefit of the parties hereto, and not for the benefit of any third parties, nor to create liability for the benefit of any third parties, nor to deprive the parties hereto of any defenses each may have as against third parties under the laws and court decisions of the State of Texas.

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**VII.
NOTICE**

Any notice provided under this Agreement shall be delivered by mail or personal service to the parties named below:

**The University of Texas at Dallas City of Plano Representative:
Representative:**

Dr. Douglas J. Watson
Program Head, Public Affairs
School of Economic, Political and Policy
Sciences
17919 Waterview Parkway, WT 17
Dallas, Texas 75252
(972) 883-4907

Mr. Greg Carpenter
Training & Development Specialist
City of Plano
1520 Avenue K
Plano, Texas 75074
(972) 461-7403

**VIII.
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. Plano has executed this Agreement pursuant to duly authorized action of the Plano City Council on November 13, 2006. University has executed this Agreement pursuant to the authority granted by its governing body. Each of the parties shall provide written documentation evidencing the grant of approval by its respective governing body.

**IX.
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.

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**X.
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.

**XI.
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 construed more favorably for either party.

**XII.
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.

**XIII.
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.

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

**THE UNIVERSITY OF TEXAS AT
DALLAS**

Date: _____

By: _____
B. Hobson Wildenthal,
Provost

Date: _____

By: _____
Jody Nelsen
Interim Vice President for
Business Affairs

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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 _____, 2006, by **B. Hobson Wildenthal**, Provost of **THE UNIVERSITY OF TEXAS AT DALLAS**.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2006, by **Jody Nelsen**, Interim Vice President for Business Affairs of **THE UNIVERSITY OF TEXAS AT DALLAS**.

Notary Public, State of Texas

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STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2006, by **THOMAS H. MUEHLENBECK**, City Manager, of the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

Notary Public, State of Texas

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EXHIBIT "A"

Program: **Graduate Certificate in Local Government Management.**

Courses offered under this Program will include, but are not limited to, the following:

- Local Government Management
- Human Resources Management
- Financial Management and Budgeting
- Navigating the Political Environment
- Quality and Productivity Improvement
- Community Development
- Economic Development
- Media Relations

Credit Hours: 3 credit hours per course

Participants: Maximum of 7 students

Tuition: \$1,284.71 per course, per resident participant; \$2,109.71 per course, per non-resident participant

Materials/Supplies Costs: All required materials will be paid for by the individual participant.

Scheduled Course Dates: To be determined by **Plano** and **University**.

Instructor: To be determined by **Plano** and **University**.

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**CITY OF PLANO
COUNCIL AGENDA ITEM**

| | | | | | |
|---------------------------------------|----------------------------------------------|------------------------------------|-----------------------------------------|----------------------------------------------------|-----------------------------------------|
| CITY SECRETARY'S USE ONLY | | Reviewed by Purchasing | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Not Applicable | |
| <input type="checkbox"/> Consent | <input type="checkbox"/> Regular | <input type="checkbox"/> Statutory | Reviewed by Budget | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable |
| Council Meeting Date: 11/13/06 | | Reviewed by Legal | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable | |
| Department: | Parks and Recreation, Creative Arts Division | | | Initials | Date |
| Department Head | Don Wendell | Executive Director | <i>[Signature]</i> | <i>[Signature]</i> | 11-06-06 |
| Dept Signature: | <i>[Signature]</i> | City Manager | <i>[Signature]</i> | <i>[Signature]</i> | 11-7-06 |
| Agenda Coordinator (include phone #): | | Linda Benoit, x.7255 | | | |

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

CAPTION

Approving the terms and conditions of an agreement between the City of Plano, Texas, and Helmick + Schechter Sculpture, a qualified professional artist corporation (Ralph Helmick & Stuart Schechter), for the design, fabrication, delivery and installation of artwork for the Visitor Center of the Oak Point Park and Nature Preserve; and authorizing the City Manager or, in his absence, an Executive Director to execute such agreement with Helmick + Schechter Sculpture; and providing an effective date.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

| FISCAL YEAR: 2006-07 | Prior Year (CIP Only) | Current Year | Future Years | TOTALS |
|-----------------------------|--------------------------|-----------------|-----------------|-----------------|
| Budget | 13,026 | 186,974 | 0 | 200,000 |
| Encumbered/Expended Amount | -13,026 | -700 | 0 | -13,726 |
| This Item | 0 | -185,000 | 0 | -185,000 |
| BALANCE | 0 | 1,274 | 0 | 1,274 |

FUND(S): PUBLIC ART FUND

COMMENTS: Funds are included in the 2006-07 Public Art Fund. This item, in the amount of \$185,000 will leave a current year balance of \$1,274 for the Oak Point Park Public Art Project.

STRATEGIC PLAN GOAL: This public art element relates to the City's Goal of "Premier City for Families."

SUMMARY OF ITEM

The Public Art Committee, after public review, recommends that the City of Plano contract with Helmick + Schechter Sculpture to design, fabricate, deliver, and install artwork for the Visitor Lobby of the Oak Point Park and Nature Preserve. The artwork is "Natural Selections", a suspended sculpture of shaped steel rod depicting images of plant and animal species in the park.

| | |
|----------------------------------------------------------------------------------------------------------------------|----------------------------------------------------|
| List of Supporting Documents: Contract for services by Helmick + Schechter Sculpture Image of Proposed Artwork | Other Departments, Boards, Commissions or Agencies |
|----------------------------------------------------------------------------------------------------------------------|----------------------------------------------------|

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF PLANO, TEXAS APPROVING THE TERMS AND CONDITIONS OF AN AGREEMENT BETWEEN THE CITY OF PLANO, TEXAS, AND HELMICK + SCHECTER, INC., A QUALIFIED PROFESSIONAL ARTIST CORPORATION COMPRISED OF RALPH HELMICK AND STUART SCHECHTER, FOR THE DESIGN, FABRICATION AND DELIVERY AND INSTALLATION OF AN ARTWORK FOR THE VISITOR CENTER OF THE OAK POINT PARK AND NATURE PRESERVE; AUTHORIZING THE CITY MANAGER, OR IN HIS ABSENCE AN EXECUTIVE DIRECTOR, TO EXECUTE SUCH AGREEMENT WITH HELMICK + SCHECHTER, INC.; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council has approved the inclusion of an art element in the Oak Point Park and Nature Preserve project, and charged the Public Art Committee with selection and recommendation of an artist and art proposal for the project; and

WHEREAS, the approved budget for the public art element at the Oak Point Park and Nature Preserve includes \$185,000; and

WHEREAS, the Public Art Committee conducted public meetings and obtained substantial input from members of the community in developing and issuing a call for artists' proposals for the project; and

WHEREAS, the Public Art Committee and an appointed art selection panel received and reviewed the credentials of 133 artists who responded to the call to artists and selected three artists to do proposals of artwork for the project; and

WHEREAS, the proposals of the three selected artists were presented and reviewed in public meetings, and the proposal of Helmick + Schechter, Inc. was selected and recommended through this process; and

WHEREAS, the recommendation of Helmick + Schechter, Inc. for the project was reviewed and approved in public meetings by the Public Art Committee, the Parks and Recreation Planning Board, and the City Council; and

WHEREAS, the City Council desires to enter into an agreement with Helmick + Schechter, Inc. for services in the design, fabrication, delivery and installation of artwork for the Visitor Center of the Oak Point Park and Nature Preserve, a copy of which agreement is attached hereto by reference as Exhibit "A", which establishes the terms and conditions for delivery of these services.

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 Agreement for Services and the amount of payment for such services, hereby approves the Agreement and payment amounts, which are proper and in the best interests of the City of Plano.

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Section II. The City Manager, or in his absence an Executive Director, 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 _____ day of _____, 2006.

Pat Evans, MAYOR

ATTEST:

Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

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CONTRACT

THIS CONTRACT is made and entered into by and between the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, (hereinafter referred to as "City") and **HELMICK & SCHECHTER, INC.**, a Massachusetts corporation having its principal place of business at 447 Lowell Avenue, Newton, Massachusetts 02460 (hereinafter referred to as "Company").

1. PURPOSE

The purpose of this Contract is to state the terms and conditions under which Company shall design, fabricate and install a piece of artwork in the Visitor Center of Oak Point Park and Nature Preserve entitled *Natural Selections* as set forth in attached Exhibit "A", (hereinafter referred to as "Artwork").

2. DESCRIPTION OF SERVICES

Company's services hereunder shall include, but shall not be limited to, the following:

A. Company shall perform all the services related to the artwork as set forth in the Scope of Work attached hereto as Exhibit "B" and made a part of this Contract for all purposes; provided, however, should there be any conflict between Exhibit "B" and the terms of this Contract, the terms of this Contract shall be final and binding.

B. Company shall work closely and cooperate with the staff of the Creative Arts Division and the Director of the Parks and Recreation Department, or their designees (hereinafter jointly referred to as "Director," unless otherwise noted), and appropriate City officials and perform any and all related tasks required by the Director in order to fulfill the purposes of this Contract. Company shall consult with the architect and engineering consultants in development of final designs for the Artwork. All disputes and other matters in question between Company and City relating to this Contract or any interpretation of this Contract shall be resolved by the Director of the Parks and Recreation Department.

C. Direct supervision of both the design and composition/installation phases of the Artwork shall be the responsibility of Company.

D. City shall be responsible for providing Company, without cost, copies of existing designs, drawings, reports and other relevant data in City's possession needed by Company in order to design and install the artwork.

E. Company shall regularly communicate with the Director to review progress of design and composition/installation and to ensure the continuing feasibility of the Artwork.

F. Company and City agree that Company shall retain artistic control of the services performed under this Contract, subject only to the limitations and conditions imposed by this Contract.

G. As an expressed condition of this Contract, Company shall design the Artwork so that it can be composed and installed without exceeding the public art budget for this project or increasing construction costs for the Visitor Center of the Oak Point Park and Nature Preserve

and so that reasonable maintenance of the Artwork will not require procedures or materials substantially in excess of those described in the maintenance recommendations submitted by Company. Company shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in the Company's performance. This includes redesign to meet the established budget.

H. Company shall complete the design and installation of the Artwork in conformity with the attached Exhibit "B", Scope of Work. Company agrees to comply with all applicable City, State and Federal laws, regulations, and ordinances relating to performance of the work under this Contract.

I. Company shall be responsible for any damage to the Artwork that may occur due to fire, explosion, theft, vandalism, flood, power failure, transit or any other cause until Artwork has been installed and accepted by City.

3. PERFORMANCE OF SERVICES

Company and Company's employees, associates or assistants shall perform all the services under this Contract in a timely, cost effective manner. Company represents that any employees, associates or assistants who perform services under this Contract on behalf of Company shall be fully qualified and competent to perform those services described in Section 2.

4. TERM

The term of this Contract shall begin November 13, 2006, and end May 30, 2008 (scheduled date for substantial completion of construction of the Visitor Center at Oak Point Park and Nature Preserve), or upon installation and acceptance of Artwork by City. Company understands and agrees that, should there be construction delay, Company will be available to install Artwork at an appropriate time that will not further delay opening of the facility. Company understands and agrees that time is of the essence. All services are to be completed and delivered to City by the termination date unless an extension of time, based upon good reasons presented by Company, is approved in writing by City.

5. PAYMENT FOR SERVICES

In consideration of the professional services to be performed by Company under the terms of this Contract, City shall pay Company for services actually performed a fee not to exceed **ONE HUNDRED EIGHTY-FIVE THOUSAND AND NO/100 DOLLARS (\$185,000.00)**, payable with a deposit of \$65,000.00 upon completion and approval by City of the final design for Artwork and the ordering of materials, \$40,000.00 upon site preparation/integration, and 50% of fabrication, \$25,000 upon 100% completion of metal fabrication and pre-finish assembly/testing of the Artwork, \$25,000.00 upon paint/finishing, and the balance of \$30,000.00 upon delivery, installation and documentation of Artwork, to be paid pending acceptance of the Artwork by CITY, as full compensation for the services performed under this Contract. All travel, lodging, food and other expenses related to such travel in the performance of this Contract are the responsibility of the Company and not to be paid by City. If other conditions necessitate additional services, the additional services must be authorized in advance by resolution of the City Council or, where applicable, by duly authorized administrative action signed by the City Manager and approved as to form by the City Attorney.

Payments to Company shall be in the amount shown by the invoices and other documentation submitted and shall be subject to the Director's approval. Invoices shall be supported by written documentation and progress photographs. All services shall be performed to the reasonable satisfaction of the Director, and City shall not be liable for any payment under this Contract for services which are unsatisfactory and which have not been approved by the Director. City may, at its option, offset any amounts due and payable under this Contract against any debt (including taxes) lawfully due to City from Company, regardless of whether the amount due arises pursuant to the terms of this Contract or otherwise. Should it be necessary for City to exercise right of termination in accordance with the terms of this Contract, Company shall reimburse City any monies advanced by deposit not substantiated by reasonable invoices or documentation.

6. **CHANGE IN SERVICES**

City, through its Director, may request, from time to time, changes in the Scope of Work conducted or to be conducted by Company pursuant to this Contract. Any change which varies significantly from the Scope of Services set out in Section 2 and would entail a significant increase in cost or expense to Company shall be mutually agreed on by Company and the Director. Agreed to changes in the Scope of Work, which in the opinion of Company and the Director would require additional funding by City, must first be authorized in advance by resolution of the City Council or, where applicable, by duly authorized administrative action signed by the City Manager and approved as to form by the City Attorney.

7. **WARRANTIES**

Company warrants that: (a) the design and Artwork being commissioned is the original product of Company's own creative efforts and is not the subject of an existing patent or copyright owned by any other person; and (b) unless otherwise stipulated, the Artwork is original, that it is an edition of one (1), and Company shall not sell or reproduce the Artwork or design or allow others to do so without the prior written consent of City. The warranties stated in this paragraph shall survive the termination of this Contract.

ARTIST warrants the integrity of the artwork for a period of one year.

8. **MAINTENANCE/CONSERVATION**

Upon completion and installation of the Artwork, Company, shall prepare and submit to City a written recommendation for maintenance of the Artwork, describing materials, procedures, frequency, and estimated annual cost. Company shall be responsible for the first year's maintenance, and thereafter City shall be responsible to maintain the Artwork. Repairs, restoration and/or conservation shall be the responsibility of City. City reserves the right to perform maintenance or make repairs without consulting Company.

9. **CONFIDENTIAL WORK**

No reports, information, project designs, data or any other documentation developed by, given to, prepared by, or assembled by Company under this Contract shall be disclosed or made available to any individual or organization by Company without the express prior written approval of the Director.

10. **COPYRIGHT IN THE FINISHED ARTWORK**

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Company's final design and all other work product (including the final Artwork itself) under this Contract shall become the property of the City, without restriction on future use, except as provided below. Company may retain copyright and other intellectual property rights in and to the final design and the final artwork itself. By execution of this Contract, Company grants to the City a perpetual, irrevocable license to graphically depict or display the final Artwork for any non-commercial purpose whatsoever; for purposes of this limitation, any graphic depiction or display of the final Artwork intended to promote or benefit the City, its public services or its public purposes, regardless of whether or not a fee is charged to the public, or whether revenue is otherwise received by the City, shall be deemed a non-commercial purpose. Notwithstanding the above limitation, Company agrees and understands that nothing in this paragraph shall affect or limit the City's absolute, unrestricted rights incidental to the City's full ownership of the final Artwork to alter, change, modify, destroy, remove, move, replace, operate, maintain, transport, sell or transfer, in whole or in part, the final Artwork when the City deems it necessary within its discretion, in order to otherwise exercise the City's powers and responsibility in regard to public works and improvements, in furtherance of the City's operations or for any other reason.

Company hereby acknowledges the rights of integrity and attribution conferred by Section 106A (a), paragraphs (2) and (3) of Title 17 of the U.S. Code, and any other rights of the same nature granted by federal, state or international laws, and of Company's own free will hereby waives such rights with respect to the City of Plano usage or use of the Artwork, including but not limited to the right to maintain, remove or destroy the Artwork.

11. **COMPANY'S LIABILITY**

Approval of City shall not constitute nor be deemed a release of the responsibility and liability of Company or Company's employees, associates or assistants for the accuracy and competency of Company's services, nor shall approval be deemed to be the assumption of such responsibility by City for any defect, error or omission in the services performed by Company or Company's employees, associates or assistants.

12. **INSURANCE REQUIREMENTS**

Company shall procure, pay for, and maintain during the term of this Contract, with a company authorized to do business in the State of Texas and acceptable to City, the minimum insurance coverage contained in Exhibit "C", attached to and made part of this Contract.

13. **INDEMNITY**

Company agrees to defend, indemnify and hold City, its officers, agents and employees, harmless against any and all claims, lawsuits, judgments, costs and expenses for: (a) any infringement of patent or copyright arising out of the services performed by Company under this Contract regardless of whether or not Company or City had knowledge of any existing patents or copyrights during the course of performance of this Contract; and (b) personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by Company's breach of any of the terms or provisions of this Contract, or by any negligent act or omission of Company, its officers, agents, associates, employees or subconsultants, in the performance of this Contract.

The indemnity for personal injury, property damage or other harm caused by Company's contractual breach or negligence provided in (b) shall not apply to any liability resulting from the sole negligence of City, its officers, agents, employees or separate contractors, and in the event of joint and concurrent negligence of both the Company and City, responsibilities and indemnity, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas without, however, waiving any governmental immunity available to the City under Texas law and without waiving any defenses of the parties under Texas law. The provisions of this paragraph 13 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.

14. **RIGHT OF REVIEW AND AUDIT**

City may review any and all of the services performed by Company under this Contract. City is hereby granted the right to audit, at City's election, all of Company's records and billings relating to the performance of this Contract. Company agrees to retain such records for a minimum of three (3) years following completion of this Contract.

15. **AFFIDAVIT OF NO PROHIBITED INTEREST**

Company acknowledges and represents Company 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. Company has executed the Affidavit of No Prohibited Interest, attached and incorporated herein as Exhibit "D".

16. **NONDISCRIMINATION**

As a condition of this Contract, Company covenants that Company will take all necessary actions to insure that, in connection with any work under this Contract, Company, its associates, employees, agents, and subcontractors, will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex or handicap unrelated to job performance either directly, indirectly or through contractual or other arrangements. In this regard, Company shall keep, retain and safeguard all records relating to this Contract or work performed hereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of the City, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

17. **CONTRACT PERSONAL**

This Contract provides for personal/professional services, involving the skill and creativity of Company. Therefore, the Company shall not assign this Contract, in whole or in part, without the prior written consent of City.

18. **TERMINATION**

City's Director may terminate this Contract, in whole or in part, for cause or the convenience of City, upon ten (10) days written notice to Company with the understanding that all services being performed under this Contract shall cease upon the date specified in such notice. Company shall invoice City for all services completed and shall be compensated or

reimburse City accordingly for all services performed by Company prior to the date specified in such notice. Upon notice of termination, Company shall promptly discontinue all services affected (unless otherwise directed by the notice) and promptly deliver to City all data, drawings, specifications, calculations, reports, estimates, materials and completed or partially completed work produced by Company under this Contract.

19. **NOTICES**

All notices, communications, and reports required or permitted under this Contract shall be personally delivered or mailed to the respective parties by depositing same in the United States mail, postage prepaid, at the addresses shown below, unless and until either party is otherwise notified in writing by the other party, at the following addresses. Mailed notices shall be deemed communicated as of five (5) days after mailing.

If intended for City, to:

City of Plano, Texas
Attn: Christine Eubanks
1517 H Avenue, Suite. 135
Plano, TX 75074 or
P.O. Box 860358
Plano, TX 75086

If intended for Company, to:

Helmick & Schechter, Inc.
Attn: Ralph Helmick
President
447 Lowell Avenue
Newton, MA 02460

20. **INDEPENDENT CONTRACTOR**

In performing services under this Contract, the relationship between City and Company is that of independent contractor, and City and Company by the execution of this Contract do not change the independent status of Company. Company shall exercise independent judgment in performing Company's duties under this Contract and is solely responsible for setting working hours, scheduling or prioritizing the work flow and determining how the work is to be performed. No term or provision of this Contract or act of Company in the performance of this Contract shall be construed as making Company the agent, servant or employee of City, or making Company or any of Company's employees eligible for the fringe benefits, such as retirement, insurance, and workers' compensation, which City provides its employees.

21. **APPLICABLE LAWS**

This Contract is made subject to the provisions of the Charter and ordinances of City, as amended, and all applicable State and federal laws.

22. **GOVERNING LAW**

This Contract shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

23. **VENUE**

The obligations of the parties to this Contract are performable in Collin County, Texas, and if legal action is necessary to enforce same, exclusive venue shall lie in Collin County, Texas.

24. **LEGAL CONSTRUCTION**

In case any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this Contract shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Contract.

25. **COUNTERPARTS**

This Contract may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

26. **CAPTIONS**

The captions to the various clauses of this Contract are for informational purposes only and shall not alter the substance of the terms and conditions of this Contract.

27. **SUCCESSORS AND ASSIGNS**

This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and, except as otherwise provided in this Contract, their assigns.

28. **ENTIRE AGREEMENT**

The Contract embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in this Contract, and except and otherwise provided herein cannot be modified without written agreement of the parties to be attached to and made a part of this Contract.

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EXECUTED the _____ day of _____, 2006, by City, signing by and through its City Manager, duly authorized to execute same by Resolution No. _____ and adopted by the City Council on _____, 2006 and by Company, signing by and through its authorized officer.

CITY OF PLANO, TEXAS

BY: _____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

HELMICK & SCHECHTER, INC.

BY: _____
Ralph Helmick
PRESIDENT

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ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2006 by **THOMAS H. MUEHLENBECK**, City Manager of the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, on behalf of said corporation.

Notary Public in and for the State of Texas

STATE OF MASSACHUSETTS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2006 by **RALPH HELMICK**, President of **HELMICK & SCHECHTER, INC.**, a Massachusetts Corporation, on behalf of said corporation.

Notary Public in and for the State of Massachusetts

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EXHIBIT "A"**NATURAL SELECTIONS**

PROPOSED ART ELEMENT FOR VISITOR CENTER LOBBY
OAK POINT PARK AND NATURE PRESERVE, PLANO, TEXAS
BY HELMICK & SCHECHTER, INC.

Description of the Artwork

Visitors entering the lobby of the new Visitor Center of the Oak Point Park and Nature Preserve will encounter an epic visual meditation on the wonder of Nature and the beauty of discovery.

Suspended from the ceiling and extending the full length of the hall is a vast "drawing in space" made of shaped steel rod. Spanning 78 feet and descending to within 11 feet of the floor, it follows the canted contour of the roof, sloping gently to the south and toward the lake beyond.

At first glance this seemingly chaotic steel filigree seems an abstract design, lending an ornamental element to the stone and wood interior. But visitors soon discern that the varied lines and sinuous curves hold something more: a compendium of references to the rich ecosystem beyond the walls.

Initially a viewer coaxes out a single form from the thicket of marks, perhaps a boxwood leaf. Then she notices that it shares a line with an overlapping bird, connecting as well to an adjacent outline of a turtle, and so on.

Further observation reveals smaller three-dimensional forms, which are both integrated into the large graphic array and subtly sited throughout the space. For example, a few small 3D red-winged blackbirds are perched on the giant steel drawing of the bird. Suspended from the ceiling a few feet away is a sculpture of the same blackbird in flight. Elsewhere, a subtle 3D spider and its web is tucked into an upper corner of the Visitors Center, its graphic counterpart in the 2D array. A hanging opossum is represented in both 2 and 3 dimensions. And so on with various plants and animals.

While scientifically accurate renderings are the components of this giant array, its overall form is undeniably esthetic, incorporating a poetry and freedom bridging art and illustration. Scale is conflated as a diatom looms larger than a snake; the circular shape of a pillbug is echoed by a topographic diagram of the Visitor Center itself. Images emerge and recede and emerge once again as the array surrenders a bounty of recognizable shapes.

In its overlaid imagery and rich layering, the sculpture mirrors the multifaceted, interconnected systems of land, water, geology, history, flora and fauna just outside the doors.

Sculpture and Site 1: Education

A sense of engagement and curiosity are central to the mission of the Center, and the artwork reinforces this quality. Serving as a catalyst for investigation, it extends an artful invitation to engage our human capacities for observation and analysis.

Changing programmatic displays at the center are unhindered by the filigree forms suspended overhead. Wall-mounted and floor exhibits work sympathetically in this arrangement, with good sightlines for both art and educational materials.

If desired, a key to the sculpture can provide detailed information on the species illustrated, further knitting together the mission of the OPPNP and the sculpture.

Sculpture and Site 2: Architectural Integration

The array is suspended beneath the graceful spine of the ceiling support structure, which traces a true north/south axis through the Visitors Center.

Visual accents in the form of the satellite elements are subtly sited throughout the interior space, located so as to optimize an integrated appreciation of art and architecture.

Approximate Specifications

Materials: graphics--shaped and welded 3/8" to 1/2" steel rod
Satellite forms—cast and fabricated metal

Dimensions: 12' – 3' height; 78' long

Linear Feet of Component Images: 800'+

Color: TBD in consultation w/ the clients and architects

Weight: Less than 2000 LB distributed

Timeline

| | |
|--------------------------------|------------------------------|
| Contract approval | November 2006 |
| Design refinement | December 2006 – January 2007 |
| Fabrication | February 2007 – March 2008 |
| Site preparation / integration | June 2007 – February 2008 |
| Pre-finish assembly / testing | March 2008 |
| Paint/finishing | March-April 2008 |
| Shipping | May 2008 |
| Installation | May 2008 |
| Documentation | May 2008 |

Maintenance

The care of this artwork is very straightforward. A soft broom or feather duster attached to the end of a telescoping pole will easily reach both sides of the sculpture. In the event that an especially striking spider web is created between two steel rods, a consortium of naturalists, artists and theologians will convene to determine the best philosophical course of action.

Budget

| | |
|----------------------------------------------|---------------------|
| Models, drawings: | 1,000.00 |
| Materials and Supplies: | |
| mild steel rod | 12,000.00 |
| stainless cable | 1,000.00 |
| hardware (clips, anchors) | 2,000.00 |
| wax/clay/plaster for 3D forms | 500.00 |
| Production / Fabrication: steel outlines | |
| enlargement | 5,000.00 |
| studio fabrication / welding | 60,000.00 |
| off-site powder coating | 9,000.00 |
| Production / Fabrication: 3D satellite forms | |
| sculpting 3D nature forms | 4,000.00 |
| moldmaking/casting of forms in metal | 8,000.00 |
| finishing/patination | 500.00 |
| Tools and Equipment: | 4,000.00 |
| Studio Overhead, incl. utilities: | 10,000.00 |
| Insurance (studio/shipping/installation): | 4,000.00 |
| Crating / Shipping to site: | 8,000.00 |
| Installation: | 10,000.00 |
| Travel / Lodging: | 6,000.00 |
| Documentation: | 3,000.00 |
| Office/Administrative Expenses | 2,000.00 |
| Artist Design fee: | 25,000.00 |
| Contingency: | 10,000.00 |
| TOTAL: | \$185,000.00 |

EXHIBIT "B"

SCOPE OF WORK

1. Research and development for final design for Artwork, to include coordination with City staff, design consultants and construction contractors, via conference call, electronic mail and up to, but not to exceed, two on-site meetings. Designs must be in accordance with site specifications provided by City and Company will provide assistance to City staff and consultants in determining any required changes to design of facility to successfully install Artwork.
2. Completion and submittal of design of Artwork by Company for approval of artwork by City, such approval to come from Director. Design phase deliverables shall include, but not be limited to these documents:
 - a. Plan sheets illustrating plans, elevations, sections and details of construction and installation.
 - b. Technical specs, to include such information as load requirements for structures to which Artwork will be attached, specific materials to be used, lighting requirements, etc. Provide specs in Microsoft Word.doc format.
 - c. Provide drawings in .dwg format.
 - d. Provide graphic products in electronic file format (tiff).
 - e. All electronic file transmittals shall be in CD-Rom format.
3. Purchase of materials by Company and fabrication of Artwork.
4. Complete off site fabrication by Company.
5. Delivery and on site installation of Artwork by Company.
6. Provision of detailed maintenance plan for Artwork.

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EXHIBIT "C"**INSURANCE REQUIREMENTS**

Service work, supplies requiring installation, Janitorial Services, Architects, Engineers, Welding, Surveyors, Plumbing Contractors, Maintenance Agreements, Consultants, Concessionaires, Tire Repairs, Tow Service, Painting, Electrical, Movers, etc.

Vendor shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the vendor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the Contractor's bid.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. 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). "Claims made" form is unacceptable except for professional liability.
2. Automobile liability shall include all owned, hired and non-owned vehicles.
3. Workers' Compensation insurance as required by the Labor Code of the State of Texas, including Employers' Liability Insurance.
4. Professional Liability (when applicable).

B. Minimum Limits of Insurance

Vendor shall maintain limits not less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. \$2,000,000 Aggregate Policy will include coverage for a) Premises - Operations; b) Broad Form Contractual Liability; c) Products and Completed Operations; d) Use of Contractors and Subcontractors; e) Personal Injury; f) Broad Form Property Damage; g) Explosion Collapse and Underground (XCU) Coverage (when applicable), Fire Damage, Medical Expense. NOTE: The aggregate loss limit applies to each project.
2. Automobile liability: \$1,000,000 combined single limit per accident, for bodily injury and property damage.
3. Workers' Compensation and Employer's Liability: Workers' Compensation limits as required by the Labor Code of the State of Texas and Statutory Employer's Liability Limits.
4. Professional Liability.

C. Deductibles and Self-Insured Retentions

Any deductible or self-insured retention must be declared to and approved by the City.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain the following provisions:

1. General Liability and Automobile Liability Coverage
 - a. The City, its officers, officials, employees, Boards and Commissions and volunteers are to be added as "Additional Insured" as respects liability

arising out of activities performed by or on behalf of the vendor, products and completed operations of the vendor, premises owned, occupied or used by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers. It is understood that the business auto policy under "Who is an Insured" automatically provides liability coverage in favor of the City.

- b. The vendor's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be excess of the vendor's insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the City, its officers, officials, employees, Boards and Commissions or volunteers.
- d. The vendor's insurance shall apply separately to each insured against who claim is made or suit is brought, except with respect to the limits of the insured's liability.

2. Workers' Compensation and Employer's Liability Coverage

The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by the vendor for the City.

3. All Coverage

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled or non-renewed by either party, reduced in coverage or in limits except after ten (10) days prior written notice by certified mail, return receipt requested, has been given to the City.

E. Acceptability of Insurers

The City prefers that Insurance be placed with insurers with an A.M. Best's rating of no less than A-:VI, or, A or better by Standard & Poor's. This requirement will be waived for workers' compensation coverage only for those vendors whose workers' compensation coverage is placed with companies who participate in the State of Texas Workers' Compensation Assigned Risk Pool. Professional Liability carriers will need to be approved by the Risk Manager.

F. Verification of Coverage

Contractor shall furnish the City with certificates of insurance effecting coverage required. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be on forms provided by the City and are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

EXHIBIT "D"

AFFIDAVIT OF NO PROHIBITED INTEREST

I, the undersigned declare and affirm that no person or officer of **HELMICK & SCHECHTER, INC.**, a Massachusetts Corporation (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.

HELMICK & SCHECHTER, INC.

BY: _____
Ralph Helmick
PRESIDENT

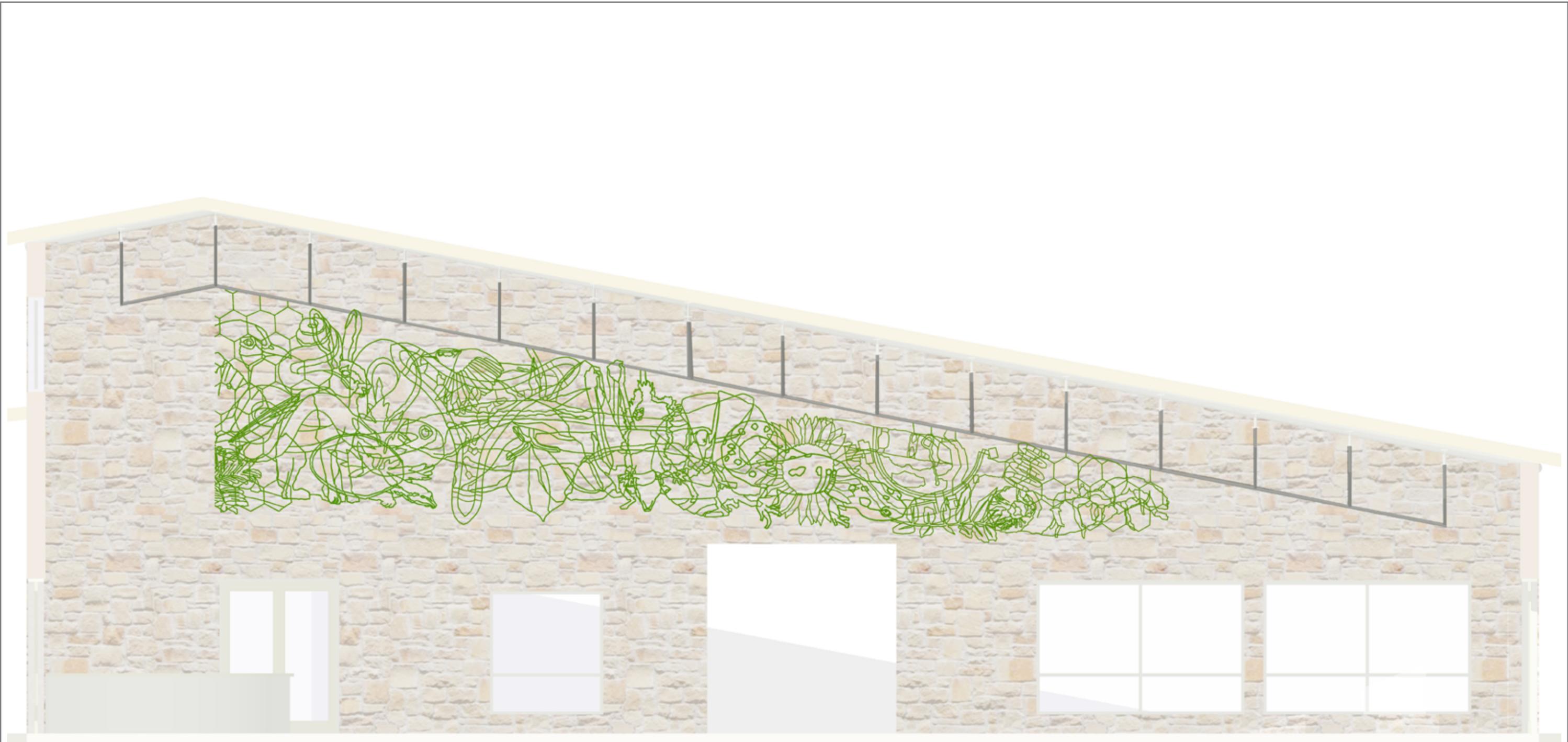
Date: _____

STATE OF MASSACHUSETTS §
 §
COUNTY OF _____ §

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2006 by **RALPH HELMICK**, President of **HELMICK & SCHECHTER, INC.**, a Massachusetts Corporation, on behalf of said corporation.

Notary Public in and for the State of Massachusetts

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HELMICK + SCHECHTER SCULPTURE

141 California Street, Newton, MA 02458
t: 617.332.2433 f: 617.332.2402
www.handsart.net

PROJECT: Oak Point Park and Nature Preserve, Plano, TX

VIEW: Lobby Elevation

WORKING TITLE: Natural Selections

DATE: August 15, 2006



**CITY OF PLANO
COUNCIL AGENDA ITEM**

| | | | | | |
|-----------------------------------------------------------|------------------------------------------------|------------------------------------|-----------------------------------------|-----------------------------------------|-----------------------------------------|
| CITY SECRETARY'S USE ONLY | | Reviewed by Purchasing | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable | |
| <input type="checkbox"/> Consent | <input type="checkbox"/> Regular | <input type="checkbox"/> Statutory | Reviewed by Budget | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable |
| Council Meeting Date: 11-13-06 | | Reviewed by Legal <i>PM</i> | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable | |
| Department: Purchasing | Department Head: Mike Ryan <i>Deane Palmer</i> | | Executive Director | Initials: <i>BR</i> | Date: 11-7-06 |
| Dept Signature: OHS - CJ Howard | City Manager: <i>f</i> | | | | |
| Agenda Coordinator (include phone #): Glenna Hayes x 7074 | | | | | |

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

CAPTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE PURCHASE OF E TEAM INCIDENT MANAGEMENT SOFTWARE IN THE AMOUNT OF SIXTY THOUSAND DOLLARS (\$60,000.00) FROM NC4 PUBLIC SECTOR LLC, THE SOLE SOURCE VENDOR OF SUCH SOFTWARE, EQUIPMENT AND SERVICES; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO TAKE SUCH ACTION AND EXECUTE SUCH DOCUMENTS AS NECESSARY TO EFFECTUATE THE PURCHASE; AND PROVIDING AN EFFECTIVE DATE.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

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

FUND(s): GRANT FUND (UASI 571)

Comments: Funds are available from the 2005 UASI Homeland Security Grant Fund for the purchase of incident management software. The balance of the grant funds will be used for other equipment purchases and items as allowed under the UASI grant.

STRATEGIC PLAN GOAL: Incident Management software relates to the City's Goal of "Service Excellence".

SUMMARY OF ITEM

Purchasing staff recommends approval of sole source expenditure to enter into a contract with NC4 Public Sector LLC in the amount of \$60,000.00 for the purchase of E Team Incident Management software license, any related equipment and/or services for a web-based incident management system for disaster management, conditioned upon timely execution by the City Manager of any necessary document. The City will apply for reimbursement of this expenditure under the 2005 UASI Grant.



**CITY OF PLANO
COUNCIL AGENDA ITEM**

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

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RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE PURCHASE OF E TEAM INCIDENT MANAGEMENT SOFTWARE IN THE AMOUNT OF SIXTY THOUSAND DOLLARS (\$60,000.00) FROM NC4 PUBLIC SECTOR LLC, THE SOLE SOURCE VENDOR OF SUCH SOFTWARE, EQUIPMENT AND SERVICES; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO TAKE SUCH ACTION AND EXECUTE SUCH DOCUMENTS AS NECESSARY TO EFFECTUATE THE PURCHASE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council has been presented with a quotation from NC4 Public Sector LLC, for the purchase of E Team Incident Management Software, equipment and services; and

WHEREAS, the City relies on NC4 Public Sector LLC to provide software, equipment and services that have complete compatibility and interoperability with the North Central Council of Governments and City of Plano USAR efforts; and

WHEREAS, the City Council thus finds that the software, equipment and service needed is available from only one source, NC4 Public Sector LLC, and therefore the purchase is exempt from competitive bid as provided for in *V.T.C.A., Local Governmental Code, Section 252.022(a)(7)*.

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

Section I. The City Council hereby finds and determines that NC4 Public Sector LLC is the sole source provider for the E Team Incident Management Software, equipment and services, and said purchase is exempt from competitive bid as provided for in *V.T.C.A., Local Government Code, Section 252.022(a)(7)*.

Section II. The City Manager or his designee is hereby authorized to take such action and execute such documents with NC4 Public Sector LLC, the sole source provider, as necessary to effectuate the purchase of such incident management software, equipment and services in an amount not to exceed the sum of **SIXTY THOUSAND DOLLARS (\$60,000.00)**.

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

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Pat Evans, MAYOR

ATTEST:

Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

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**CITY OF PLANO
COUNCIL AGENDA ITEM**

| | | | | | |
|---------------------------------------|----------------------------------|------------------------------------|-----------------------------------------|-----------------------------------------|-----------------------------------------|
| -CITY SECRETARY'S USE ONLY | | Reviewed by Purchasing | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable | |
| <input type="checkbox"/> Consent | <input type="checkbox"/> Regular | <input type="checkbox"/> Statutory | Reviewed by Budget | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable |
| Council Meeting Date: | 11/13/06 | | Reviewed by Legal <i>WS</i> | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable |
| Department: | Engineering | | Initials | Date | |
| Department Head | Upchurch | Executive Director | <i>[Signature]</i> | <i>11/6/06</i> | |
| Dept Signature: | <i>[Signature]</i> | City Manager | <i>[Signature]</i> | <i>11.07.06</i> | |
| Agenda Coordinator (include phone #): | Irene Pegues (7198) | | | Project No. 5623 | |

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

CAPTION

Approving the terms and conditions of a Local Transportation Project Advance Funding Agreement by and between the City of Plano and the State of Texas for bicycle, pedestrian and vehicular enhancements along 15th Street from Avenue G to Chisholm Trail in the City of Plano.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

| FISCAL YEAR: 2006-07 | Prior Year (CIP Only) | Current Year | Future Years | TOTALS |
|-----------------------------|--------------------------|-----------------|-----------------|-----------------|
| Budget | 0 | 100,000 | 400,000 | 500,000 |
| Encumbered/Expended Amount | 0 | 0 | 0 | 0 |
| This Item | 0 | -23,280 | -290,000 | -313,280 |
| BALANCE | 0 | 76,720 | 110,000 | 186,720 |

FUND(S): STREET IMPROVEMENT CIP

COMMENTS: This funding agreement has a fiscal impact of \$23,280 at this time and an estimated \$290,000 in the future. The City of Plano's estimated share of the project is \$313,280. Currently there is \$100,000 available leaving a current year balance of \$76,720 for the 15th Street – G Avenue to US 75 project. Additional funding is available from future funding in the amount of \$400,000.

STRATEGIC PLAN GOAL: Funding agreements for street improvements relate to the City's Goal of Safe, Efficient Travel.

SUMMARY OF ITEM

City Council approved a Master Agreement Governing Local Transportation Projects Advance Funding Agreement with TxDOT on May 29, 2001 (Resolution No. 2001-5-2000), which provides state funding for local transportation projects. This agreement requires that a Local Project Advance Funding Agreement (LPAFA) be prepared for each individual project. The attached LPAFA is for the construction of bicycle, pedestrian and vehicular enhancements along 15th Street from Avenue G to Chisholm Trail.

The City's share of the project will be 20% of an estimated total cost of \$1,450,000 (\$290,000). In addition, the City will pay for TxDOT's expenses on this project, estimated to be \$23,280. Federal funding will pay for the remainder.

| | |
|--------------------------------------------------------|-----------------------------------------------------------|
| List of Supporting Documents: LPAFA Location Map | Other Departments, Boards, Commissions or Agencies N/A |
|--------------------------------------------------------|-----------------------------------------------------------|

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RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A LOCAL TRANSPORTATION PROJECT ADVANCE FUNDING AGREEMENT BETWEEN THE STATE OF TEXAS AND THE CITY OF PLANO FOR BICYCLE, PEDESTRIAN AND VEHICULAR ENHANCEMENTS ALONG 15TH STREET FROM AVENUE G TO CHISHOLM TRAIL IN THE CITY OF PLANO; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER, OR IN HIS ABSENCE AN EXECUTIVE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council has been presented a proposed Local Transportation Project Advance Funding Agreement for Project CSJ: 0918-24-965, development and construction of bicycle, pedestrian and vehicular enhancements along 15th Street from Avenue G to Chisholm Trail in the City of Plano, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and

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

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

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

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

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

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

Pat Evans, MAYOR

ATTEST:

Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

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CSJ: 0918-24-965
District #18
Code Chart 64#33100
15th: From Avenue G
To Chisholm Trail
Collin County
Funding Cat: CMAQ

STATE OF TEXAS §
COUNTY OF TRAVIS §

**LOCAL TRANSPORTATION PROJECT
ADVANCE FUNDING AGREEMENT
For a CMAQ Project
(Off State System)**

THIS Local Project Advance Funding Agreement (LPAFA) is made by and between the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called the "State", and the City of Plano, acting by and through its duly authorized officials, hereinafter called the "Local Government."

WITNESSETH

WHEREAS, a Master Agreement between the Local Government and the State has been adopted and states the general terms and conditions for transportation projects developed through this LPAFA; and,

WHEREAS, the Texas Transportation Commission passed Minute Order _____ that provides for the development of, and funding for, the project describe herein; and,

WHEREAS, the Governing Body of the Local Government has approved entering into this LPAFA by resolution or ordinance dated _____, which is attached hereto and made a part hereof as Attachment A for development of the specific project which is identified in the location map shown as Attachment B.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, to be by them respectively kept and performed as hereinafter set forth, it is agreed as follows:

AGREEMENT

1. The period of this LPAFA is as stated in the Master Agreement, without exception.
2. Termination of this LPAFA shall be under the conditions as stated in the Master Agreement, without exception.
3. Amendments to this LPAFA shall be made as described in the Master Agreement, without exception.
4. Scope of Work.
The scope of work for this LPAFA is described as development and construction of bicycle, pedestrian and vehicular enhancements along 15th Street from Avenue G to Chisholm Trail in the City of Plano.
5. Right of Way and Real Property shall be the responsibility of the Local Government, as stated in the Master Agreement, without exception.

CSJ: 0918-24-965
District #18
Code Chart 64#33100
15th: From Avenue G
To Chisholm Trail
Collin County

6. Adjustment of utilities will be provided by the Local Government as required and as stated in the Master Agreement without exception.
7. Environmental Assessment and Mitigation will be carried out as stated in the Master Agreement, without exception.
8. Compliance with Texas Accessibility Standards and ADA will be as stated in the Master Agreement, without exception.
9. Architectural and Engineering Services will be provided by the Local Government. The Local Government is responsible for performance of any required architectural or preliminary engineering work. The design shall conform to AASHTO standards and State specifications will be used. The State shall review and comment on the work as required to accomplish the public purposes of the State. The Local Government will cooperate fully with the State in accomplishing these local public purposes to the degree permitted by State and Federal law.
10. Construction Responsibilities will be carried out by the Local Government.
11. Project Maintenance will be undertaken as provided for in the Master Agreement, without exception.
12. Local Project Sources and Uses of Funds
 - a. Project Cost Estimate: A Project Cost Estimate is provided in Attachment C. Any work done prior to federal authorization will not be eligible for reimbursement. It is the Local Government's responsibility to verify with the State that the Federal Letter of Authority has been issued for the work covered by this Agreement.
 - b. A Source of Funds estimate is also provided in Attachment C. Attachment C shows the percentage and absolute dollar amount to be contributed to the project by federal, state, and local sources.
 - c. The Local Government is responsible for all non-federal and non-state funding, including all project cost overruns, unless provided for through amendment of this agreement.
 - d. After execution of this LPAFA, but prior to the performance of any work by the State, the Local Government will remit a check or warrant made payable to the "Texas Department of Transportation" in the amount specified in Attachment C as the local contribution for State review of Preliminary Engineering and Environment Assessment. The Local Government will pay at a minimum its funding share for this estimated cost of preliminary engineering and environmental assessment as stated in the Local Project Sources and Uses of Funds provision of the Master Agreement.
 - e. Sixty (60) days prior to the date set for receipt of the construction bids, the Local Government shall remit its remaining financial share for the State's estimated construction oversight cost and any others costs owing.
 - f. In the event the State determines that additional funding is required by the Local Government at any time during the development of the Project, the State will notify the Local Government in writing. The Local Government will make payment to the State within thirty (30) days from receipt of the State's written notification.
 - g. Whenever funds are paid by the Local Government to the State under this Agreement, the Local Government shall remit a check or warrant made payable to the "Texas Department of Transportation Trust Fund." The check or warrant shall be deposited by the State in an

CSJ: 0918-24-965
District #18
Code Chart 64#33100
15th: From Avenue G
To Chisholm Trail
Collin County

escrow account to be managed by the State. Funds in the escrow account may only be applied by the State to the Project. If, after final Project accounting, excess funds remain in the escrow account, those funds may be applied by the State to the Local Government's contractual obligations to the State under another advance funding agreement.

- h. If any existing or future local ordinances, commissioners court orders, rules, policies, or other directives, including but not limited to outdoor advertising billboards and storm water drainage facility requirements, are more restrictive than State or Federal Regulations, or if any other locally proposed changes, including but not limited to plats or replats, result in increased costs, then any increased costs associated with the ordinances or changes will be paid by the local government. The cost of providing right of way acquired by the State shall mean the total expenses in acquiring the property interests either through negotiations or eminent domain proceedings, including but not limited to expenses related to relocation, removal, and adjustment of eligible utilities.
 - i. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.
13. Document and Information Exchange. The Local Government agrees to electronically deliver to the State all general notes, specifications, contract provision requirements and related documentation in a Microsoft® Word or similar document. If requested by the State, the Local Government will use the State's document template. The Local Government shall also provide a detailed construction time estimate including types of activities and month in the format required by the State. This requirement applies whether the Local Government creates the documents with its own forces or by hiring a consultant or professional provider.
 14. Incorporation of Master Agreement Provisions. This LPAFA incorporates all of the governing provisions of the Master Advance Funding Agreement (MAFA) in effect on the date of final execution of this LPAFA, unless such MAFA provision is specifically excepted herein.
 15. Insurance. If this agreement authorizes the Local Government or its contractor to perform any work on State right of way, before beginning work the entity performing the work shall provide the State with a fully executed copy of the State's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on the State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and the State may recover damages and all costs of completing the work.
 16. Signatory Warranty. The signatories to this agreement warrant that each has the authority to enter into this agreement on behalf of the party represented.

CSJ: 0918-24-965
District #18
Code Chart 64#33100
15th: From Avenue G
To Chisholm Trail
Collin County

IN TESTIMONY HEREOF, the parties hereto have caused these presents to be executed in duplicate counterparts.

THE LOCAL GOVERNMENT

By: _____
Thomas H. Muellenbeck

Title: City Manager

Date: _____

THE STATE OF TEXAS

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

By: _____
Janice Mullenix
Director of Contract Services Section
Office of General Counsel
Texas Department of Transportation

Date: _____

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CSJ: 0918-24-965
District #18
Code Chart 64#33100
15th: From Avenue G
To Chisholm Trail
Collin County

ATTACHMENT A

**RESOLUTION OF LOCAL GOVERNMENT
APPROVING THIS LPAFA**

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CSJ: 0918-24-965
District #18
Code Chart 64#33100
15th: From Avenue G
To Chisholm Trail
Collin County

ATTACHMENT B
PROJECT LOCATION MAP

y-8

CSJ: 0918-24-965
 District #18
 Code Chart 64#33100
 15th: From Avenue G
 To Chisholm Trail
 Collin County

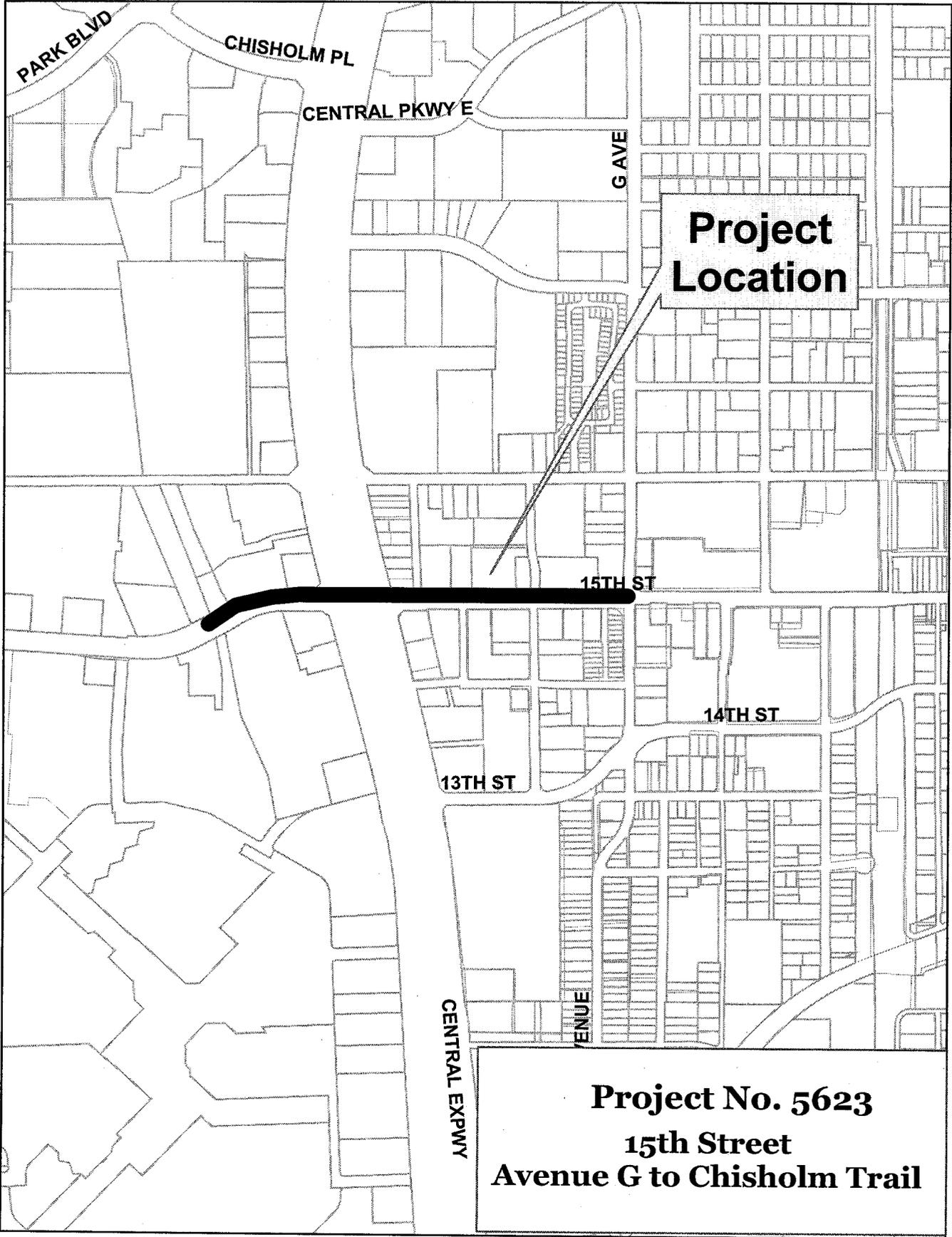
ATTACHMENT C

PROJECT BUDGET ESTIMATE AND SOURCE OF FUNDS

| Project Budget | | | | | | CSJ: | 0918-24-965 |
|--------------------------------------------------|-----------------------|-----------------------|---------------------|---------------------|----------------------|------|-------------|
| Description | Total Estimated Cost | Federal Participation | State Participation | Local Participation | Actual Participation | | |
| | 100% | 80.0% | 0.0% | 20.0% | Actual Participation | | |
| Land (no cash contribution) | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | | |
| Utilities (no cash contribution) | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | | |
| Environmental Cost | \$40,000.00 | \$32,000.00 | \$0.00 | \$8,000.00 | \$8,000.00 | | |
| Preliminary Engineering - State Review | \$20,000.00 | \$16,000.00 | \$0.00 | \$4,000.00 | \$4,000.00 | | |
| Plans, Specs & Estimate (PS&E) | \$141,000.00 | \$112,800.00 | \$0.00 | \$28,200.00 | \$28,200.00 | | |
| Construction | \$1,192,600.00 | \$954,080.00 | \$0.00 | \$238,520.00 | \$238,520.00 | | |
| Engineering & Contingency (State oversight) | \$56,400.00 | \$45,120.00 | \$0.00 | \$11,280.00 | \$11,280.00 | | |
| Total | \$1,450,000.00 | \$1,160,000.00 | \$0.00 | \$290,000.00 | \$290,000.00 | | |
| 1st payment due prior to PS&E review by state | | | | | | | |
| 2nd payment due 60 days prior to project letting | | | | | | | |

Total Participation required from the local government = \$290,000.00

y-9



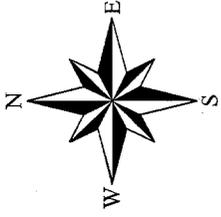
Y-10



CITY OF PLANO COUNCIL AGENDA ITEM

| | | | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|----------------------------------------------------|-----------------------------------------|----------------------------------------------------|
| CITY SECRETARY'S USE ONLY | | Reviewed by Purchasing | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Not Applicable |
| <input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory | | Reviewed by Budget | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Not Applicable |
| Council Meeting Date: | 11/13/06 | Reviewed by Legal <i>WJ</i> | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable |
| Department: | Engineering | | Initials | Date |
| Department Head | Alan Wachurch | Executive Director | <i>[Signature]</i> | 11-11-06 |
| Dept Signature: | <i>[Signature]</i> | City Manager | <i>[Signature]</i> | 11/11/06 |
| Agenda Coordinator (include phone #): | | I. Pegues 7198 <i>[Signature]</i> | | |
| ACTION REQUESTED: <input checked="" type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER | | | | |
| CAPTION | | | | |
| An Ordinance of the City of Plano, Texas, amending Section 12-101 Prohibited on certain streets at all times in Article V, Stopping, Standing, and Parking, Chapter 12, Motor Vehicles and Traffic, of the Plano Code of Ordinances to modify parking restrictions along and upon specified portions of 18th Street and G Avenue within the city limits of the City of Plano, declaring it unlawful and a misdemeanor to stop, stand, or park motor vehicles at all times along and upon the specified portions of 18th Street and G Avenue listed in Section 12-101, providing a fine for criminal penalties not to exceed \$200.00 for each offense; and providing a repealer clause, a severability clause, a savings clause, and an effective date. | | | | |
| FINANCIAL SUMMARY | | | | |
| <input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP | | | | |
| FISCAL YEAR: | Prior Year (CIP Only) | Current Year | Future Years | TOTALS |
| Budget | 0 | 0 | 0 | 0 |
| Encumbered/Expended Amount | 0 | 0 | 0 | 0 |
| This Item | 0 | 0 | 0 | 0 |
| BALANCE | 0 | 0 | 0 | 0 |
| FUND(s): | | | | |
| COMMENTS: | | | | |
| SUMMARY OF ITEM | | | | |
| Stopping, standing, and parking prohibitions currently exist along 18th Street between Central Expressway and G Avenue and along G Avenue between 15th Street and 19th Street. The construction of the Lexington Park Addition at the southwest corner of the intersection of 18th Street at G Avenue includes modifications to portions of both 18th Street and G Avenue to provide on-street parking areas. The stopping, standing, or parking prohibitions in areas where the on-street parking areas are being constructed should therefore be eliminated to facilitate the use of the on-street parking areas. Stopping, standing, or parking in other areas of 18th Street and of G Avenue should continue to be prohibited. The Transportation Engineering Division recommends approval of an Ordinance modifying the stopping, standing, and parking restrictions along portions of 18th Street and G Avenue. | | | | |
| List of Supporting Documents: | | Other Departments, Boards, Commissions or Agencies | | |
| Map | | | | |

Proposed Parking Restrictions - 18th Street and G Avenue



**Proposed
Parking Restrictions
18th Street &
G Avenue**

November 2006

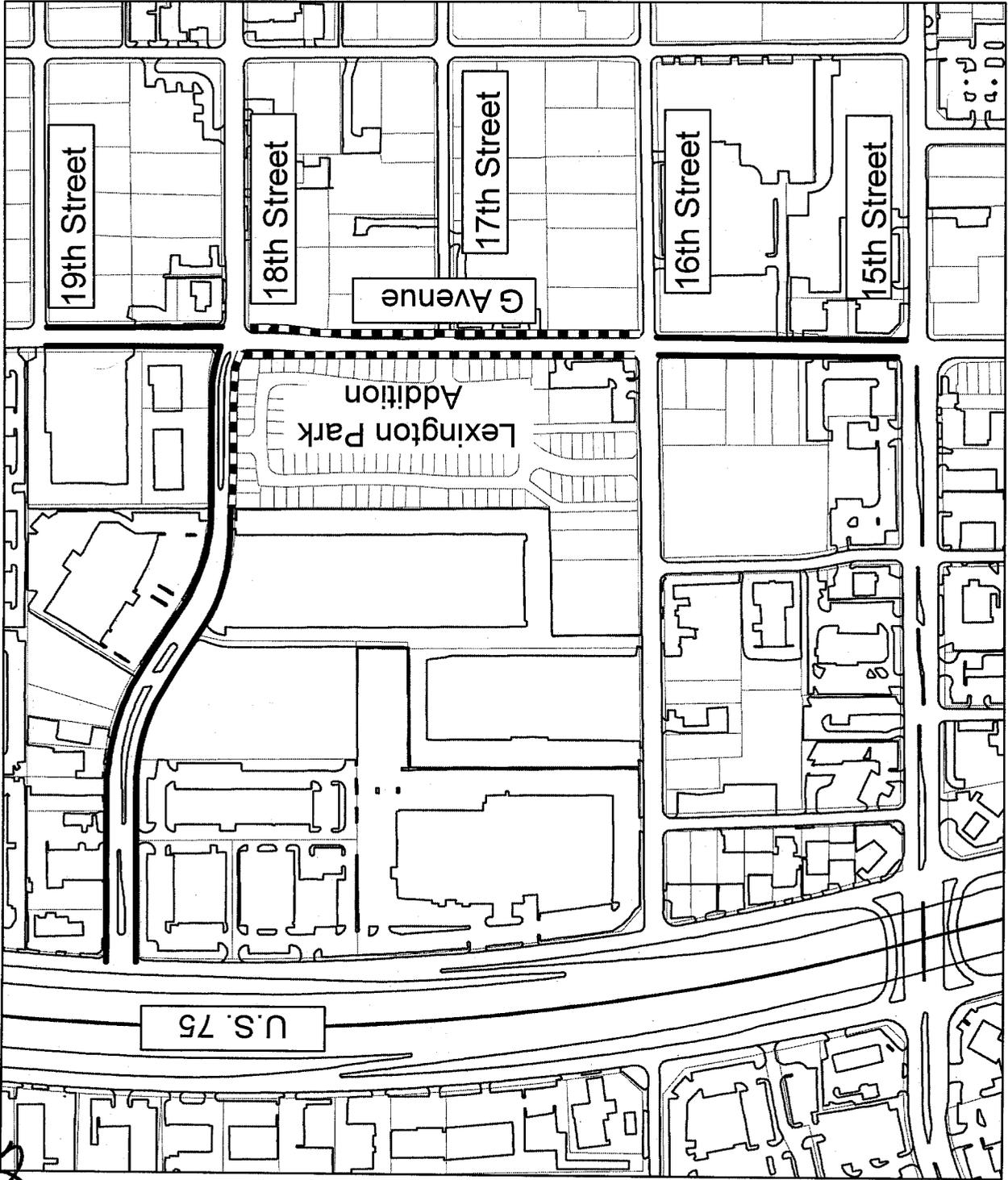
Legend

No Stopping,
Standing,
or Parking

Parking
Permitted



TRANSPORTATION
ENGINEERING
DIVISION



2-2

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PLANO, TEXAS, AMENDING SECTION 12-101 PROHIBITED ON CERTAIN STREETS AT ALL TIMES IN ARTICLE V, STOPPING, STANDING, AND PARKING, CHAPTER 12, MOTOR VEHICLES AND TRAFFIC, OF THE PLANO CODE OF ORDINANCES TO MODIFY PARKING RESTRICTIONS ALONG AND UPON SPECIFIED PORTIONS OF 18TH STREET AND G AVENUE WITHIN THE CITY LIMITS OF THE CITY OF PLANO, DECLARING IT UNLAWFUL AND A MISDEMEANOR TO STOP, STAND, OR PARK MOTOR VEHICLES AT ALL TIMES ALONG AND UPON THE SPECIFIED PORTIONS OF 18TH STREET AND G AVENUE LISTED IN SECTION 12-101, PROVIDING A FINE FOR CRIMINAL PENALTIES NOT TO EXCEED \$200.00 FOR EACH OFFENSE; AND PROVIDING A REPEALER CLAUSE, A SEVERABILITY CLAUSE, A SAVINGS CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS, stopping, standing, and parking prohibitions currently exist along 18th Street between Central Expressway and G Avenue and along G Avenue between 15th Street and 19th Street; and

WHEREAS, the construction of the Lexington Park Addition at the southwest corner of the intersection of 18th Street at G Avenue includes modifications to portions of both 18th Street and G Avenue to provide on-street parking areas; and

WHEREAS, the stopping, standing, or parking prohibitions in areas on 18th Street and on G Avenue where the on-street parking areas are being constructed should be eliminated to facilitate the use of the on-street parking areas; and

WHEREAS, stopping, standing, or parking should be prohibited along certain portions of 18th Street and of G Avenue; and

WHEREAS, the City Council of the City of Plano finds it necessary to prohibit the stopping, standing, or parking of motor vehicles along and upon specified portions of 18th Street and G Avenue within the city limits of the City of Plano at all times in order to provide for the safety of the general public within the area.

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

Section I. The City of Plano Code of Ordinances, Chapter 12, Motor Vehicles and Traffic, Article V, Stopping, Standing, and Parking, Section 12-101 Prohibited on certain streets at all times, subsection *18th Street*, is hereby amended by the deletion of the following:

“(4) On both sides of 18th Street between U.S. 75 Northbound Service Road and G Avenue.”

Section II. The City of Plano Code of Ordinances, Chapter 12, Motor Vehicles and Traffic, Article V, Stopping, Standing, and Parking, Section 12-101 Prohibited on certain streets at all times, subsection *Avenue G*, is hereby amended by the deletion of the following:

- (1) Along the east side from its intersection with 18th Street to its intersection with 19th Street.
- (2) Along the west side from its intersection with 16th Street to its intersection with 18th Street.
- (3) Along the east side for a distance of three hundred (300) feet north from the north curb line of 15th Street.
- (4) Along and upon the east side of Avenue G from the north property line of the Douglass Community Center to the south property line of the Douglass Community Center."

Section III. The City of Plano Code of Ordinances, Chapter 12, Motor Vehicles and Traffic, Article V, Stopping, Standing, and Parking, Section 12-101 Prohibited on certain streets at all times, subsection *18th Street*, is hereby amended by the addition of the following:

- (4) Along the north side between Central Expressway and G Avenue and along the south side between Central Expressway and a point 360 feet west of G Avenue."

Section IV. The City of Plano Code of Ordinances, Chapter 12, Motor Vehicles and Traffic, Article V, Stopping, Standing, and Parking, Section 12-101 Prohibited on certain streets at all times, subsection *Avenue G*, is hereby amended by the addition of the following:

- (1) Along both sides between 15th Street and 16th Street.
- (2) Along both sides between 18th Street and 19th Street.
- (3) Along the east side from the north property line of the Douglass Community Center to the south property line of the Douglass Community Center."

Section V. It shall be unlawful for any person to stop, stand, or park a motor vehicle, except when necessary to avoid conflict with other traffic or in compliance with law or directions of a police officer, along and upon the streets or portions of streets listed in the City of Plano Code of Ordinances, Chapter 12, Motor Vehicles and Traffic, Article V, Stopping, Standing, and Parking, Section 12-101 Prohibited on certain streets at all times.

Section VI. The Traffic Engineer of Plano is hereby authorized and directed to cause placement of traffic control signs to the sections of the roadways described herein, and such signs shall give notice to all persons of the prohibition against stopping, standing, or parking in this area.

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

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

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

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

Section XI. This Ordinance shall become effective from and after its passage and publication as required by law.

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

Pat Evans, MAYOR

ATTEST:

Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

Z-5



**CITY OF PLANO
COUNCIL AGENDA ITEM**

| | | | | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|----------------------------------------------------|-----------------------------------------|----------------------------------------------------|
| CITY SECRETARY'S USE ONLY | | Reviewed by Purchasing | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Not Applicable |
| <input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory | | Reviewed by Budget | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Not Applicable |
| Council Meeting Date: | 11/13/06 | Reviewed by Legal <i>WS</i> | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable |
| Department: | Engineering | | Initials | Date |
| Department Head | Alan L. Upchurch | Executive Director | <i>[Signature]</i> | <i>11-13-06</i> |
| Dept Signature: | <i>[Signature]</i> | City Manager | <i>[Signature]</i> | <i>11/13/06</i> |
| Agenda Coordinator (include phone #): | | Irene Pegues (7198) <i>[Signature]</i> | | |
| ACTION REQUESTED: <input checked="" type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER | | | | |
| CAPTION | | | | |
| AN ORDINANCE OF THE CITY OF PLANO, TEXAS, ABANDONING ALL RIGHT, TITLE AND INTEREST OF THE CITY, IN AND TO THAT CERTAIN FIVE FOOT (5') WATER MAIN EASEMENT BEING SITUATED IN THE JOSEPH KLEPPER SURVEY, ABSTRACT NUMBER 213, BEING PART OF THE PLANO SAVINGS ADDITION, AN ADDITION TO THE CITY OF PLANO, AS RECORDED IN VOLUME G, PAGE 298 OF THE COLLIN COUNTY MAP RECORDS, WHICH IS LOCATED WITHIN THE CITY LIMITS OF PLANO, COLLIN COUNTY, TEXAS; QUITCLAIMING ALL RIGHT, TITLE AND INTEREST OF THE CITY IN SUCH RIGHT-OF-WAY TO THE ABUTTING PROPERTY OWNER, MARY AND RUBEN GARZA FAMILY PARTNERSHIP, TO THE EXTENT OF ITS INTEREST; AUTHORIZING THE CITY MANAGER, OR IN HIS ABSENCE AN EXECUTIVE DIRECTOR, TO EXECUTE ANY DOCUMENTS DEEMED NECESSARY; AND PROVIDING AN EFFECTIVE DATE. | | | | |
| FINANCIAL SUMMARY | | | | |
| <input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP | | | | |
| FISCAL YEAR: | Prior Year (CIP Only) | Current Year | Future Years | TOTALS |
| Budget | 0 | 0 | 0 | 0 |
| Encumbered/Expended Amount | 0 | 0 | 0 | 0 |
| This Item | 0 | 0 | 0 | 0 |
| BALANCE | 0 | 0 | 0 | 0 |
| FUND(s): | | | | |
| COMMENTS: | | | | |
| SUMMARY OF ITEM | | | | |
| There is no water main located in the easement. The property is served by a water line in 15 th Street. The abandonment of the water easement will eliminate any building constraints on the property because of this easement. | | | | |
| List of Supporting Documents: | | Other Departments, Boards, Commissions or Agencies | | |
| Location Map | | n/a | | |

aa-1

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PLANO, TEXAS, ABANDONING ALL RIGHT, TITLE AND INTEREST OF THE CITY, IN AND TO THAT CERTAIN FIVE FOOT (5') WATER MAIN EASEMENT BEING SITUATED IN THE JOSEPH KLEPPER SURVEY, ABSTRACT NUMBER 213, BEING PART OF THE PLANO SAVINGS ADDITION, AN ADDITION TO THE CITY OF PLANO AS RECORDED IN VOLUME G, PAGE 298 OF THE COLLIN COUNTY MAP RECORDS, WHICH IS LOCATED WITHIN THE CITY LIMITS OF PLANO, COLLIN COUNTY, TEXAS; QUITCLAIMING ALL RIGHT, TITLE AND INTEREST OF THE CITY IN SUCH RIGHT-OF-WAY TO THE ABUTTING PROPERTY OWNER, MARY AND RUBEN GARZA FAMILY PARTNERSHIP, TO THE EXTENT OF ITS INTEREST; AUTHORIZING THE CITY MANAGER, OR IN HIS ABSENCE AN EXECUTIVE DIRECTOR, TO EXECUTE ANY DOCUMENTS DEEMED NECESSARY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Plano has been requested to abandon all right, title and interest of the City in and to that certain five foot (5') water easement (hereinafter called "Easement") being situated in the Joseph Klepper Survey, Abstract Number 213, being part of the Plano Savings Addition, an addition to the City of Plano as recorded in Volume G, Page 298 of the Collin County Map Records, which is located within the City Limits of Plano, Collin County, Texas, and which is more particularly described in Exhibit "A" attached hereto and incorporated herein by reference; and

WHEREAS, the Property Owner has filed with the City a Petition for Abandonment, a copy of which is attached hereto as Exhibit "B" (without attached Exhibits) and made a part hereof by reference; and

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

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

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

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

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

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

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

Pat Evans, MAYOR

ATTEST:

Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

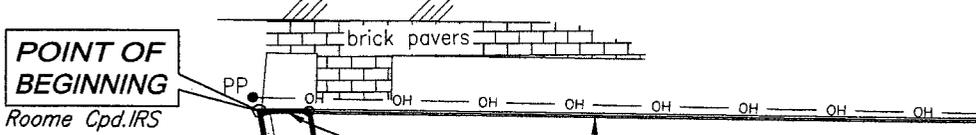
Diane C. Wetherbee, CITY ATTORNEY

aa-3

Exhibit "A"

817 Sq. Ft. or 0.0188 Acre
Joseph Klepper Survey, Abstract No. 213
City of Plano, Collin County, Texas

East 15th Street



5' Water Main Esmt.
Vol. 639, Pg. 47, CCLR

Lot 1, Block A
Mobil Oil
Vol. J, Pg. 936, CCMR

Existing
Two Story Masonry Building

Lot 1, Block 1
Plano Savings Addition
Vol. G, Pg. 298, CCMR

550 E. 15th Street
Joseph Klepper Survey, Abstract No. 213
City of Plano, Collin County, Texas



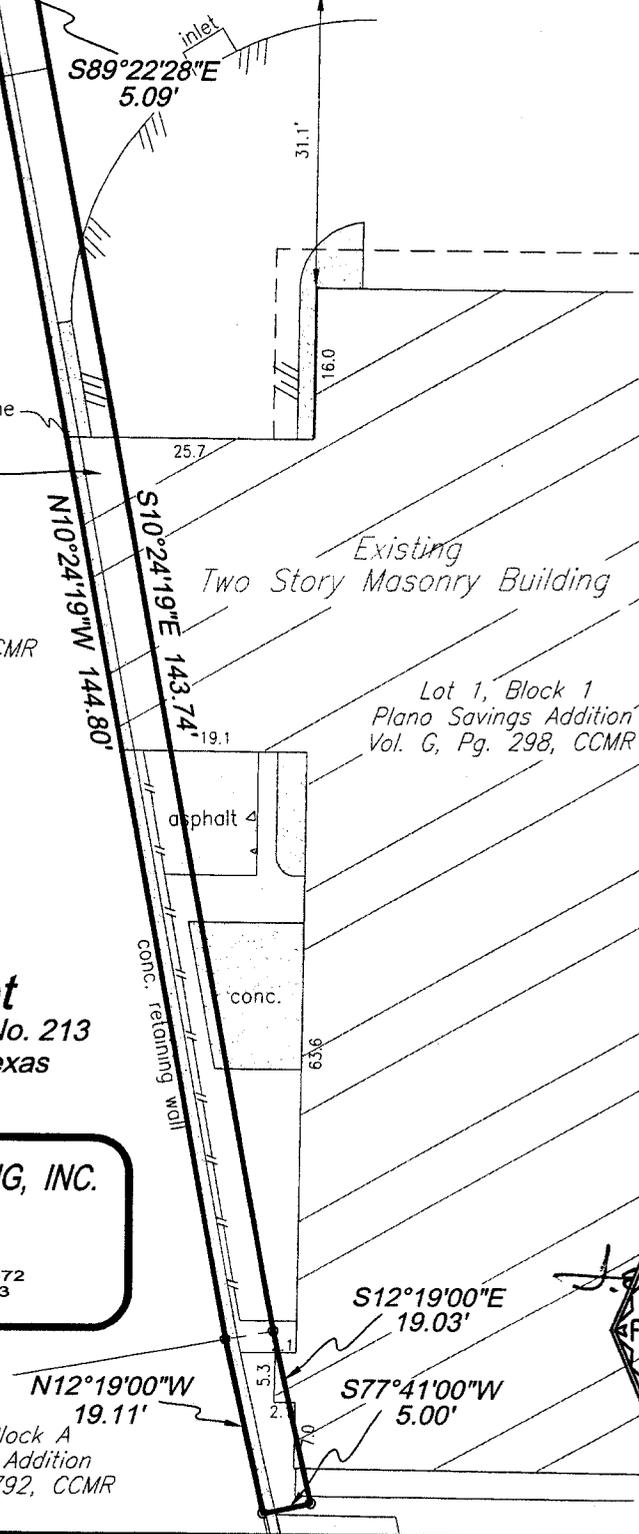
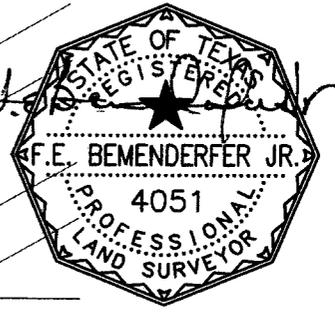
P:/AC/2006Q4/AC64453Esmt.dwg



ROOME LAND SURVEYING, INC.
2000 AVENUE G
SUITE 810
PLANO, TX 75074
Phone Number (972) 423-4372
Fax Number (972) 423-7523

aa-4

Lot 1, Block A
Glen Whitt Addition
Vol. F, Pg. 792, CCMR



Metes and Bounds Description
Joseph Klepper Survey, Abstract No. 213
City of Plano, Collin County, Texas

SITUATED in the State of Texas, County of Collin and City of Plano, being part of the Joseph Klepper Survey, Abstract No. 213, being part of the Plano Savings Addition, an addition to the City of Plano as recorded in Volume G, Page 298 of the Collin County Map Records, being all of a 5-foot water main easement as described and recorded with a centerline description in Volume 639, Page 47 of the Collin County Land Records with said premises being more particularly described as follows:

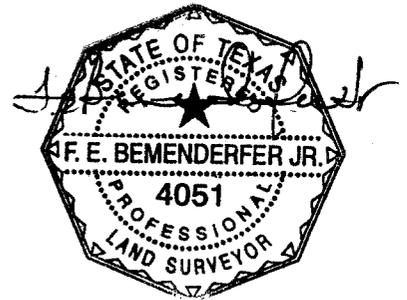
BEGINNING at a Roome capped 1/2-inch iron rod set in the south right-of-way line of East 15th Street marking the northwest corner of said premises and the northwest corner of said Plano Savings Addition;

THENCE with the south right-of-way line of East 15th Street, the north line of said premises and the north line of said Addition, South 89°22'28" East, 5.09 feet to the northeast corner of said premises;

THENCE with the east line of said premises as follows: South 10°24'19" East, 143.74 feet and South 12°19'00" East, 19.03 feet to its southeast corner;

THENCE with the south line of said premises, South 77°41'00" West, 5.00 feet to its southwest corner in the west line of said Addition;

THENCE with the west line of said Addition as follows: North 12°19'00" West, 19.11 feet and North 10°24'19" West, 144.80 feet to the place of beginning and containing 817 square feet or 0.0188 acre of land.



aa-5

EXHIBIT "B"

PETITION FOR ABANDONMENT
[For Easement Abandonment]

We, the undersigned, (hereinafter "Owners"), being all of the owners of real property abutting **WATER EASEMENT ALONG THE WEST PROPERTY LINE** (hereinafter called "Easement"), more particularly described by metes and bounds in the field note description attached hereto and incorporated herein as **Exhibit "A-1"** do hereby request that the City of Plano, Texas (called "City") abandon the Easement.

- 1. The Owners are requesting the abandonment of the Easement for the following reasons:

THERE IS NO WATER MAIN LOCATED IN THE EASEMENT. THE PROPERTY IS SERVED BY A WATER LINE IN 15TH STREET.

- 2. The following public interest will be served as a result of the abandonment:

THE ABANDONMENT OF THE WATER EASEMENT WILL ELIMINATE ANY BUILDING CONSTRAINTS ON THE PROPERTY BECAUSE OF THIS EASEMENT.

- 3. Unless the City determines that this abandonment is exempt from payment of fair market value, the Owners agree to pay to the City the fair market value of the Easement as determined by an appraisal obtained by the City (called "Price"). The appraisal shall be conclusive as to the fair market value. The Owners shall reimburse the City for the cost of the appraisal and other costs incident to the abandonment (called "Costs"). The Price and Costs shall be paid to the City prior to the abandonment. Should the Plano City Council decide not to abandon the Easement, the Price shall be returned to the Owners, but the Costs shall be retained by the City. Each Owner's share of the Price and Costs shall be in the same proportion as their abutting ownership as hereinafter defined.

- 4. If the Owners are providing a replacement easement for the Easement requested to be abandoned herein, Owners will attach a metes and bounds description or plat identifying the replacement easement and attach same to this Petition as **Exhibit "B-1"**.

- 5. The Owners hereby represent and affirm to the City that no other property owner, lessee, tenant or easement or license holder uses the Easement to access or to serve their property.

- 6. **The Owners further agree to release, defend, indemnify and hold the City, its officers, agents and employees harmless from and against any and all claims, losses, demands, suits, judgments and costs, including reasonable**

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and necessary attorney's fees and expenses, arising out of, related to or resulting from the abandonment of the Easement by City.

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

MARY AND RUBEN GARZA FAMILY PARTNERSHIP – 100%

- 8. Owners shall also prepare a map or drawing showing the Easement to be abandoned along with a designation of all abutting property owners. This map or drawing shall be attached hereto and incorporated herein as **Exhibit "C-1"**.
- 9. Owners shall also prepare a separate field note description for each portion of the Easement to be released to each abutting property owner. This description shall be attached hereto and incorporated herein as **Exhibit "D-1"**.

[Remainder of page blank]

aa-7

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

and
 Mary ~~and~~ Ruben Garza FLP

Typed Name of Owner

2821 Aspen Court West

Address

Plano, TX 75075

City, State and Zip

Dated: 10-9-06

Ruben B Garza

 Signature of Owner

Contact Person for Property Owners:

Name: MARY ALICE GARZA

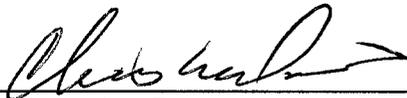
Phone No: 972-423-5480

aa-8

FOR DEPARTMENTAL USE ONLY

The Easement to be abandoned is to one or more abutting property owners and is exempt from the requirement that fair market value be paid for the following reason(s):

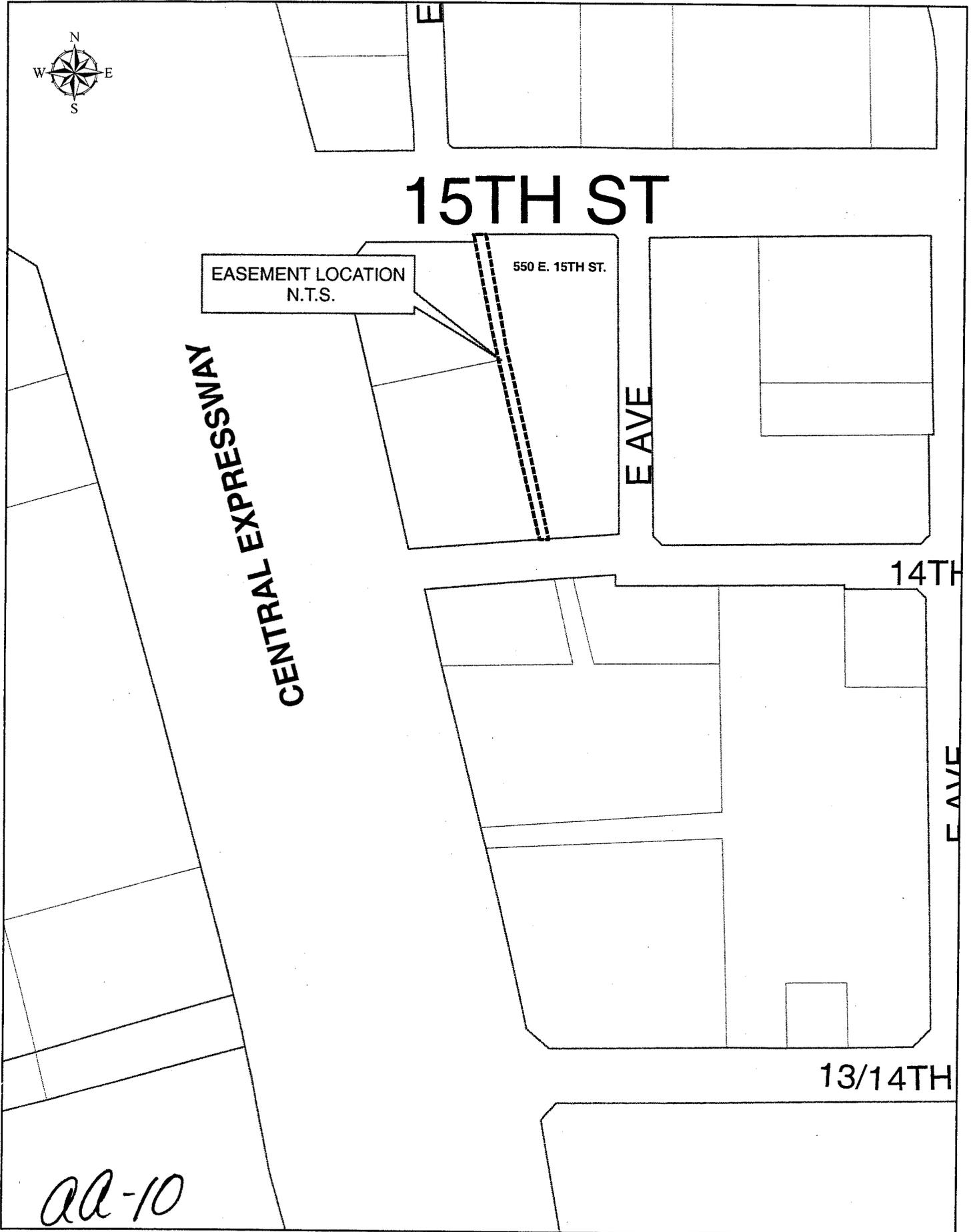
- The Easement consists of narrow strips of land, or land that because of its shape, lack of access to public roads, or small area cannot be used independently under its current zoning or under applicable subdivision or other development code ordinances;
- The Easement consists of streets or alleys, owned in fee or used by easement;
- The Easement consists of land or a real property interest originally acquired for streets, rights-of-way, or easements that the City of Plano has decided to exchange with Owner for other land to be dedicated and used for streets, rights of way, easements, or other public purposes, including transactions partly for cash;
- The Easement contains land that the City wants to have developed by an independent foundation;
- The Easement is located within a reinvestment zone designated by law that the City desires to have developed under a project plan adopted by the municipality for the zone.



 Engineering Department
 City of Plano, Texas

aa-9

EASEMENT ABANDONMENT



LOCATION MAP



**CITY OF PLANO
COUNCIL AGENDA ITEM**

| | | | | | |
|--------------------------------------------------------------------|---------------------------------------------|------------------------------------|------------------------------|----------------------------------------------------|-----------------------------------------|
| CITY SECRETARY'S USE ONLY | | Reviewed by Purchasing | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Not Applicable | |
| <input type="checkbox"/> Consent | <input checked="" type="checkbox"/> Regular | <input type="checkbox"/> Statutory | Reviewed by Budget | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable |
| Council Meeting Date: | 11/13/2006 | | Reviewed by Legal | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable |
| Department: | Customer and Utility Services | | Initials | Date | |
| Department Head | Mark Israelson | Executive Director | <i>[Signature]</i> | 11/13/06 | |
| Dept Signature: | <i>[Signature]</i> | City Manager | <i>[Signature]</i> | 10/31/06 | |
| Agenda Coordinator (include phone #): Nancy Rodriguez X7510 | | | | | |

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

CAPTION

AN ORDINANCE OF THE CITY OF PLANO, TEXAS AMENDING EXISTING FRANCHISE ORDINANCE NO. 2006-8-17 BETWEEN THE CITY OF PLANO AND TXU ELECTRIC DELIVERY COMPANY, A TEXAS CORPORATION, ITS SUCCESSORS AND ASSIGNS, TO CORRECT AN ERROR IN THE DATE THAT FINAL PAYMENT UNDER THE FRANCHISE WILL BE MADE; PROVIDING FOR TXU ELECTRIC DELIVERY ACCEPTANCE; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; AND PROVIDING A REPEALER CLAUSE, A SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

SECOND READING – FIRST READING HELD AND APPROVED SEPTEMBER 25, 2006.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

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

FUND(s):

COMMENTS: The change of the final payment in the contract period from 2016 to 2017 and change of the rights and privileges period changed ending August 31, 2018 has no financial impact, other than to extend the contract periods.

SUMMARY OF ITEM

This ordinance corrects the final payment date to August 31, 2017.

| | |
|-------------------------------------------------------|----------------------------------------------------|
| List of Supporting Documents: Memo to City Council | Other Departments, Boards, Commissions or Agencies |
|-------------------------------------------------------|----------------------------------------------------|

1-1

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PLANO, TEXAS AMENDING EXISTING FRANCHISE ORDINANCE NO. 2006-8-17 BETWEEN THE CITY OF PLANO AND TXU ELECTRIC DELIVERY COMPANY, A TEXAS CORPORATION, ITS SUCCESSORS AND ASSIGNS, TO CORRECT AN ERROR IN THE DATE THAT FINAL PAYMENT UNDER THE FRANCHISE WILL BE MADE; PROVIDING FOR TXU ELECTRIC DELIVERY ACCEPTANCE; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; AND PROVIDING A REPEALER CLAUSE, A SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

WHEREAS, TXU Electric Delivery Company, successor in interest to Oncor Electric Delivery Company (hereinafter called "Electric Delivery") is engaged in the business of providing electric utility service within the City and is using the public rights-of-way within the City for that purpose under the terms of a franchise ordinance heretofore duly passed by the governing body of the City and duly accepted by Electric Delivery; and

WHEREAS, on August 28, 2006, the City Council amended Ordinance No. 2003-12-12 to provide for a different payment schedule and extension of the term; and

WHEREAS, Ordinance No. 2006-8-17 incorrectly provided that the final payment date was August 31, 2018 when the actual final payment date is August 31, 2017.

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

Section I. The franchise between the City and TXU Electric Delivery is amended as follows:

- A. A final annual payment will be made on or before August 31, 2006, based on each kilowatt hour of electricity delivered by TXU Electric Delivery during the twelve-month period ending July 31, 2006, to each retail customer whose consuming facility's point of delivery is located within the City's municipal boundaries. This payment is for the rights and privileges granted under the franchise for the twelve month period September 1, 2006 – August 31, 2007.

Effective November 30, 2006, the annual prospective payment schedule is hereby changed to a quarterly prospective schedule as follows:

| Payment Due Date | Basis Period | Privilege Period (Following Year) |
|------------------|------------------|--------------------------------------|
| Nov. 30 | Aug. 1 – Oct. 31 | Sept. 1 – Nov. 30 |
| Feb 28 | Nov. 1 – Jan. 31 | Dec. 1 – Feb. 28 |
| May 31 | Feb. 1 – Apr. 30 | Mar. 1 – May 31 |
| Aug. 31 | May 1 – July 31 | June 1 – Aug. 31 |

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The first quarterly payment will be due and payable on or before November 30, 2006, based on the period beginning August 1, 2006, and ending October 31, 2006, for the rights and privileges granted under the franchise during the period beginning September 1, 2007, and ending November 30, 2007. Subsequent payments will be made on a quarterly basis as provided in the above schedule. The final payment under the franchise will be made on or before August 31, 2017, based on the period beginning May 1, 2017, and ending July 31, 2017, for the rights and privileges beginning June 1, 2018, and ending August 31, 2018.

After the final payment date of August 31, 2017, TXU Electric Delivery may continue to make additional quarterly payments in accordance with the above schedule. City acknowledges that such continued payments will correspond to privilege periods that extend beyond the term of this franchise and that such continued payments will be recognized in any subsequent franchise agreement as full payment for the relevant quarterly periods; and

- B. The term of the franchise is hereby extended for an additional five years to expire on August 31, 2018.

Section II. In all respects, except as specifically and expressly amended by this ordinance, the franchise heretofore duly passed by the governing body of the City and duly accepted by TXU Electric Delivery shall remain in full force and effect according to its terms until said franchise ordinance terminates as provided herein.

Section III. It is hereby officially found and determined that the meeting at which this Ordinance is passed is open to the public as required by law and that public notice of the time, place and purpose of said meeting was given as required.

Section IV. All provisions of the Code of Ordinances of the City of Plano 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, not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

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

Section VI. This Ordinance shall be read at two separate regular meetings of the City Council of the City of Plano with the second meeting to be at least 30 days from the first reading, and shall be published once each week for four consecutive weeks in the official newspaper of the City of Plano.

Section VII. This ordinance shall become effective 30 days after its final passage and publication as required by City Charter and conditioned upon TXU Electric Delivery executing the written acceptance of this Ordinance attached hereto prior to the effective date; otherwise this Ordinance shall be null and void.

**DULY PASSED AND APPROVED ON FIRST READING THIS 25th day of
September, 2006.**

Pat Evans
for Pat Evans, MAYOR

ATTEST:

Elaine Bealke
Elaine Bealke, City Secretary

APPROVED AS TO FORM:

Diane C. Wetherbee
Diane C. Wetherbee, City Attorney

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DULY PASSED AND APPROVED ON SECOND READING (which date is at least 30 days from the First Reading) THIS _____ DAY OF _____, 2006.

Pat Evans, MAYOR

ATTEST:

Elaine Bealke, City Secretary

APPROVED AS TO FORM:

Diane C. Wetherbee, City Attorney

ACCEPTED BY TXU ELECTRIC DELIVERY COMPANY

By: _____
Name: _____
Title: _____
Date: _____

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TXU Electric Delivery
500 N. Akard
Suite 13-062
Dallas, TX 75201
Tel: 214-486-2879
Fax: 214-486-2180

Debra Anderson
Manager
Municipal Regulatory

September 19, 2006

Mr. Mark Israelson
Director of Customer and Utility Services
City of Plano
P. O. Box 860358
Plano, TX 75074

Re: Ordinance No 2006-8-17:

After careful review of Ordinance No. 2006-8-17 amending the franchise between the City of Plano and TXU Electric Delivery, please be advised that we cannot accept the ordinance as passed. Page 2 of the ordinance contains an error that results in two final payment dates, which raises the issue of differing interpretations at some future time.

We have not reached this decision lightly. As you may recall, TXU Electric Delivery was sued several years ago by cities over franchise interpretation issues. At that time, we felt that the franchise language was clear, but others thought differently. To avoid such controversies in the future, we are striving to ensure that our franchises accurately reflect our agreements with our cities. The issue of franchise privilege periods and corresponding payments is significant and it is important to both the City and Company that the franchise be as clear and specific as possible so as to avoid future disagreements.

Since the document in question was authorized by the City Council, any change made to that document must be authorized by the City Council. If the City of Plano is still interested in changing the franchise payment schedule to quarterly payments, we will be happy to accept a franchise amendment that correctly reflects the last payment date.

If you have any additional questions, please feel free to give me a call.

Sincerely,

Debra Anderson

1-6



CITY OF PLANO COUNCIL AGENDA ITEM

| | | | | |
|------------------------------------------------------------------------------------------------------|---------------------|--------------------------------|-----------------------------------------|----------------------------------------------------|
| CITY SECRETARY'S USE ONLY | | Reviewed by Purchasing | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Not Applicable |
| <input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory | | Reviewed by Budget <i>C.S.</i> | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable |
| Council Meeting Date: 11/13/06 | | Reviewed by Legal <i>W</i> | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable |
| Department: | Finance | | Initials | Date |
| Department Head | John McGrane | Executive Director | | |
| Dept Signature: | <i>John McGrane</i> | City Manager | <i>DM</i> | <i>11/13/06</i> |
| Agenda Coordinator (include phone #): Brianna Alvarado X7479 | | | | |

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

CAPTION

Public hearing and consideration of an ordinance to establish and designate a certain area as Reinvestment Zone No. 101 for commercial/industrial tax abatement consisting of a 0.6247 tract of land located west of Chase Oaks at its intersection with Wagner Way in the City of Plano, Texas, establishing the boundaries of such zone, ordaining other matters relating thereto and providing an effective date.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

| FISCAL YEAR: 2007-2008 | Prior Year (CIP Only) | Current Year | Future Years | TOTALS |
|-------------------------------|--------------------------|-----------------|-----------------|--------|
| Budget | 0 | 0 | 0 | 0 |
| Encumbered/Expended Amount | 0 | 0 | 0 | 0 |
| This Item | 0 | 0 | 0 | 0 |
| BALANCE | 0 | 0 | 0 | 0 |

FUND(S): GENERAL

COMMENTS: The fiscal impact is contingent upon the value of improvements made to the property. Currently, the Real Property is estimated to have an approximate taxable value of not less than \$632,000. The Business Personal Property is estimated to have an approximate taxable value of not less than \$39,000. The Proposed Real Property and Business Property tax abatement on the improvements will begin January 1, 2007 and continue to December 31, 2011, and will be equal to 50% for five (5) years.

SUMMARY OF ITEM

This is related to Santo Paschal, LLC and PASCO Brokerage, Inc. request for tax abatement. This Ordinance creates the geographical zone in which Council will hold a Public Hearing earlier on the same Agenda date. Notice of Public Hearing to be published on October 25, 2006.

List of Supporting Documents:
Ordinance and Public Hearing Notice

Other Departments, Boards, Commissions or Agencies
Joint Committee on Tax Abatement, CCCD, Collin
County Community College

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PLANO, TEXAS, DESIGNATING A CERTAIN AREA WITHIN THE CITY OF PLANO AS REINVESTMENT ZONE NO. 101 FOR A TAX ABATEMENT CONSISTING OF A 0.6247 ACRE TRACT OF LAND LOCATED WEST OF CHASE OAKS AT ITS INTERSECTION WITH WAGNER WAY IN THE CITY OF PLANO; ESTABLISHING THE BOUNDARIES OF SUCH ZONE; ORDAINING OTHER MATTERS RELATING THERETO; AND PROVIDING AN EFFECTIVE DATE.

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

WHEREAS, a public hearing before the City Council was set for 7:00 p.m. on the 13th day of November, 2006, such date being at least seven (7) days after the date of publication of the notice of such public hearing; and

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

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

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

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

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

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

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

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

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

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

Section IV. Pursuant to Section 312.201 of the Act, the City hereby creates a reinvestment zone for commercial/industrial tax abatement encompassing only the area described by metes and bounds in Exhibit "A" attached hereto and such reinvestment zone is hereby designated and shall hereafter be designated as Reinvestment Zone No. 101, City of Plano, Texas.

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

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

- a) Be located wholly within the zone as established herein.
- b) Have a minimum expenditure on personal property improvements equal to or greater than **Thirty-Nine Thousand and No/100 Dollars (\$39,000.00)** and have a minimum expenditure on real property improvements equal to or greater than **Six Hundred and Thirty-Two Thousand and No/100 Dollars (\$632,000.00).**

2-4

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

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

- a) Duration of Exemption - five (5) consecutive tax years beginning with and including the January 1, 2007 assessment date.
- b) Share of taxes abated - percentage of taxes on total value of appraised Personal Property and Improvements at the rate of: 50% for the years 2007, 2008, 2009, 2010, 2011.

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

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

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

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

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

DULY PASSED AND APPROVED this 13th day of November, 2006.

Pat Evans, MAYOR

ATTEST:

Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

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EXHIBIT "A"
LEGAL DESCRIPTION
REINVESTMENT ZONE NO. 101
Real Property
Metes and Bounds

Being all that certain lot, parcel or tract of land situated in the Daniel Rowlett Survey, Abstract No. 738 in the City of Plano, Collin County, Texas and being a part of the called 5.699 acre tract of land conveyed to Bar P Joint Venture by deed recorded in Volume 4123, Page 0786, Deed Records, Collin County, Texas, and being a more particularly described by metes and bounds as follows:

Commencing at a ½ inch iron rod found for corner, and being the Southwest corner of said 5.699 acre tract, and being the Northwest corner of the remainder of a tract of land conveyed to San Antonio Savings Association by deed recorded in Volume 2824, Page 268, Deed Records, Collin County, Texas and being in the East line of a tract of land conveyed to Texas Power & Light Company by deed recorded in Volume 887, Page 793, Deed Records, Collin County, Texas; Thence South 59 Degrees 54 Minutes 02 Seconds East, along the Northeast line of remainder of said San Antonio Savings Association tract, a distance of 133.34 feet to a ½ inch iron rod set with yellow cap stamped (DC&A INC), and being the Northeast corner of the remainder of said San Antonio Savings Association tract, and being in the West line of Chase Oaks Boulevard (a 100 foot right-of-way), said point being in a non-tangent curve to the right having a radius of 1055.00 feet, and a delta of 13 Degrees 17 Minutes 46 Seconds, and a chord that bears North 37 Degrees 09 Minutes 03 Seconds East, a distance of 244.27 feet; Thence along said curve to the right and along the West line of said Chase Oaks Boulevard an arc length of 244.82 feet to a ½ inch iron rod set with yellow cap stamped (DC&A INC), said point being in a tangent curve to the left having a radius of 945.00 feet, and a delta of 02 Degrees 55 Minutes 01 Seconds, and a chord that bears North 42 Degrees 20 Minutes 26 Seconds East, a distance of 48.10 feet; Thence along said curve to the left and along the West line of said Chase Oaks Boulevard an arc length of 48.11 feet to the Point of Beginning;

Thence North 49 Degrees 07 Minutes 05 Seconds West, along the remainder of said Bar P Joint Venture, a distance of 113.56, feet to a ½ inch iron rod set with yellow cap stamped (DC&A INC);

Thence North 02 Degrees 05 Minutes 54 Seconds East, along the remainder of said Bar P Joint Venture, a distance of 125.00 feet to a ½ inch iron rod set with yellow cap stamped (DC&A INC);

Thence South 87 Degrees 54 Minutes 07 Seconds East, along the remainder of said Bar P Joint Venture, a distance of 210.0 feet to a ½ inch iron rod set with yellow cap stamped (DC&A INC), and being in the West line of said Chase Oaks Boulevard, said point being a non-tangent curve to the right having a radius of 945.00 feet, and a delta of 14 degrees 01 Minutes 22 Seconds, and a chord that bears South 33 Degrees 52 Minutes 14 Seconds West a, distance of 230.71 feet;

Thence along said curve to the right and said Chase Oaks Boulevard an arc length of 231.28 feet to the Point of Beginning and containing 27,214.40 square feet of 0.6247 acres of land.

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INTEROFFICE MEMORANDUM

TO: Thomas H. Muehlenbeck
City Manager

DATE: November 13, 2006

FROM: John F. McGrane *JM*
Director of Finance

CC: Cindy Pierce, EAA
Di Zucco, ACS

SUBJECT: Tax Abatement for Santo Paschal, LLC, a Texas limited liability company and PASCO Brokerage, Inc. a Texas Corporation, Reinvestment Zone No. 101

The Tax Abatement Agreement with Santo Paschal, LLC, a Texas limited liability company, and PASCO Brokerage, Inc. a Texas Corporation, is for a period of five (5) years at fifty percent (50%) of the Real Property and Business Personal Property.

Pasco Brokerage will complete a total of \$671,000 in improvements in the five year period. Through equipment training and demonstration, PASCO will provide an important education service to operators of school kitchens. The equipment displayed in the showroom will encourage sales and will be a valuable service to the owners and operators of local restaurant, school, and institutional facilities with commercial kitchens.

The fiscal impact of this item is contingent upon the value of real property located in the reinvestment zone and the value of business personal property brought onto the property. The Business Personal Property is estimated to have an approximate taxable value of not less than \$39,000 and the Real Property is estimated to have an approximate taxable value of not less than \$632,000. The company's location is West of Chase Oaks at its intersection with Wagner Way. The business relocation will result in approximately 9 full-time jobs upon occupancy. The proposed Real Property and Business Personal Property tax abatement will begin January 1, 2007 and continue through the year 2011

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**CITY OF PLANO
COUNCIL AGENDA ITEM**

| | | | | | |
|---------------------------------------------------------------------|----------------------------------|--------------------------------------|-----------------------------------------|-----------------------------------------|-----------------------------------------|
| CITY SECRETARY'S USE ONLY | | Reviewed by Purchasing | <input type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable | |
| <input type="checkbox"/> Consent | <input type="checkbox"/> Regular | <input type="checkbox"/> Statutory | Reviewed by Budget <i>C.S.</i> | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable |
| Council Meeting Date: 11/13/06 | | Reviewed by Legal <i>[Signature]</i> | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable | |
| Department: | Finance | | Initials | Date | |
| Department Head | John McGrane | | Executive Director | | |
| Dept Signature: | <i>[Signature]</i> | | City Manager | <i>[Signature]</i> 11/31/06 | |
| Agenda Coordinator (include phone #): Brianna Alvarado x7479 | | | | | |

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

CAPTION

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an agreement by and between the City of Plano, Texas, the County of Collin, Texas, the Collin County Community College District, Santo Paschal, LLC, a Texas Limited Liability Company, and PASCO Brokerage, Inc., a Texas Corporation and providing for a business personal property and real property tax abatement, and authorizing its execution by the City Manager, or in his absence an Executive Director, and providing an effective date.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

| FISCAL YEAR: 2007-2008 | Prior Year (CIP Only) | Current Year | Future Years | TOTALS |
|-------------------------------|--------------------------|-----------------|-----------------|--------|
| Budget | 0 | 0 | 0 | 0 |
| Encumbered/Expended Amount | 0 | 0 | 0 | 0 |
| This Item | 0 | 0 | 0 | 0 |
| BALANCE | 0 | 0 | 0 | 0 |

FUND(S): GENERAL

COMMENTS: The fiscal impact of this item is contingent upon the value of improvements made to the property. Currently the Real Property is estimated to have an approximate taxable value of not less than \$632,000. The Business Personal Property is estimated to have an approximate taxable value of not less than \$39,000. The proposed Real and Business Personal Property tax abatement on the improvements will be January 1, 2007 and continue to December 31, 2011, and will be equal to 50% for five (5) years.

SUMMARY OF ITEM

A request by PASCO Brokerage, Inc. for tax Abatement, Reinvestment Zone No. 101.

List of Supporting Documents:
Resolution and Tax Abatement Agreement

Other Departments, Boards, Commissions or Agencies
Joint Committee on Tax Abatement, CCCCD, Collin County Community College

3-1

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS, THE COUNTY OF COLLIN, TEXAS, THE COLLIN COUNTY COMMUNITY COLLEGE DISTRICT, SANTO PASCHAL, LLC, A TEXAS LIMITED LIABILITY COMPANY, AND PASCO BROKERAGE, INC., A TEXAS CORPORATION AND PROVIDING FOR A BUSINESS PERSONAL PROPERTY AND REAL PROPERTY TAX ABATEMENT, AND AUTHORIZING ITS EXECUTION BY THE CITY MANAGER, OR IN HIS ABSENCE AN EXECUTIVE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council has been presented a proposed Tax Abatement Agreement by and between the City of Plano, Texas, the County of Collin, the Collin County Community College District, Santo Paschal, LLC, a Texas Limited Liability Company, and Pasco Brokerage, Inc., a Texas Corporation, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and

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

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

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

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

3-2

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

DULY PASSED AND APPROVED this the 13th day of November, 2006.

Pat Evans, MAYOR

ATTEST:

Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

THE STATE OF TEXAS §
 §
COUNTY OF COLLIN §

TAX ABATEMENT AGREEMENT

This Agreement is entered into by and between the **CITY OF PLANO, TEXAS**, a home rule municipal corporation of Collin and Denton Counties, Texas, duly acting herein by and through its City Manager, hereinafter referred to as "City;" the County of Collin, Texas, duly acting herein by and through its County Judge, and the Collin County Community College District, duly acting herein by and through its President of the Board of Trustees, hereinafter collectively referred to as "Taxing Units," and **SANTO PASCHAL, LLC.**, a Texas Limited Liability Company, duly acting by and through its Vice President, hereinafter referred to as "Owner," and **PASCO BROKERAGE, INC.**, a Texas Corporation, duly acting by and through its President, hereinafter referred to as "Lessee."

WITNESSETH:

WHEREAS, on the 13th day of November, 2006, the City Council of the City of Plano, Texas, passed Ordinance No. _____ establishing Reinvestment Zone No.101, for commercial/industrial tax abatement, hereinafter referred to as the "Ordinance," as authorized by V.T.C.A. Tax Code, Chapter 312.001, et seq., cited as the Property Redevelopment and Tax Abatement Act, hereinafter referred to as "Act"; and

WHEREAS, the **City** has adopted a revised policy statement for Tax Abatement by Resolution No. 2006-9-22 (R) stating that it elects to be eligible to participate in tax abatement (the "Policy Statement"); and

WHEREAS, the Policy Statement sets forth appropriate guidelines and criteria governing tax abatement agreements to be entered into by the City as contemplated by the Act; and

WHEREAS, the tax abatement will maintain and enhance the commercial/industrial economic and employment base of the Plano area thereby benefiting both the City and the Taxing Units in accordance with the said Ordinance and Act; and

WHEREAS, the contemplated use of the Real Property, as hereinafter defined, the contemplated improvements to the Real Property in the amount as set forth in this Agreement and the other terms hereof are consistent with encouraging development of said Reinvestment Zone No. 101 in accordance with the purposes for its creation and are in compliance with the intent of the Policy Statement and the Ordinance and similar guidelines and criteria adopted by the City and all applicable law.

NOW THEREFORE, the parties hereto do mutually agree as follows:

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Santo Paschal, LLC, and
PASCO Brokerage, Inc (101)

1. The real property subject to this Agreement is described by metes and bounds in **EXHIBIT "A"** (the "Real Property") attached hereto and made a part hereof. At the time of this Agreement, **Santo Paschal, LLC** is the Owner of the Real Property. This Agreement shall be terminated should the Real Property not be leased by Lessee, its successors or affiliates, or should such lease be terminated during the term of this Agreement.

2. The tangible personal property subject to this Agreement shall be personal property, excluding inventory and supplies, used within Reinvestment Zone No. 101, which shall be hereinafter referred to as the "Personalty." The Personalty is presently estimated to have an approximate taxable value of thirty-nine thousand dollars (\$39,000) and is or will be owned by Lessee or its affiliates. Lessee shall timely render its personal property value each year to the Central Appraisal District

3. Lessee, as owner of the Personalty, may not relocate, for purposes of maintaining taxable situs of tangible personal property, the Personalty on the Real Property in other Reinvestment Zones in the City.

JOBS

4. Lessee estimates the proposed development of the Real Property as shown in **EXHIBIT "B"** (the "Development") will result in approximately 9 jobs at the Development in Plano when the new office building is completed.

IMPROVEMENTS

5. The Owner shall complete construction of improvements and/or repairs to the Real Property (hereinafter referred to as Improvements) consisting primarily of a new building consisting of not less than 4,525 gross square feet of office space with an initial expenditure of not less than Six hundred and thirty-two thousand dollars (\$632,000) on or before December 31, 2007; provided that Owner shall have such additional time to complete the Improvements as may be required in the event of "force majeure" if Owner is diligently and faithfully pursuing the completion of the Improvements or, if in the reasonable opinion of the City, the Owner has made substantial progress toward completion of the initial phase of the Improvements. For this purpose, "force majeure" shall mean any contingency or cause beyond the reasonable control of Owner including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, governmental or de facto governmental action (unless caused by acts or omissions of Owner), fire, shortages of material and/or labor, explosion or flood, and labor disturbances. The date of completion of the Improvements shall be defined as the date a Certificate of Occupancy is issued by the City of Plano.

6. The Owner agrees and covenants that it will diligently and faithfully in a good and workmanlike manner pursue the substantial completion of the Improvements as a good and valuable consideration of this Agreement. Owner further covenants and agrees that all construction

of the Improvements will be in accordance with all applicable federal, state and local laws and regulations or valid waiver thereof. In further consideration, Owner shall from the date a Certificate of Occupancy is issued until the expiration or termination of this Agreement, operate and maintain the Real Property (or cause the same to be operated and maintained) for the following described purposes: production/manufacturing/office space where Lessee or its affiliates will initially employ approximately 9 employees, referred to herein as the "Purposes."

DEFAULT

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

(a) The Improvements are not completed in accordance with this Agreement;

(b) Owner or Lessee allows its real or personal property taxes owed the City or Taxing Units on the Real Property, Improvements, or Personalty to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of any such ad valorem taxes;

(c) Lessee fails to occupy the Improvements for the Purposes set forth in paragraph 6 above on or before December 31, 2007; or

(d) The value of the Improvements to Real Property and the value of Personalty placed on the improved Real Property on December 31, 2007, and maintained on the Real Property during the term of this Agreement is less than the minimum amounts set forth in paragraphs 2 and 5 above; or

(e) Lessee fails to employ at least 75% of its employee commitment as provided in paragraph 4 above; or

(f) Owner or Lessee fails to provide annual certification as required in paragraph 10 below.

8. In the event that the Owner or Lessee defaults under this Agreement then the City or Taxing Units shall give the Owner and Lessee written notice of such default and if the Owner or Lessee has not cured such default, or obtained a waiver thereof from the appropriate authority, within thirty (30) days of said written notice, this Agreement may be terminated by the City and Taxing Units. Notice shall be in writing as provided below. Upon the occurrence of an event of default other than under Paragraph 7(b) above and after Owner or Lessee fails to cure same in accordance herewith, this Agreement shall immediately terminate and all taxes due after the event of default shall be paid in full without the benefit of any abatement. The parties acknowledge that actual damages in the event of default and termination would be speculative and difficult to determine.

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9. Upon the occurrence of an event of default under Paragraph 7(b) above and after Owner or Lessee fails to cure same in accordance herewith, this Agreement shall immediately terminate and all taxes, including previously abated taxes which would have been paid to the City and Taxing Units without the benefit of this Agreement, shall become due and owing to the City and Taxing Units, together with interest charged from the date of this Agreement at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 33.01, but without the addition of penalty other than that mandated by V.T.C.A., § 33.01 or 33.07.

ANNUAL CERTIFICATION

10. On or before the 1st day of November of each calendar year during the term of this Agreement, the Owner, or its successors or assigns, and Lessee must provide annual certification (substantially in the form attached as **EXHIBIT "C"** hereto) to the Governing Body of the City certifying compliance with each applicable term of the Agreement.

ASSIGNMENT

11. The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto. This Agreement cannot be assigned by Owner unless written permission is first granted by the City and Taxing Units, which permission shall be at the reasonable discretion of the City and Taxing Units, except under the following conditions:

(a) Assignment to an affiliate of Lessee is permissible;

(b) A transfer or assignment of the Real Property and Improvements, or an assignment of this Agreement, by Owner to successors or assigns is permissible wherein the successors or assigns agree to be bound by the terms of this Agreement and Lessee shall continue to conduct business on the subject premises, and shall remain the primary tenant.

However, Owner and Lessee agree to give written notice to the City and Taxing Units of any assignment or transfer of interest allowed pursuant to subparagraphs (a) and (b) hereof.

ABATEMENT PROVISIONS

12. Subject to the terms and conditions of this Agreement, and subject to the rights of holders of any outstanding bonds of the City and Taxing Units, a portion of ad valorem real and personal property taxes from the Real Property, Improvements, and Personalty otherwise owed to the City and taxing Units shall be abated as follows:

(a) The tax abatements as to the Real Property, Improvements, and Personalty, as provided for herein, shall be for a period of five (5) tax years, from January 1, 2007, through December 31, 2011.

(b) In accordance with all applicable federal, state, and local laws and regulations, the abatement shall be based on amounts equal to fifty (50%) of the value of the improved value of the Real Property and Improvements and 50% of the Personalty for each tax year from January 1, 2007, through December 31, 2011.

(c) The Owner and Lessee shall have the right to protest and/or contest any assessment of the Real Property, Improvements or Personalty, and the abatement shall be applied to the amount of taxes finally determined to be due as a result of any such protest and/or contest.

NOTICE

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

For City by notice to:

City of Plano
Attention: Mr. Thomas H. Muehlenbeck
City Manager
P.O. Box 860358
Plano, Texas 75086-0358

With copy to:

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

For Taxing Units by notice to:

County of Collin, Texas
Attention: The Honorable Ron Harris
County Judge
Collin County Commissioners' Court
210 S. McDonald, Ste. 626
McKinney, Texas 75069

Collin County Community College District
Attention: Dr. Cary A. Israel
President of Board of Trustees
4800 Preston Park Blvd.

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Plano, Texas 75093

For Owner by notice to:

Santo Paschal, LLC
Attention: Mr. William Hollon
Vice President
2232 Old Orchard
Plano, Texas 75023-1652

For Lessee by notice to:

PASCO Brokerage, Inc.
Attention: Ms. Kasey P. Hollon
President
P.O. Box 260399
Plano, Texas 75026-0399

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

MISCELLANEOUS PROVISIONS

14. The Owner and Lessee further agree that the City and Taxing Units, their agents and employees, shall have reasonable right (upon reasonable prior notice to Owner and Lessee) to access the Real Property to inspect the Improvements and Personalty in order to insure that the construction of the Improvements and locations of the Personalty are in accordance with this Agreement and all applicable federal, state, and local laws and regulations. After completion of the Improvements, and City and Taxing Units shall have the continuing right (upon reasonable prior notice to Owner and Lessee) to inspect the Real Property and Personalty to insure that the Real Property and Personalty is thereafter maintained, operated and occupied in accordance with this Agreement.

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

16. The City and the Taxing Units each represent and warrant that the Real Property, Improvements and Personalty do not include any property that is owned by a member of their

respective councils or boards, agencies, commissions, or other governmental bodies approving, or having responsibility for the approval of this Agreement.

17. This Agreement was authorized by Resolution of the City Council at its Council meeting on the _____ day of _____, 2006, authorizing the City Manager to execute the Agreement on behalf of the City.

18. This Agreement was authorized by the minutes of the Commissioners' Court of Collin County, Texas, at its meeting on the _____ day of _____, 2006, whereupon it was duly determined that the County Judge would execute the Agreement on behalf of Collin County.

19. This Agreement was authorized by the Board Minutes of the Board of Trustees of Collin County Community College District at its Board Meeting on the _____ day of _____, 2006, whereupon it was duly determined that the Chairman would execute the Agreement on behalf of Collin County Community College District.

20. This Agreement was entered into by Owner pursuant to authority granted by its Vice President, whereby the Vice President of the limited liability company was authorized to execute this Agreement on behalf of Owner.

21. This Agreement was entered into by Lessee pursuant to authority granted by its Board of Directors whereby the President of the corporation was authorized to execute this Agreement on behalf of Lessee.

22. This instrument shall constitute a valid and binding agreement between the City, Owner, and Lessee when executed in accordance herewith, regardless of whether any other **TAXING UNIT** executes this Agreement. This shall constitute a valid and binding Agreement between such **TAXING UNITS**, Owner and Lessee when executed on behalf of said parties, for the abatement of such **TAXING UNIT's** taxes in accordance therewith.

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

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This Agreement is performable in Collin County, Texas.

Signed this _____ day of _____, 2006.

ATTEST:

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

Elaine Bealke, CITY SECRETARY

Thomas H. Muehlenbeck, CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ATTEST:

**COMMISSIONERS' COURT OF
COLLIN COUNTY**

COUNTY JUDGE

ATTEST:

**COLLIN COUNTY COMMUNITY
COLLEGE DISTRICT**

CHAIRMAN

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ATTEST:

SANTO PASCHAL LLC, a Texas Limited Liability Company

By:

William Hollon
Vice President

ATTEST:

PASCO BROKERAGE, INC., a Texas Corporation

By:

Kasey P. Hollon
President

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EXHIBIT "A"
LEGAL DESCRIPTION
REINVESTMENT ZONE NO. 101
Real Property
Metes and Bounds

Being all that certain lot, parcel or tract of land situated in the Daniel Rowlett Survey, Abstract No. 738 in the City of Plano, Collin County, Texas and being a part of the called 5.699 acre tract of land conveyed to Bar P Joint Venture by deed recorded in Volume 4123, Page 0786, Deed Records, Collin County, Texas, and being a more particularly described by metes and bounds as follows:

Commencing at a ½ inch iron rod found for corner, and being the Southwest corner of said 5.699 acre tract, and being the Northwest corner of the remainder of a tract of land conveyed to San Antonio Savings Association by deed recorded in Volume 2824, Page 268, Deed Records, Collin County, Texas and being in the East line of a tract of land conveyed to Texas Power & Light Company by deed recorded in Volume 887, Page 793, Deed Records, Collin County, Texas; Thence South 59 Degrees 54 Minutes 02 Seconds East, along the Northeast line of remainder of said San Antonio Savings Association tract, a distance of 133.34 feet to a ½ inch iron rod set with yellow cap stamped (DC&A INC), and being the Northeast corner of the remainder of said San Antonio Savings Association tract, and being in the West line of Chase Oaks Boulevard (a 100 foot right-of-way), said point being in a non-tangent curve to the right having a radius of 1055.00 feet, and a delta of 13 Degrees 17 Minutes 46 Seconds, and a chord that bears North 37 Degrees 09 Minutes 03 Seconds East, a distance of 244.27 feet; Thence along said curve to the right and along the West line of said Chase Oaks Boulevard an arc length of 244.82 feet to a ½ inch iron rod set with yellow cap stamped (DC&A INC), said point being in a tangent curve to the left having a radius of 945.00 feet, and a delta of 02 Degrees 55 Minutes 01 Seconds, and a chord that bears North 42 Degrees 20 Minutes 26 Seconds East, a distance of 48.10 feet; Thence along said curve to the left and along the West line of said Chase Oaks Boulevard an arc length of 48.11 feet to the Point of Beginning;

Thence North 49 Degrees 07 Minutes 05 Seconds West, along the remainder of said Bar P Joint Venture, a distance of 113.56, feet to a ½ inch iron rod set with yellow cap stamped (DC&A INC);

Thence North 02 Degrees 05 Minutes 54 Seconds East, along the remainder of said Bar P Joint Venture, a distance of 125.00 feet to a ½ inch iron rod set with yellow cap stamped (DC&A INC);

Thence South 87 Degrees 54 Minutes 07 Seconds East, along the remainder of said Bar P Joint Venture, a distance of 210.0 feet to a ½ inch iron rod set with yellow cap stamped (DC&A INC), and being in the West line of said Chase Oaks Boulevard, said point being a non-tangent curve to

the right having a radius of 945.00 feet, and a delta of 14 degrees 01 Minutes 22 Seconds, and a chord that bears South 33 Degrees 52 Minutes 14 Seconds West a, distance of 230.71 feet;

Thence along said curve to the right and said Chase Oaks Boulevard an arc length of 231.28 feet to the Point of Beginning and containing 27,214.40 square feet of 0.6247 acres of land.

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**EXHIBIT "C"
CERTIFICATION FORM
REINVESTMENT ZONE NO. 101**

This letter certifies that Santo Paschal, LLC and PASCO Brokerage Inc are in compliance with each applicable term as set forth in the Agreement to Resolution No. _____(R) as of _____, 2006. The term of this agreement is January 1, 2007, through December 31, 2011. This form is due on November 1 of each year this tax abatement is in force.

ATTEST:

SANTO PASCHAL LLC, a Texas Limited Liability Company

By:

William Hollon
Vice President

ATTEST:

PASCO BROKERAGE, INC., a Texas Corporation

By:

Kasey P. Hollon
President

Date

NOTE: This certification form should be mailed to:

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

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**CITY OF PLANO
COUNCIL AGENDA ITEM**

| | | | | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|------------------------------------|----------------------------------------------------|------------------------------------------------------------------------------------|
| CITY SECRETARY'S USE ONLY | | Reviewed by Purchasing | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Not Applicable |
| <input type="checkbox"/> Consent | <input type="checkbox"/> Regular | <input type="checkbox"/> Statutory | Reviewed by Budget | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> Not Applicable |
| Council Meeting Date: November 13, 2006 | | Reviewed by Legal <i>WS</i> | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable |
| Department: | Public Works / Michael Rapplean | | Initials | Date |
| Department Head | Jimmy Foster | | Executive Director | <i>JS</i> 11-07-06 |
| Dept Signature: | <i>J.B. Rapplean</i> | | City Manager | |
| Agenda Coordinator (include phone #): Margie Stephens (4104) | | | | |
| ACTION REQUESTED: <input checked="" type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input checked="" type="checkbox"/> OTHER <i>PUBLIC HEARING</i> | | | | |
| CAPTION | | | | |
| AN ORDINANCE OF THE CITY OF PLANO, TEXAS, REPEALING ORDINANCE NO. 2006-5-23 IN ITS ENTIRETY, WHICH WAS CODIFIED AS CHAPTER 21, ARTICLE II, DIVISION 4, DROUGHT CONTINGENCY PLAN, OF THE CODE OF ORDINANCES OF THE CITY OF PLANO; ADOPTING A NEW DROUGHT CONTINGENCY PLAN TO BE CODIFIED AS CHAPTER 21, ARTICLE II, DIVISION 4 OF THE CODE OF ORDINANCES OF THE CITY OF PLANO; ESTABLISHING PROCEDURES AND CRITERIA FOR DECLARING A WATER EMERGENCY AND IMPLEMENTING AND TERMINATING DROUGHT RESPONSE STAGES; ESTABLISHING RESTRICTIONS ON CERTAIN WATER USES DURING DROUGHT RESPONSE STAGES; ESTABLISHING ADMINISTRATIVE REMEDIES AND FEES AND CRIMINAL PENALTIES FOR VIOLATING THE RESTRICTIONS AND PROVISIONS FOR ENFORCEMENT OF THESE RESTRICTIONS; AND PROVIDING A REPEALER CLAUSE, A SEVERABILITY CLAUSE, A SAVINGS CLAUSE; AN EFFECTIVE DATE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF. | | | | |
| FINANCIAL SUMMARY | | | | |
| <input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP | | | | |
| FISCAL YEAR: 06-07 | Prior Year (CIP Only) | Current Year | Future Years | TOTALS |
| Budget | 0 | 0 | 0 | 0 |
| Encumbered/Expended Amount | 0 | 0 | 0 | 0 |
| This Item | 0 | 0 | 0 | 0 |
| BALANCE | 0 | 0 | 0 | 0 |
| FUND(S): | | | | |
| COMMENTS: | | | | |
| SUMMARY OF ITEM | | | | |
| Public Works recommends repealing the Drought Contingency Plan and Ordinance (2006-5-23) in its entirety and adopting a new Drought Contingency Plan and Ordinance which establishes Administrative Remedies for violations in addition to criminal penalties. The new ordinance has a notification process and a hearing process for the administrative remedies. | | | | |
| The time table when watering is allowed has been expanded by two hours, clarifying how often a resident can water their foundation and the type of systems that can be used, adding trees can be watered by drip irrigation or soaker hoses, change the submittal and approval procedures for granting a variance to the plan. | | | | |
| List of Supporting Documents: | | | Other Departments, Boards, Commissions or Agencies | |

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PLANO, TEXAS, REPEALING ORDINANCE NO. 2006-5-23 IN ITS ENTIRETY, WHICH WAS CODIFIED AS CHAPTER 21, ARTICLE II, DIVISION 4, DROUGHT CONTINGENCY PLAN, OF THE CODE OF ORDINANCES OF THE CITY OF PLANO; ADOPTING A NEW DROUGHT CONTINGENCY PLAN TO BE CODIFIED AS CHAPTER 21, ARTICLE II, DIVISION 4 OF THE CODE OF ORDINANCES OF THE CITY OF PLANO; ESTABLISHING PROCEDURES AND CRITERIA FOR DECLARING A WATER EMERGENCY AND IMPLEMENTING AND TERMINATING DROUGHT RESPONSE STAGES; ESTABLISHING RESTRICTIONS ON CERTAIN WATER USES DURING DROUGHT RESPONSE STAGES; ESTABLISHING ADMINISTRATIVE REMEDIES AND FEES AND CRIMINAL PENALTIES FOR VIOLATING THE RESTRICTIONS AND PROVISIONS FOR ENFORCEMENT OF THESE RESTRICTIONS; AND PROVIDING A REPEALER CLAUSE, A SEVERABILITY CLAUSE, A SAVINGS CLAUSE; AN EFFECTIVE DATE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, in April, 2004, the North Texas Municipal Water District ("NTMWD") developed a model drought contingency plan in accordance with state law and has requested all member cities to adopt this plan; and

WHEREAS, a public hearing was conducted on May 22, 2006 to require input from the public on this drought ordinance plan; and

WHEREAS, on May 22, 2006, by Ordinance No. 2006-5-23, the City Council of the City of Plano adopted a Drought Contingency Plan to be implemented in the event of a water shortage, such Ordinance was codified as Division 4, Article II, Chapter 21 of the City of Plano Code of Ordinances; and

WHEREAS, after enacting the drought contingency plan the City of Plano has encountered issues regarding compliance with the water conservation measures in the ordinance and enforcement of same; and

WHEREAS, the City of Plano has encountered unforeseen costs associated with the enforcement provisions of the plan; and

WHEREAS, the City of Plano has encountered unforeseen administrative and personnel demands associated with the enforcement of the plan, and;

WHEREAS the City Council for the City of Plano, Texas ("City Council") has determined that the current drought contingency plan created by City Ordinance No. 2006-5-23 should be repealed in its entirety and replaced with this ordinance; and

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WHEREAS, on November 13, 2006 a public hearing was conducted to require input from the public on this drought ordinance plan; and

WHEREAS, the City Council hereby finds and determines that the repeal of the previous drought contingency plan and the enactment of this drought contingency plan is in the best interest of the City of Plano and its citizens and should be adopted as set forth below.

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

Section I. Ordinance No. 2006-5-23 duly passed approved by the City Council of the City of Plano, Texas, on May 22, 2006 is hereby repealed in its entirety and replaced by this ordinance.

Section II. The Drought Contingency Plan which follows the NTMWD model and complies with the regulations and requirements of the Texas Water Code and Texas Commission on Environmental Quality ("TCEQ") are hereby adopted and codified as Division 4, Drought Contingency Plan, of Article II, Water, of Chapter 21, Utilities of the Code of Ordinances of the City of Plano shall read as follows:

"DIVISION 4. DROUGHT CONTINGENCY PLAN

Sec. 21-53. Purpose and scope.

(a) The North Texas Municipal Water District (NTMWD) supplies treated water to the City of Plano, as well as other member cities and customers. A model drought contingency plan was developed by NTMWD in accordance with the regulations and requirements of the Texas Administration Code and the Texas Commission on Environmental Quality ("TCEQ") and consultation with its member cities. The NTMWD model plan calls for member cities and customers to adopt similar criteria and procedures for declaring a water emergency and implementing drought or emergency response stages as used by NTMWD. Member cities and customers may also adopt more stringent drought stages than NTMWD if conditions warrant. The following ordinance is written in accordance with TAC and the NTMWD's model drought contingency plan.

(b) There is hereby established a City of Plano Drought Contingency Plan (in this division called "the Plan") to provide procedures for:

- (1) Conserving the available water supply in times of drought and emergency;
- (2) Maintaining supplies for domestic water use, sanitation, and fire protection;

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- (3) Protecting and preserving public health, safety, and welfare; and
 - (4) Minimizing the adverse impacts of water supply shortages.
- (c) The plan applies to:
- (1) All persons and premises within the city using water from the city's water system ("the system");
 - (2) All wholesale contract customers; and
 - (3) All retail customers who live in unincorporated areas within the city's extraterritorial jurisdiction and are served by the system.

Sec. 21-54. Exemption.

The governmental use of water for essential services such as police, fire, and emergency services which is necessary to preserve or protect the health, safety and welfare of the citizens of Plano are exempt from any and all restrictions or mandates set forth in the Plan.

Sec. 21-55. Definitions.

The following words, terms, and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

'Customer' means a person, company or other entity connected to the City's water system and contracting with the City of Plano to receive potable water service.

"Drip Irrigation" means any type of irrigation that does not spray into the air. Drip irrigation drips slowly into the soil without visible spray.

"Foundation" means area that includes first 24" of soil from foundation slab.

'General emergency' means a condition in which the existing or projected water supply available to the city is not anticipated to meet the normal water requirements of metered water users. This condition may be the result of factors including, but not limited to, natural emergency conditions (i.e., drought, etc.) and/or a failure of the city's or its supplier's water distribution systems.

'Geographical emergency' means a condition in which the existing or projected water supply available to the city is not anticipated to meet the normal water

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requirements of a section or sections of the metered water users. This condition may be the result of factors including, but not limited to, natural emergency conditions (i.e., drought, fire, etc.) and/or a failure of the city's or its supplier's water distribution systems.

'Landscape' means natural plant materials around buildings or on grounds (i.e., trees, shrubbery, grasses and flowers).

'Landscape beds' means plants and shrubs that are separated from turf.

'North Texas Municipal Water District' or *"NTMWD"* refers to the North Texas Municipal Water District.

'Plan' refers to the City of Plano Drought Contingency Plan.

'Person' means owner, occupant, or person in control of the premises or a person authorized by the owner, occupant, or person in control of the premises.

'Potable water' means any public water supply, which has been investigated and approved by the TCEQ as satisfactory for drinking, culinary and domestic purposes.

'Public Health and Safety' means such amount of water as necessary to sustain human life, reasonable standards of hygiene and sanitation, and fire suppression.

'Putting Green' means the ground that is specially prepared for putting. The putting green is typically defined by a fine bladed grass that requires an extremely high level of maintenance to provide a smooth surface for rolling the ball when putting.

'System' means the City of Plano water works system and shall include, but not be limited to, all reservoirs, storage tanks, elevated tanks, pipelines, pumps, hydrants, meters, valves, connections, engines, and all other property and machinery used in connection with the City's water works system.

'Tee Box' means the rectangular area considered the starting place for the hole to be played. The tee box is typically defined by a grass that requires a very high level of maintenance and mowed at a low height to provide a consistent surface to begin play on the hole.

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Sec. 21-56. Presumption

For purposes of enforcement of administrative remedies and criminal penalties under this ordinance, it shall be presumed that the person in actual control of the watering or irrigation devices for a premises is responsible for any violations of this ordinance.

Sec. 21-57. Authority to Declare Water Emergency.

Upon the occurrence of any one of the criteria listed below, the City Manager or an Executive Director in his absence is hereby authorized to declare a water emergency and to implement any of the drought or emergency response stages in accordance with the provisions of this Division:

- (a) General or geographical emergency;
- (b) Water system failures/emergencies (i.e., pressure zone deficiencies, chemical spills, broken water mains, power outages, electrical failure, failure of storage tanks or other equipment, treatment plant breakdown, and/or water contamination);
- (c) Supply failure from North Texas Municipal Water District or initiation of any stage in its drought contingency plan;
- (d) An inability to recover approximately ninety percent (90%) in all storage facilities within a twenty-four (24) hour period;
- (e) Notification by the North Texas Municipal Water District of a significant decrease in reservoir levels resulting in NTMWD's inability, presently or in the immediate future, to recover resources sufficient to provide services necessary for public health, safety, and welfare.

Sec. 21-58. Notification and Termination of Water Emergency.

(a) Notification of Water Emergency – The public will be notified of a water emergency through one or more of the following methods: press release to local media, publication in a newspaper in general circulation in the City of Plano, publication on Plano Television Network ("PTN") and publication on the City's website. Wholesale customers will be notified first by telephone call or electronic mail and then by letter that provides detailed information regarding the reasons for the drought stage.

(b) Violations following Notification - No criminal citation or administrative fee for violating any of the water use restrictions set forth in Drought or Emergency Response Stages 2, 3 or 4 will be issued until the notice of a water emergency or notice of

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drought response stage has been published in at least one issue of a newspaper in general circulation in the City of Plano.

(c) Termination of Water Emergency – The water emergency shall remain in effect until the City Manager or an Executive Director in his absence determines that the condition(s) that triggered the water emergency have been alleviated or no longer exist. The public and wholesale customers will be informed of the termination of the water emergency in the same manner as provided in subsection (a) above.

Sec. 21-59. Provisions for Continuing Public Education and Information

The City will take steps to inform and educate the public about water emergencies and the drought contingency plan by the following means:

- (a) At any time that the drought contingency plan is activated or the drought or emergency response stage changes, the City will notify the local media of the implementation, issues, the drought response stage, and the specific actions required of the public;
- (b) The information will also be publicized on the city's web site;
- (c) Billing inserts and other communication devices will also be used as appropriate;
- (d) A copy of the plan will be available to the public at the City Secretary's office;
- (e) Local organizations, schools, churches, and civic groups will be notified that City staff is available to make presentations on the drought contingency plan (usually in conjunction with presentations on water conservation programs).

Sec. 21-60. Initiation and Termination of Drought or Emergency Response Stages

(a) Initiation of a Drought or Emergency Response Stage - The City Manager or an Executive Director in his absence is authorized to initiate a drought or emergency response stage when one or more of the criteria applicable to that stage are triggered.

(b) Notification of Public – The following actions will be taken to notify the public when a drought emergency response stage is initiated or raised.

- (1) The public will be notified of the implementation or amendment of a drought or emergency response stage in the manner set forth in Sec. 21-58 above;
- (2) Wholesale customers and the NTMWD will be notified by telephone with a follow-up letter, e-mail or facsimile transmission;

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- (3) If any mandatory provisions of the drought or emergency response contingency plan are activated, notification will be sent to the Executive Director of the TCEQ within five (5) business days:

(c) Drought or Emergency Response Stages Imposed by NTMWD The City Manager or his authorized designee may elect not to implement a drought or emergency response stage depending on all relevant factors. Factors which could influence such a decision include, but are not limited to, the time of the year, weather conditions, the anticipation of replenished water supplies, or the anticipation that additional facilities will become available to meet needs. The reason for this decision should be documented.

(d) Termination of a Drought or Emergency Response Stage – The drought or emergency response stage shall remain in effect until the City Manager or an Executive Director in his absence determines that the conditions that triggered the drought response stage have been alleviated or no longer exist or lake levels established by NTMWD for termination are met.

(e) Notification of Public. The following actions will be taken to notify the public when a drought or emergency response stage is terminated or lowered:

- (1) The public will be notified of the termination or lowering of a drought or emergency response stage in the manner provided in Sec. 21-58 herein;
- (2) Wholesale customers and the NTMWD will be notified by telephone with a follow-up letter, e-mail, or facsimile transmission;
- (3) If any mandatory provisions of the drought response contingency plan are terminated, the Executive Director of the TCEQ will be notified within five (5) business days.

Sec. 21-60.1 Drought or Emergency Response Stages

(a) **Triggers for Stage 1, Mild (Voluntary) Drought or Emergency Response Stage (hereinafter referred to as “Stage 1”)** - the City Manager or an Executive Director in his absence may implement Stage 1 when one or more of the following criteria are met:

- (1) The NTMWD initiates Stage 1 drought or emergency response stage;
- (2) The water level in Lake Lavon falls below an elevation of 484.0 msl (8 feet below the top of conservation storage);
- (3) The water level in Lake Chapman falls below an elevation of 432.0 msl (8 feet below top of conservation storage);

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- (4) Regional water use is projected to approach the limit of the permitted supply;
- (5) NTMWD determines that Lake Texoma or some other NTMWD water supply source may have limited availability in the next 6 months;
- (6) NTMWD demand exceeds ninety percent (90%) of the amount that can be delivered to customers for seven (7) consecutive days;
- (7) Water demand for all or part of NTMWD's delivery system approaches delivery capacity because delivery capacity is inadequate;
- (8) NTMWD's supply source becomes contaminated;
- (9) NTMWD's water supply system is unable to deliver water due to the failure or damage of major water system components;
- (10) Demand on the City's system exceeds ninety percent (90%) of the amount that can be delivered to customers for three (3) consecutive days;
- (11) Demand on the City's system exceeds the system's ability to recover approximately ninety percent (90%) in all storage facilities within a 24-hour period;
- (12) Water demand on all or part of the City's delivery system approaches delivery capacity because delivery capacity is inadequate;
- (13) The City's supply source becomes contaminated;
- (14) The City's water supply system is unable to deliver water due to the failure or damage of major water system components.

(b) **Goal for Use Reduction and Actions Available under Stage 1** - The goal under Stage 1 is to raise public awareness of potential drought or water supply problems. The City Manager or an Executive Director in his absence may implement any or all of the actions or programs listed below:

- (1) Request voluntary reductions in water use by the public and by wholesale customers;
- (2) Increase public education on ways to reduce water usage;

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- (3) Notify major water users and work with them to achieve voluntary water use reductions;
- (4) Review non-essential city government water use and reduce when possible;
- (5) Reduce city government water use for landscape irrigation;
- (6) Recommend to all City of Plano water users:
 - i. Use drip irrigation system or soaker hoses to maintain foundation moisture;
 - ii. Irrigate landscaping with a hand operated hose equipped with a positive shut off nozzle;
 - iii. Operate sprinkler system only two times per week and only if necessary, avoid irrigating between the hours of 10:00 am to 6:00 pm to prevent evaporation of irrigation water;
 - iv. Notify wholesale customers of actions being taken and require implementation of similar procedures.

(c) **Stage 1** may be terminated when the level of Lake Lavon rises above an elevation of 488.0 msl and/or when Lake Chapman rises above an elevation of 435.0 msl and/or when the circumstances that caused the implementation of Stage 1 no longer prevail.

(d) **Triggers for Stage 2, Moderate (Mandatory) Drought or Emergency Response Stage (hereinafter referred to as "Stage 2")** - the City Manager or an Executive Director in his absence may implement Stage 2 when one or more of the following criteria are met:

- (1) NTMWD implements Stage 2 drought or emergency response stage;
- (2) The water level in Lake Lavon falls below an elevation of 481.0 msl (11 feet below the top of conservation storage);
- (3) The water level in Lake Chapman falls below an elevation of 430.0 msl (10 feet below top of conservation storage);
- (4) Regional water use is projected to approach the limit of the permitted supply;

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- (5) NTMWD determines that Lake Texoma or some other NTMWD water supply source may have limited availability in the next three (3) months;
- (6) NTMWD demand exceeds ninety five percent (95%) of the amount that can be delivered to customers for five consecutive days;
- (7) NTMWD demand for all or part of the delivery system equals delivery capacity because delivery capacity is inadequate;
- (8) NTMWD's supply source becomes contaminated;
- (9) NTMWD's water supply system is unable to deliver water due to the failure or damage of major water system components;
- (10) Demand on the City's system exceeds ninety-five percent (95%) of the amount that can be delivered to customers for three consecutive days;
- (11) Demand on the City's system exceeds the system's ability to recover approximately ninety percent (90%) in all storage facilities within a 48-hour period;
- (12) Water demand on all or part of the City's delivery system equals delivery capacity because delivery capacity is inadequate;
- (13) The City's supply source becomes contaminated;
- (14) The City's water supply system is unable to deliver water due to the failure or damage of major water system components.

(e) **Goal for Use Reduction and Actions Available Under Stage 2, Moderate (Mandatory)** - The goal for water use reduction under Stage 2 is a two percent (2 %) reduction in the amount of water produced by NTMWD. The City Manager, or an Executive Director in his absence, may implement any or all of the following actions or programs under Stage 2:

- (1) Continue with water conservation actions and programs provided under Stage 1;
- (2) Encourage the public to wait until the current drought or water emergency has passed before establishing new landscaping. New landscaping installed during any drought response stage will be subject to any additional water use restrictions implemented under drought response Stages 3 or 4. Financial loss will not constitute justification for a variance;

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- (3) Reduce non-essential city government water use. (Example: operation of ornamental fountains, etc.). Initiate studies to evaluate alternatives should conditions worsen;
- (4) Notify wholesale customers of actions being taken and require them to implement similar procedures.

(f) **Water Use Restrictions Under Stage 2** – Upon implementation of Stage 2 and notification of the public as provided herein, the following water use restrictions shall apply to all customers, users and other persons connected to the City of Plano Water System:

- (1) Commercial business or contracted services for washing or hosing of buildings, sidewalks, driveways, patios, porches, parking areas is prohibited; Any and all of the above will be allowed if a portable water tank is utilized as its source of water to power wash wood, metal, and concrete surfaces.
- (2) Excessive water run-off from any landscaped area onto streets, alleys, parking lots or other paved surfaces is prohibited. Water run-off is excessive when it extends for a distance greater than ten (10) feet from the property's boundary lines; onto an adjacent property; or, ten (10) feet past the targeted irrigation area for commercial sites;
- (3) Outdoor watering or irrigation is prohibited between the hours of 10:00 am to 6:00 pm.

(g) **Stage 2** may be terminated when the level of Lake Lavon rises above an elevation of 485.0 msl and/or when Lake Chapman rises above an elevation of 433.0 msl and/or when the circumstances that caused the implementation of Stage 2 no longer prevail.

(h) **Triggers for Stage 3, Severe (Mandatory) Drought or Emergency Response Stage (hereinafter referred to as "Stage 3")** – The City Manager, or an Executive Director in his absence, may implement Stage 3 when one or more of the following criteria are met:

- (1) NTMWD implements Stage 3 drought or emergency response stage;
- (2) The water level in Lake Lavon falls below an elevation of 478.0 msl (14 feet below the top of conservation storage);
- (3) The water level in Lake Chapman falls below an elevation of 426.0 msl (14 feet below the top of conservation storage);

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- (4) Regional water use is approaching or exceeding the limit of permitted supply;
- (5) The supply from Lake Texoma or some other NTMWD water supply source has become limited in availability;
- (6) NTMWD demand exceeds ninety eight percent (98%) of the amount that can be delivered to customers for three consecutive days;
- (7) NTMWD demand for all or part of the delivery system exceeds delivery capacity because delivery capacity is inadequate;
- (8) NTMWD's supply source becomes contaminated;
- (9) NTMWD's water supply system is unable to deliver water due to the failure or damage of major water system components;
- (10) Demand on the City's system exceeds ninety-eight percent (98%) of the amount that can be delivered to customers for three consecutive days;
- (11) Demand on City's system exceeds the system's ability to recover approximately ninety percent (90%) in all storage facilities within a 72-hour period;
- (12) Demand on all or part of the delivery system exceeds City's delivery capacity because delivery capacity from NTMWD is inadequate;
- (13) The City's supply source becomes contaminated;
- (14) The City's water supply system is unable to deliver water due to the failure or damage to major water system components.

(i) **Goal for Water Use Reduction and Actions Available Under Stage 3** - The goal for water use reduction under Stage 3 is a reduction of five percent (5%) in the amount of water produced by NTMWD. The City Manager or an Executive Director in his absence may implement any or all of the following actions or programs under Stage 3:

- (1) Continue with water conservation actions or programs implemented under Stages 1 and 2;

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- (2) Drastically reduce city government water use for landscape irrigation, except as needed to prevent foundation damage, maintain plant root viability, keep golf course greens and tee boxes alive, and preserve new plantings;
- (3) Require city landscape irrigation to adhere to watering restrictions based on a percent reduction;
- (4) Notify wholesale customers of actions being taken and require them to implement similar procedures;

(j) **Water Use Restrictions Under Stage 3** – Upon implementation of Stage 3 and notification of the public as provided herein, the following water use restrictions shall apply to all customers, users and other persons connected to the City of Plano Water System:

- (1) All of the water use restrictions implemented during Stages 1 and 2 shall continue in force except as amended or replaced by the restrictions set out herein;
- (2) Pools may be filled to maintain operation levels. The use of potable water to refill ponds and lakes is prohibited;
- (3) Landscape watering is limited to one day per week at each service address located within the City of Plano. Landscape watering is prohibited between the hours of 10:00 am to 6:00 pm. Landscape watering shall comply with the following mandatory watering schedule. Watering shall take place on the day indicated based upon the location of the service address as indicated on the Watering Zone Map attached hereto as “Exhibit A”:

| <u>ZONE</u> | <u>Allowed Landscape Water Days</u> |
|-------------|-------------------------------------|
| 1 | Monday |
| 2 | Tuesday |
| 3 | Wednesday |
| 4 | Thursday |
| 5 | Friday |

Note: Landscape watering will be enforced as follows:

12:00 am to 10:00 a.m. on assigned day watering is allowed;
10:01 am to 5:59 p.m. – watering is not allowed;
6:00 pm to 11:59 p.m. on assigned day watering is allowed.

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- (4) Except as otherwise provided herein, landscape watering is prohibited on weekends;
- (5) Landscape beds may be watered by using a hand-operated hose equipped with a positive shut off nozzle on any day including weekends except between the hours of 10:00 am to 6:00 pm;
- (6) A drip irrigation system, soaker hoses, or irrigation zones specifically for foundation maintenance may be used as often as deemed necessary by the property owner to maintain foundation moisture. Irrigation for foundation maintenance will not be subject to the watering restriction schedule set forth in section 21-60.1(j)(3);
- (7) In all instances, excessive run-off is prohibited. Water run-off is excessive when it extends for a distance greater than ten (10) feet from the property's boundary lines; onto an adjacent property; or, ten (10) feet past the targeted irrigation area for commercial sites;
- (8) Trees may be watered by drip irrigation system or soaker hoses as often as deemed necessary by the property owner except between the hours of 10:00 am to 6:00 pm;
- (9) Municipal water use necessary to maintain the public health or safety, including, but not limited to: fire-fighting, fire prevention and water system maintenance is allowed;
- (10) The watering of golf course putting greens and tee boxes is permitted as needed;

All other golf course watering must follow the watering scheduled as outlined under Section 21-60.1(j)(3);

Excessive run-off is prohibited for all water users. (Restrictions do not apply to golf courses using non-potable water for landscape irrigation);

- (11) Irrigation of City parks, athletic complexes and facilities will be allowed Monday through Friday from 10:00 pm to 6:00 am. Watering is not allowed on the weekends.

(k) **Stage 3** may be terminated when the level of Lake Lavon rises above an elevation of 482.0 msl and/or when Lake Chapman rises above an elevation of 430.0 msl and/or when the circumstances that caused the implementation of Stage 3 no longer prevail.

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(l) **Triggers for Stage 4, Emergency (Mandatory) Drought Response Stage (hereinafter referred to as "Stage 4")** – The City Manager, or an Executive Director in his absence, may implement Stage 4 when one or more of the following criteria are met:

- (1) NTMWD implements Stage 4 drought or emergency response stage;
- (2) The water level in Lake Lavon falls below an elevation of 475.0 msl (17 feet below the top of conservation storage);
- (3) The water level in Lake Chapman falls below an elevation of 423.0 msl (17 feet below top of conservation storage);
- (4) Regional water use is exceeding the limit of the permitted supply;
- (5) The supply from Lake Texoma or some other NTMWD water supply source has become severely limited in availability;
- (6) NTMWD demand exceeds the amount that can be delivered to customers;
- (7) NTMWD demand for all or part of the delivery system seriously exceeds delivery capacity because the delivery capacity is inadequate;
- (8) NTMWD's supply source becomes contaminated;
- (9) NTMWD's water supply system is unable to deliver water due to the failure or damage of major water system components;
- (10) Demand on City's system exceeds the amount that can be delivered to customers;
- (11) Demand on City's system for all or part of the delivery system seriously exceeds delivery capacity because the delivery capacity from NTMWD is inadequate;
- (12) The City's supply source becomes contaminated;
- (13) The City's water supply system is unable to deliver water due to the failure of or damage to major water system components.

(m) **Goal for Water Use Reduction and Actions Available under Stage 4** - the goal for water use reduction under Stage 4 is a reduction of ten percent (10%) in the amount of water produced by NTMWD. The City Manager, or an Executive Director in his absence, may implement any or all of the following actions or programs under Stage 4:

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- (1) Continue with water conservation actions or programs implemented under Stages 1, 2, and 3.

(n) **Water Use Restrictions Under Stage 4** - Upon implementation of Stage 4 and notification to the public as provided herein, the following water use restrictions shall apply to all customers, users and other persons connected to the City of Plano Water System:

- (1) All of the water use restrictions implemented during Stages 1, 2, and 3 shall continue in force except as amended or replaced by the restrictions set out herein;
- (2) Watering of any and all landscape and landscape bedding is prohibited except as amended or replaced by the restrictions set out herein;
- (3) A drip irrigation system, soaker hoses, or irrigation zones specifically designed for foundation maintenance may be used as often as deemed necessary by the property owner. Irrigation for foundation maintenance will not be subject to the watering restriction schedule set forth in section 21-60.1(j)(3);
- (4) In all instances, excessive run-off is prohibited. Water run-off is excessive when it extends for a distance greater than ten (10) feet from the property's boundary lines; onto an adjacent property; or, ten (10) feet past the targeted irrigation area for commercial sites;
- (5) Irrigation of City athletic fields will be allowed Monday through Friday from 10:00 pm to 6:00 am. Watering is not allowed on the weekends. The Director of Public Works will determine a percent reduction in water consumption for the City Parks and Recreation Department;
- (6) The watering of golf course putting greens and tee boxes is permitted as needed;

All other golf course watering is prohibited;

Excessive run-off prohibited for all water users. (Restrictions do not apply to golf courses using non-potable water for landscape irrigation);

- (7) Construction of new water lines or rehabilitation of existing water lines is prohibited except where necessary for public health or safety as determined by the Director of Public Works or as determined through the variance process set forth in section 21-60.2;

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- (8) The use of potable water for construction purposes is prohibited except where necessary to protect the public health or safety as determined by the Director of Public Works or as determined through the variance process set forth in section 21-60.2;
- (9) Municipal water use necessary to maintain the public health or safety, including, but not limited to: fire-fighting, fire prevention and water system maintenance is allowed;
- (10) Notify wholesale customers of actions being taken and require them to implement similar procedures.

(o) Stage 4 may be terminated when Lake Lavon rises above an elevation of 479.0 msl and/or when Lake Chapman rises above an elevation of 427.0 msl and/or when the circumstances that caused the implementation of Stage 4 no longer prevail.

21-60.2 Procedures for Requesting Variances to the Plan

(a) All petitions for variances must be in writing, utilizing the Request for Variance form and addressed to the Public Works Department, City of Plano, P.O. Box 860358, Plano, Texas 75086. The form can be accessed through the city website at www.plano.gov/water or by contacting the Public Works Department. The request must include the following information:

- (1) Name, address, and phone number of the petitioners;
- (2) Physical address for which variance is being requested;
- (3) Petitioner's relationship to property (Owner, Contractor, Property Manager);
- (4) Name, address, and phone number of owner (if different from petitioner);
- (5) Detailed description of the relief requested;
- (6) Period of time for which the variance is sought;
- (7) Alternative measures that will be taken to reduce water use;
- (8) Other information deemed pertinent by the petitioner.

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(b) The Water Education Coordinator shall evaluate all information pertinent to the variance request. The Coordinator may make his/her recommendation on the basis of the petition or he/she may request additional written information from the petitioner. The Coordinator will provide a response to the petitioner within seven (7) business days following receipt of a petition for variance deemed complete by the Coordinator. Failure to comply with requests for additional information from the Coordinator shall cause the request for a variance to be deemed withdrawn. The Coordinator may make a recommendation to the Director of Public Works or his designee to grant the variance if one or more of the following conditions are met:

- (1) Failure to grant such a variance would create an emergency condition adversely affecting the health or safety of the applicant (or the applicant's tenants, occupants or residents) or an emergency condition adversely affecting the public health or safety of the public at large;
- (2) Strict compliance with the drought contingency plan or the water use restrictions set out in the drought or emergency response stages cannot be achieved due to serious mechanical or technical limitations which cannot be corrected;
- (3) Alternative water conservation methods that achieve the same level of reduction in potable water use for applicant can be implemented;
- (4) If variance request is made when Stage 4 restrictions have been implemented, the applicant for the variance must demonstrate the variance is necessary to preserve public health and safety.

(c) The Director or his designee may grant a temporary variance for an existing water use otherwise prohibited under this drought contingency plan. The Director may take into consideration the recommendation provided by the Water Education Coordinator. The Director shall make a determination with regards to the variance within 7 business days of the receipt of the recommendation of the Water Education Coordinator. The decision of the Director is final.

Sec. 21-60.3 Criminal Penalty

Any person, firm or corporation who violates any term or provision of this Ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to a fine in accordance with Section 1-4(b) of the City Code of Ordinances for each offense. These criminal penalties may be imposed in addition to any Administrative or Civil Remedy listed herein. Each day a violation continues shall constitute a separate offense.

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Sec. 21-60.4 Administrative Remedies for Violations.

The following administrative remedies are available to the City in cases of noncompliance with the provisions of this ordinance. These administrative remedies may be assessed in addition to any criminal penalty assessed for a violation of this ordinance. Each day a violation continues shall constitute a separate violation for purposes of assessing administrative remedies.

In the event that any person violates the provisions of this ordinance, the Director of Public Works or his designee, shall give notice to such person setting forth the evidence of noncompliance with the restrictions outlined in stages 2, 3 and 4.

(a) In-Ground Irrigation Systems Violations

(1) Notification of Violation

- i. Placement of a notice flag at the person's double check irrigation valve will be provided to advise the person his double check device has been turned off and locked; and
- ii. The City will install a locking device on the person's double check valve to the irrigation system; and
- iii. Notice to be sent by letter delivered by United States Postal Service addressed to the person as recorded in the city's customer and utility billing records notifying that the irrigation system has been turned off and locked. The letter shall advise the person of the assessment of administrative remedies and fees. The letter shall advise the person the procedures for payment of the administrative fees and the procedure for requesting a hearing to contest the assessment of the administrative remedies.

(2) Remedy on First and Second Violation

- i. The administrative fee to restore service when a locking device has been installed is two hundred ten dollars (\$210) per occurrence when paid at Customer and Utility Services.
- ii. If a person requests a hearing to protest the assessment of the administrative fee, the administrative fee will be a maximum of two hundred twenty five dollars (\$225) per occurrence if the violation is upheld.

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(3) Remedy on Third Violation

- i. In addition to the provisions set forth in 21.60.4(a)(1), (2) the City may elect to leave the locking device on the person's double check valve for 14 calendar days from the date the fee is paid.

(4) Remedy on Fourth and Subsequent Violations

- i. In addition to the provisions set forth in 21.60.4(a)(1), (2), (3) the City may elect to leave the locking device on the person's double check valve for 28 calendar days from the date the fee is paid.

(b) Violations for Systems Without Double-Check Valves or In-Ground Irrigation Systems

(1) Violation Notification

- i. Placement of a notice flag at the person's water meter will be provided to advise the person he was in violation of watering restrictions.
- ii. Notice shall be sent by letter delivered by United States Postal Service addressed to the person as recorded in the city's customer and utility billing records notifying the person of the violation. The letter shall advise the person of the assessment of administrative fees. The letter shall advise the person the procedures for payment of the administrative fees and the procedure for requesting a hearing to contest the assessment of the administrative remedies.

(2) Remedy

- i. The administrative fee on all violations under section 21.60.4(b) is two hundred dollars (\$200) per occurrence when paid at Customer & Utility Services.
- ii. If the person requests a hearing to protest the administrative fee, the administrative fee will be two hundred fifteen dollars (\$215). If violation is upheld, the administrative fee is to be paid at Customer & Utility Services.

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- (c) Procedures for Paying Administrative Fees or Requesting a Hearing on the Fees
- (1) Personal appearance by the person listed on the city's Customer & Utility Services billing records is required to re-establish service to the irrigation system. The person's government issued photo identification must be provided at time of payment or upon request for a hearing.
 - (2) A person may request a hearing to protest the assessment of any administrative remedy. To request a hearing, the owner must make the request in person to the City of Plano Public Works Department within fifteen (15) business days from the date on the written notice of violation. If a locking device was installed it shall remain in place until the conclusion of the hearing and payment of any required fee.
 - (3) The Public Works Manager or his designee shall conduct the hearing. The Manager shall evaluate all information offered by the petitioner at the hearing. The person making the request for a hearing shall bear the burden of proof to show why, by a preponderance of the evidence, the administrative remedy should not be assessed. The Manager will provide a decision at the time of the hearing or within three (3) business days following the conclusion of the hearing.
 - (4) Payment of any fees assessed at the hearing must be made within seven (7) business days of the decision from the hearing. Any fees not paid within this time limit shall be added to the person's next water billing cycle;
 - (5) A person may appeal the decision from the hearing to the office of the Director of Public Works or his designee. The Director or his designee shall hear the appeal;
 - (6) The request for an appeal must be filed in writing with the office of the Director of Public Works within three (3) business days from the notice being given by the Manager.
 - (7) The Director or his designee shall render a decision at the time of the appeal or within three (3) business days from the conclusion of the appeal.

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- (8) A person may elect to pay the administrative fee without requesting a hearing. Any fees not paid within 15 business days from the date on the written notice shall be added to the person's next water billing cycle.
- (9) Unpaid fees related to the Drought Contingency Plan can result in the termination of the domestic water services in accordance with City of Plano Code Chapter 21, Article IV, Service Charges Generally, Section 21-131(d) and the established policies and procedures of the Customer and Utility Services Department.
- (d) Re-establishment of service to double checks that have been locked-off.
- (1) The administrative fee is to be paid at City of Plano Customer & Utility Services. The locking device will be removed within three working days after notice of payment is received from Customer & Utility Services, unless a longer lock-out time period was assessed pursuant to section 21.60.4(a)(3), (4) above.
- (2) Request for same day service to unlock double check will require an additional fee of \$40 to be paid in advance at Customer & Utility Services. Same day service is not available if a longer lock-out time was assessed pursuant to section 21.60.4(a)(3), (4) above.
- (e) It shall be unlawful for a person to remove through the use of any means or otherwise cause damage to a lock that has been placed on a backflow prevention device by the director or his designee pursuant to this section.
- (f) *Administrative remedy for customers outside city.* The Director of Public Works shall advise wholesale water customers outside the city limits receiving water service from the city of actions taken under the plan by telephone and/or by letter. Noncompliance with any requirement in any stage may result in termination of service and removal of meter. Prior to such termination, the wholesale water customer shall be given notice of the city's intent to terminate service and shall have five (5) business days from the mailing of such notice to appeal the decision to the Director. Notice shall be sufficient if sent by certified mail to the last known address of the customer. If service is terminated, customer shall be liable for all costs of reinstallation. Termination of service to a wholesale water customer under this provision is subject also to the terms of any written contract between the city and the customer.

Section III. All wholesale water contracts entered into or renewed after adoption of this ordinance, including contract extensions, shall include a provision that requires all wholesale water customers of the City to comply with the provisions of this ordinance.

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Section IV. This plan shall be coordinated with the Region C Water Planning Group and with North Texas Municipal Water District, as required by TCEQ, to insure consistency with the appropriate approved regional water plan.

Section V. All provisions of the ordinances of the City of Plano, codified or uncodified, in conflict with the provisions of this Ordinance are hereby repealed upon the effective date of this Ordinance, and all other provisions of the ordinances of the City of Plano, codified or uncodified, not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

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

Section VII. The repeal of any ordinance or part of any ordinance 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 affecting any rights of the municipality under any section or provision of any ordinance at the time of passage this Ordinance.

Section VIII. This Ordinance shall become effective from and after its passage and publication as required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, on this the _____ day of _____, 2006.

Pat Evans, MAYOR
CITY OF PLANO, TEXAS

ATTESTED TO:

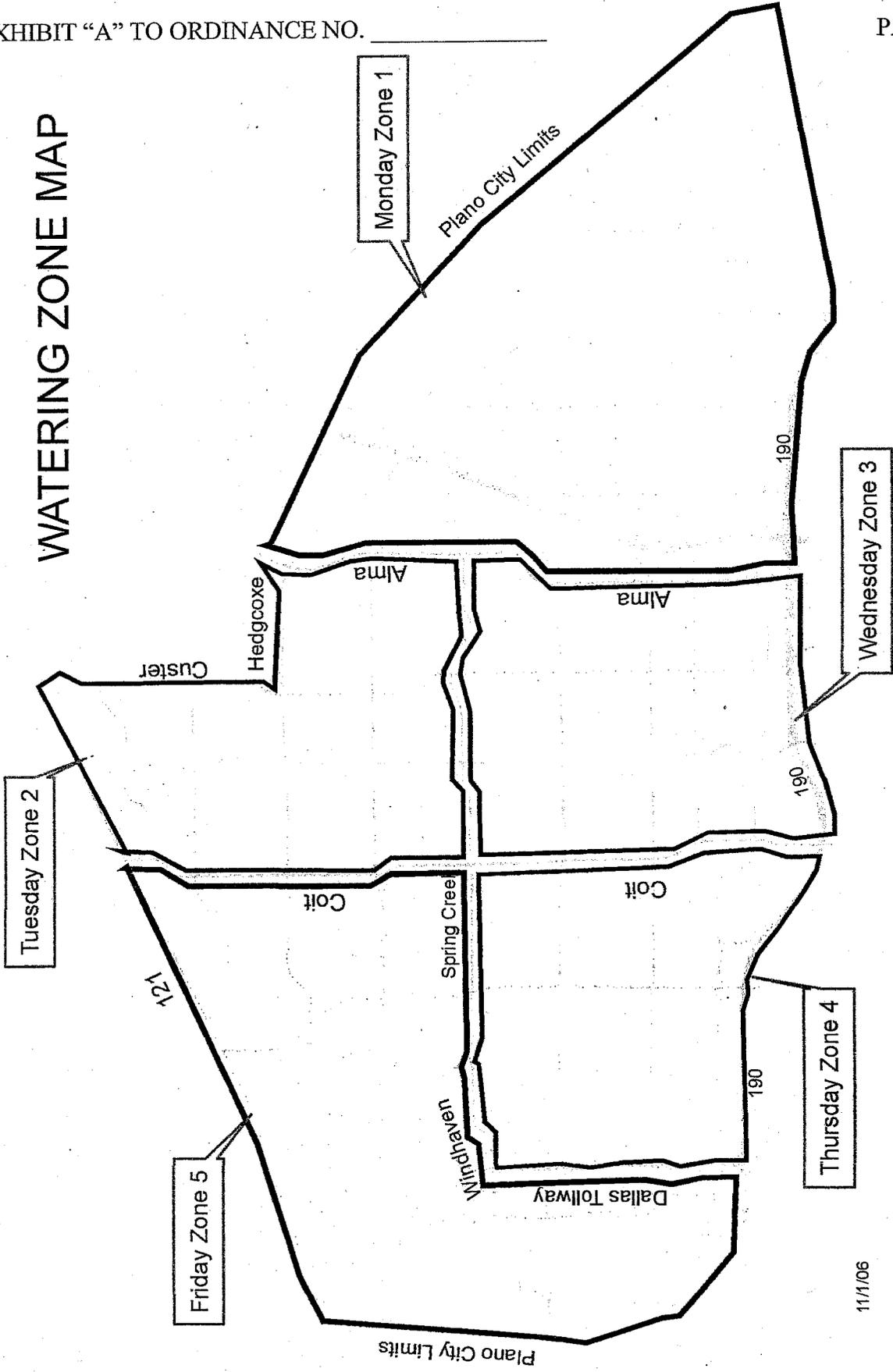
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

Diane Wetherbee, CITY ATTORNEY

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WATERING ZONE MAP



11/1/06

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ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PLANO, TEXAS, REPEALING ORDINANCE NO. ~~2001-12-19, 2006-5-23~~ IN ITS ENTIRETY, WHICH WAS CODIFIED AS CHAPTER 21, ARTICLE II, DIVISION 4, DROUGHT CONTINGENCY PLAN, OF ARTICLE II, WATER OF CHAPTER 21, UTILITIES, OF THE CODE OF ORDINANCES OF THE CITY OF PLANO; ADOPTING A NEW DROUGHT CONTINGENCY PLAN TO BE CODIFIED AS CHAPTER 21, ARTICLE II, DIVISION 4 OF THE CODE OF ORDINANCES OF THE CITY OF PLANO; ESTABLISHING PROCEDURES AND CRITERIA FOR DECLARING A WATER EMERGENCY AND IMPLEMENTING AND TERMINATING DROUGHT RESPONSE STAGES; ESTABLISHING RESTRICTIONS ON CERTAIN WATER USES DURING DROUGHT RESPONSE STAGES; ESTABLISHING ADMINISTRATIVE REMEDIES AND FEES AND CRIMINAL PENALTIES FOR VIOLATING THE RESTRICTIONS AND PROVISIONS FOR ENFORCEMENT OF THESE RESTRICTIONS; ~~ESTABLISHING PROCEDURES FOR GRANTING VARIANCES;~~ AND PROVIDING A REPEALER CLAUSE, A SEVERABILITY CLAUSE, A SAVINGS CLAUSE; AN EFFECTIVE DATE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

~~WHEREAS, on December 17, 2001, by Ordinance No. 2001-12-19, the City Council of the City of Plano adopted a Drought Contingency Plan to be implemented in the event of a water shortage, such Ordinance was codified as Division 4, Article II, Chapter 21 of the City of Plano Code of Ordinances; and~~

WHEREAS, in April, 2004, the North Texas Municipal Water District ("NTMWD") developed a model drought contingency plan in accordance with state law and has requested all member cities to adopt this plan; and

WHEREAS, a public hearing was conducted on May 22, 2006 to require input from the public on this drought ordinance plan; and

~~WHEREAS the City Council for the City of Plano, Texas ("City Council") has determined that the current drought contingency plan created by City Ordinance No. 2001-12-19 should be repealed; and~~

WHEREAS, on May 22, 2006, by Ordinance No. 2006-5-23, the City Council of the City of Plano adopted a Drought Contingency Plan to be implemented in the event of a water shortage, such Ordinance was codified as Division 4, Article II, Chapter 21 of the City of Plano Code of Ordinances; and

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WHEREAS, after enacting the drought contingency plan the City of Plano has encountered issues regarding compliance with the water conservation measures in the ordinance and enforcement of same; and

WHEREAS, the City of Plano has encountered unforeseen costs associated with the enforcement provisions of the plan; and

WHEREAS, the City of Plano has encountered unforeseen administrative and personnel demands associated with the enforcement of the plan, and;

WHEREAS the City Council for the City of Plano, Texas ("City Council") has determined that the current drought contingency plan created by City Ordinance No. 2006-5-23 should be repealed in its entirety and replaced with this ordinance; and

WHEREAS, on November 13, 2006 a public hearing was conducted to require input from the public on this drought ordinance plan; and

WHEREAS, the City Council hereby finds and determines that the ~~model~~repeal of the previous drought contingency plan and the enactment of this drought contingency plan is in the best interest of the City of Plano and its citizens and should be adopted as set forth below.

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

Section I. Ordinance No. ~~2001-12-19~~2006-5-23 duly passed approved by the City Council of the City of Plano, Texas, on ~~December 17, 2001~~May 22, 2006 is hereby repealed in its entirety and replaced by this ordinance.

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Section II. ~~A new~~The Drought Contingency Plan which follows the NTMWD model and complies with the regulations and requirements of the Texas Water Code and Texas Commission on Environmental Quality ("TCEQ") ~~is~~are hereby adopted and codified as Division 4, Drought Contingency Plan, of Article II, Water, of Chapter 21, Utilities of the Code of Ordinances of the City of Plano shall read as follows:

"DIVISION 4. DROUGHT CONTINGENCY PLAN

Sec. 21-53. Purpose and scope.

(a) The North Texas Municipal Water District (NTMWD) supplies treated water to the City of Plano, as well as other member cities and customers. A model drought contingency plan was developed by NTMWD in accordance with the regulations and requirements of the Texas Administration Code and the Texas Commission on Environmental Quality ("TCEQ") and consultation with its member cities. The NTMWD model plan calls for member cities and customers to adopt similar criteria and procedures for declaring a water emergency and implementing drought or emergency response stages as used by NTMWD. Member cities and customers may also adopt more stringent drought stages than NTMWD if conditions warrant. The following ordinance is written in accordance with TAC and the NTMWD's model drought contingency plan.

(b) There is hereby established a City of Plano Drought Contingency Plan (in this division called "the Plan") to provide procedures for:

- (1) Conserving the available water supply in times of drought and emergency;
- (2) Maintaining supplies for domestic water use, sanitation, and fire protection;
- (3) Protecting and preserving public health, safety, and welfare; and
- (4) Minimizing the adverse impacts of water supply shortages.

(c) The plan applies to:

- (1) All persons and premises within the city using water from the city's water system ("the system");
- (2) All wholesale contract customers; and
- (3) All retail customers who live in unincorporated areas within the city's extraterritorial jurisdiction and are served by the system.

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Sec. 21-54. Exemption.

The governmental use of water for essential services such as police, fire, and emergency services which is necessary to preserve or protect the health, safety and welfare of the citizens of Plano are exempt from any and all restrictions or mandates set forth in the Plan.

Sec. 21-55. Definitions.

The following words, terms, and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~'City Manager' means the City Manager of the City of Plano or his authorized designee.~~

'Customer' means a person, company or other entity connected to the City's water system and contracting with the City of Plano to receive potable water service.

~~'Director' means the Director of Public Works of the City of Plano or his authorized designee.~~

"Drip Irrigation" means any type of irrigation that does not spray into the air. Drip irrigation drips slowly into the soil without visible spray.

"Foundation" means area that includes first 24" of soil from foundation slab.

'General emergency' means a condition in which the existing or projected water supply available to the city is not anticipated to meet the normal water requirements of metered water users. This condition may be the result of factors including, but not limited to, natural emergency conditions (i.e., drought, etc.) and/or a failure of the city's or its supplier's water distribution systems.

'Geographical emergency' means a condition in which the existing or projected water supply available to the city is not anticipated to meet the normal water requirements of a section or sections of the metered water users. This condition may be the result of factors including, but not limited to, natural emergency conditions (i.e., drought, fire, etc.) and/or a failure of the city's or its supplier's water distribution systems.

'Landscape' means natural plant materials around buildings or on grounds (i.e., trees, shrubbery, grasses and flowers).

'Landscape beds' means plants and shrubs that are separated from turf.

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'North Texas Municipal Water District' or "NTMWD" refers to the North Texas Municipal Water District.

'Plan' refers to the City of Plano Drought Contingency Plan.

'Person' means owner, occupant, or person in control of the premises or a person authorized by the owner, occupant, or person in control of the premises.

'Potable water' means any public water supply, which has been investigated and approved by the TCEQ as satisfactory for drinking, culinary and domestic purposes.

'Public Health and Safety' means such amount of water as necessary to sustain human life, reasonable standards of hygiene and sanitation, and fire suppression.

'Putting Green' means the ground that is specially prepared for putting. The putting green is typically defined by a fine bladed grass that requires an extremely high level of maintenance to provide a smooth surface for rolling the ball when putting.

'System' means the City of Plano water works system and shall include, but not be limited to, all reservoirs, storage tanks, elevated tanks, pipelines, pumps, hydrants, meters, valves, connections, engines, and all other property and machinery used in connection with the City's water works system.

'Tee Box' means the rectangular area considered the starting place for the hole to be played. The tee box is typically defined by a grass that requires a very high level of maintenance and mowed at a low height to provide a consistent surface to begin play on the hole.

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Sec. 21-56. ~~Authority to declare water emergency.~~ Presumption

For purposes of enforcement of administrative remedies and criminal penalties under this ordinance, it shall be presumed that the person in actual control of the watering or irrigation devices for a premises is responsible for any violations of this ordinance.

Sec. 21-57. Authority to Declare Water Emergency.

Upon the occurrence of any one of the criteria listed below, the City Manager or an Executive Director in his absence is hereby authorized to declare a water emergency and to implement any of the drought or emergency response stages in accordance with the provisions of this Division:

- (a) General or geographical emergency;
- (b) Water system failures/emergencies (i.e., pressure zone deficiencies, chemical spills, broken water mains, power outages, electrical failure, failure of storage tanks or other equipment, treatment plant breakdown, and/or water contamination);
- (c) Supply failure from North Texas Municipal Water District or initiation of any stage in its drought contingency plan;
- (d) An inability to recover approximately ninety percent (90%) in all storage facilities within a twenty-four (24) hour period;
- (e) Notification by the North Texas Municipal Water District of a significant decrease in reservoir levels resulting in NTMWD's inability, presently or in the immediate future, to recover resources sufficient to provide services necessary for public health, safety, and welfare.

Sec. 21-5758. Notification and ~~termination of water emergency~~ Termination of Water Emergency.

(a) Notification of Water Emergency – The public will be notified of a water emergency through one or more of the following methods: press release to local media, publication in a newspaper in general circulation in the City of Plano, publication on Plano Television Network ("PTN") and publication on the City's website. Wholesale customers will be notified first by telephone call or electronic mail and then by letter that provides detailed information regarding the reasons for the drought stage.

(b) Violations following Notification - No criminal citation or administrative fee for violating any of the water use restrictions set forth in Drought or Emergency

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Response Stages 2, 3 or 4 will be issued until the notice of a water emergency or notice of drought response stage has been published in at least one issue of a newspaper in general circulation in the City of Plano.

(c) Termination of Water Emergency – The water emergency shall remain in effect until the City Manager or an Executive Director in his absence determines that the condition(s) that triggered the water emergency have been alleviated or no longer exist. The public and wholesale customers will be informed of the termination of the water emergency in the same manner as provided in subsection (a) above.

Sec. 21-5859. Provisions for Continuing Public Education and Information

The City will take steps to inform and educate the public about water emergencies and the drought contingency plan by the following means:

- (a) At any time that the drought contingency plan is activated or the drought or emergency response stage changes, the City will notify the local media of the implementation, issues, the drought response stage, and the specific actions required of the public;
- (b) The information will also be publicized on the city's web site;
- (c) Billing inserts and other communication devices will also be used as appropriate;
- (d) A copy of the plan will be available to the public at the City Secretary's office;
- (e) Local organizations, schools, churches, and civic groups will be notified that City staff is available to make presentations on the drought contingency plan (usually in conjunction with presentations on water conservation programs).

Sec. 21-5960. Initiation and Termination of Drought or Emergency Response Stages

(a) Initiation of a Drought or Emergency Response Stage - The City Manager or an Executive Director in his absence is authorized to initiate a drought or emergency response stage when one or more of the criteria applicable to that stage are triggered.

(b) Notification of Public – The following actions will be taken to notify the public when a drought emergency response stage is initiated or raised.

- (1) The public will be notified of the implementation or amendment of a drought or emergency response stage in the manner set forth in Sec. 21-5758 above;

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- (2) Wholesale customers and the NTMWD will be notified by telephone with a follow-up letter, e-mail or facsimile transmission;
- (3) If any mandatory provisions of the drought or emergency response contingency plan are activated, notification will be sent to the Executive Director of the TCEQ within five (5) business days:

(c) Drought or Emergency Response Stages Imposed by NTMWD The City Manager or his authorized designee may elect not to implement a drought or emergency response stage depending on all relevant factors. Factors which could influence such a decision include, but are not limited to, the time of the year, weather conditions, the anticipation of replenished water supplies, or the anticipation that additional facilities will become available to meet needs. The reason for this decision should be documented.

(d) Termination of a Drought or Emergency Response Stage – The drought or emergency response stage shall remain in effect until the City Manager or an Executive Director in his absence determines that the conditions that triggered the drought response stage have been alleviated or no longer exist or lake levels established by NTMWD for termination are met.

(e) Notification of Public. The following actions will be taken to notify the public when a drought or emergency response stage is terminated or lowered:

- (1) The public will be notified of the termination or lowering of a drought or emergency response stage in the manner provided in Sec. 21-5758 herein;
- (2) Wholesale customers and the NTMWD will be notified by telephone with a follow-up letter, e-mail, or facsimile transmission;
- (3) If any mandatory provisions of the drought response contingency plan are terminated, the Executive Director of the TCEQ will be notified within five (5) business days.

Sec. 21-60.1 Drought or Emergency Response Stages

(a) **Triggers for Stage 1, Mild (Voluntary) Drought or Emergency Response Stage (hereinafter referred to as “Stage 1”)** - the City Manager or an Executive Director in his absence may implement Stage 1 when one or more of the following criteria are met:

- (1) The NTMWD initiates Stage 1 drought or emergency response stage;
- (2) The water level in Lake Lavon falls below an elevation of 484.0 msl (8 feet below the top of conservation storage);

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- (3) The water level in Lake Chapman falls below an elevation of 432.0 msl (8 feet below top of conservation storage);
- (4) Regional water use is projected to approach the limit of the permitted supply;
- (5) NTMWD determines that Lake Texoma or some other NTMWD water supply source may have limited availability in the next 6 months;
- (6) NTMWD demand exceeds ninety percent (90%) of the amount that can be delivered to customers for seven (7) consecutive days;
- (7) Water demand for all or part of NTMWD's delivery system approaches delivery capacity because delivery capacity is inadequate;
- (8) NTMWD's supply source becomes contaminated;
- (9) NTMWD's water supply system is unable to deliver water due to the failure or damage of major water system components;
- (10) Demand on the City's system exceeds ninety percent (90%) of the amount that can be delivered to customers for three (3) consecutive days;
- (11) Demand on the City's system exceeds the system's ability to recover approximately ninety percent (90%) in all storage facilities within a 24-hour period;
- (12) Water demand on all or part of the City's delivery system approaches delivery capacity because delivery capacity is inadequate;
- (13) The City's supply source becomes contaminated;
- (14) The City's water supply system is unable to deliver water due to the failure or damage of major water system components.

(b) **Goal for Use Reduction and Actions Available under Stage 1** - The goal ~~for water use reduction~~ under Stage 1 is to raise public awareness of potential drought or water supply problems. The City Manager or an Executive Director in his absence may implement any or all of the actions or programs listed below:

- (1) Request voluntary reductions in water use by the public and by wholesale customers;

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- (2) Increase public education on ways to reduce water usage;
- (3) Notify major water users and work with them to achieve voluntary water use reductions;
- (4) Review non-essential city government water use and reduce when possible. ~~(Examples include street cleaning, vehicle washing, operation of ornamental fountains, etc.);~~
- (5) Reduce city government water use for landscape irrigation;
- (6) Recommend to all City of Plano water users:
 - i. Use drip irrigation system or soaker hoses to maintain foundation moisture;
 - ii. Irrigate landscaping with a hand operated hose equipped with a positive shut off nozzle;
 - iii. Operate sprinkler system only ~~one~~two times per week and only if necessary, ~~irrigate~~avoid irrigating ~~between 7the hours of 10:00 am to 6:00 pm and 9:00 am only~~to prevent evaporation of irrigation water;
 - iv. Notify wholesale customers of actions being taken and require implementation of similar procedures.

(c) **Stage 1** may be terminated when the level of Lake Lavon rises above an elevation of 488.0 msl and/or when Lake Chapman rises above an elevation of 435.0 msl and/or when the circumstances that caused the implementation of Stage 1 no longer prevail.

(d) **Triggers for Stage 2, Moderate (Mandatory) Drought or Emergency Response Stage (hereinafter referred to as "Stage 2")** - the City Manager or an Executive Director in his absence may implement Stage 2 when one or more of the following criteria are met:

- (1) NTMWD implements Stage 2 drought or emergency response stage;
- (2) The water level in Lake Lavon falls below an elevation of 481.0 msl (11 feet below the top of conservation storage);
- (3) The water level in Lake Chapman falls below an elevation of 430.0 msl (10 feet below top of conservation storage);

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- (4) Regional water use is projected to approach the limit of the permitted supply;
- (5) NTMWD determines that Lake Texoma or some other NTMWD water supply source may have limited availability in the next three (3) months;
- (6) NTMWD demand exceeds ninety five percent (95%) of the amount _____that can be delivered to customers for five consecutive days;
- (7) NTMWD demand for all or part of the delivery system equals delivery capacity because delivery capacity is inadequate;
- (8) NTMWD's supply source becomes contaminated;
- (9) NTMWD's water supply system is unable to deliver water due to the failure or damage of major water system components;
- (10) Demand on the City's system exceeds ninety-five percent (95%) of the amount that can be delivered to customers for three consecutive days;
- (11) Demand on the City's system exceeds the system's ability to recover approximately ninety percent (90%) in all storage facilities within a 48-hour period;
- (12) Water demand on all or part of the City's delivery system equals delivery capacity because delivery capacity is inadequate;
- (13) The City's supply source becomes contaminated;
- (14) The City's water supply system is unable to deliver water due to the failure or damage of major water system components.

(e) **Goal for Use Reduction and Actions Available Under Stage 2, Moderate (Mandatory)** - The goal for water use reduction under Stage 2 is a two percent (2 %) reduction in the amount of water produced by NTMWD. The City Manager, or an Executive Director in his absence, may implement any or all of the following actions or programs under Stage 2:

- (1) Continue with water conservation actions and programs provided under Stage 1;

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- (2) Encourage the public to wait until the current drought or water emergency has passed before establishing new landscaping. New landscaping installed during any drought response stage will be subject to any additional water use restrictions implemented under drought response Stages 3 or 4. Financial loss will not constitute justification for a variance;
- (3) Reduce non-essential city government water use. (~~Examples include street cleaning, vehicle washing;~~ operation of ornamental fountains, etc.). Initiate studies to evaluate alternatives should conditions worsen;
- (4) Notify wholesale customers of actions being taken and require them to implement similar procedures.

(f) **Water Use Restrictions Under Stage 2** – Upon implementation of Stage 2 and notification of the public as provided herein, the following water use restrictions shall apply to all customers, users and other persons connected to the City of Plano Water System:

- (1) ~~Washing~~Commercial business or contracted services for washing or hosing of buildings, sidewalks, driveways, patios, porches, parking areas or any other paved surfaces is prohibited; Any and all of the above will be allowed if a portable water tank is utilized as its source of water to power wash wood, metal, and concrete surfaces.
- (2) Excessive water run-off from any landscaped area onto streets, alleys, parking lots or other paved surfaces is prohibited. Water run-off is excessive when it extends for a distance greater than ten (10) feet from the property's boundary lines; onto an adjacent property; or, ten (10) feet past the targeted irrigation area for commercial sites;
- (3) Outdoor watering or irrigation is prohibited ~~except~~ between the hours of ~~7~~10:00 p.m. to ~~9~~6:00 a.m.

(g) **Stage 2** may be terminated when the level of Lake Lavon rises above an elevation of 485.0 msl and/or when Lake Chapman rises above an elevation of 433.0 msl and/or when the circumstances that caused the implementation of Stage 2 no longer prevail.

(h) **Triggers for Stage 3, Severe (Mandatory) Drought or Emergency Response Stage (hereinafter referred to as "Stage 3")** – The City Manager, or an Executive Director in his absence, may implement Stage 3 when one or more of the following criteria are met:

- (1) NTMWD implements Stage 3 drought or emergency response stage;

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- (2) The water level in Lake Lavon falls below an elevation of 478.0 msl (14 feet below the top of conservation storage);
- (3) The water level in Lake Chapman falls below an elevation of 426.0 msl (14 feet below the top of conservation storage);
- (4) Regional water use is approaching or exceeding the limit of permitted supply;
- (5) The supply from Lake Texoma or some other NTMWD water supply source has become limited in availability;
- (6) NTMWD demand exceeds ninety eight percent (98%) of the amount that can be delivered to customers for three consecutive days;
- (7) NTMWD demand for all or part of the delivery system exceeds delivery capacity because delivery capacity is inadequate;
- (8) NTMWD's supply source becomes contaminated;
- (9) NTMWD's water supply system is unable to deliver water due to the failure or damage of major water system components;
- (10) Demand on the City's system exceeds ninety-eight percent (98%) of the amount that can be delivered to customers for three consecutive days;
- (11) Demand on City's system exceeds the system's ability to recover approximately ninety percent (90%) in all storage facilities within a 72-hour period;
- (12) Demand on all or part of the delivery system exceeds City's delivery capacity because delivery capacity from NTMWD is inadequate;
- (13) The City's supply source becomes contaminated;
- (14) The City's water supply system is unable to deliver water due to the failure or damage to major water system components.

(i) **Goal for Water Use Reduction and Actions Available Under Stage 3** - The goal for water use reduction under Stage 3 is a reduction of five percent (5%) in the amount of water produced by NTMWD. The City Manager or an Executive Director in his absence may implement any or all of the following actions or programs under Stage 3:

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- (1) Continue with water conservation actions or programs implemented under Stages 1 and 2;
- (2) Drastically reduce city government water use for landscape irrigation, except as needed to prevent foundation damage, maintain plant root viability, keep golf course greens and tee boxes alive, and preserve new plantings;
- (3) Require city landscape irrigation to adhere to ~~implemented landscape watering schedule~~; restrictions based on a percent reduction;
- (4) Notify wholesale customers of actions being taken and require them to implement similar procedures;

(j) **Water Use Restrictions Under Stage 3** – Upon implementation of Stage 3 and notification of the public as provided herein, the following water use restrictions shall apply to all customers, users and other persons connected to the City of Plano Water System:

- (1) All of the water use restrictions implemented during Stages 1 and 2 shall continue in force except as amended or replaced by the restrictions set out herein;
- (2) Pools may be filled to maintain operation levels. The use of potable water to refill ponds and lakes is prohibited;
- (3) Landscape watering is limited to one day per week ~~between the hours of 7:00 p.m. and 9:00 a.m.~~ at each service address located within the City of Plano. Landscape watering is prohibited between the hours of 10:00 am to 6:00 pm. Landscape watering shall comply with the following mandatory ~~five-day~~ watering schedule. Watering shall take place on the day indicated based upon the location of the service address as indicated on the Watering Zone Map attached hereto as “Exhibit A”:

| <u>ZONE</u> | <u>Allowed Landscape Water Days</u> |
|-------------|-------------------------------------|
| 1 | Monday |
| 2 | Tuesday |
| 3 | Wednesday |
| 4 | Thursday |
| 5 | Friday |

Note: Landscape watering will be enforced as follows:

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~~_____~~
~~_____~~ **12:00 am to 9:00 a.m. on assigned day watering is allowed;**
~~_____~~ **9:01 am to 6:59 p.m. – watering is not allowed;**
~~_____~~ **7:00 pm to 11:59 p.m. on assigned day watering is allowed.**

- (4) Except as otherwise provided herein, landscape watering is prohibited on weekends;
- (5) Landscape beds may be watered ~~on any day between the hours of 7:00 p.m. and 9:00 a.m.~~ by using a hand-operated hose equipped with a positive shut off nozzle. Soaker on any day including weekends except between the hours of 10:00 am to 6:00 pm;
- (6) A drip irrigation system, soaker hoses, or irrigation zones specifically for foundation maintenance are authorized may be used as often as deemed necessary. by the property owner to maintain foundation moisture. Irrigation for foundation maintenance will not be subject to the watering restriction schedule set forth in section 21-60.1(j)(3);
- ~~(5)~~(7) In all instances, excessive run-off is prohibited. Water run-off is excessive when it extends for a distance greater than ten (10) feet from the property's boundary lines; onto an _____ adjacent property; or, ten (10) feet past the targeted irrigation area for commercial sites;
- (8) ~~Golf course watering and irrigation shall be limited to~~ Trees may be watered by drip irrigation system or soaker hoses as often as deemed necessary by the property owner except between the hours of 10:00 am to 6:00 pm;
- (9) Municipal water use necessary to maintain the public health or safety, including, but not limited to: fire-fighting, fire prevention and water system maintenance is allowed;
- (10) The watering of golf course putting greens and tee boxes is permitted as needed; excessive

All other golf course watering must follow the watering scheduled as outlined under Section 21-60.1(j)(3);

Excessive run-off is prohibited for all water users. (Restrictions do not apply to golf courses using non-potable water for landscape irrigation);

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~~(8)(11) Watering-Irrigation of City parks, athletic complexes by the City's Parks and Recreation Department facilities will be allowed one day per week, on Sundays beginning at 7:00 pm and ending at 9:00 pm Monday through Friday from 10:00 pm and ending at 9:00 am Monday. Watering is not allowed on the weekends.~~

(k) **Stage 3** may be terminated when the level of Lake Lavon rises above an elevation of 482.0 msl and/or when Lake Chapman rises above an elevation of 430.0 msl and/or when the circumstances that caused the implementation of Stage 3 no longer prevail.

(l) **Triggers for Stage 4, Emergency (Mandatory) Drought Response Stage (hereinafter referred to as "Stage 4")** – The City Manager, or an Executive Director in his absence, may implement Stage 4 when one or more of the following criteria are met:

- (1) NTMWD implements Stage 4 drought or emergency response stage;
- (2) The water level in Lake Lavon falls below an elevation of 475.0 msl (17 feet below the top of conservation storage);
- (3) The water level in Lake Chapman falls below an elevation of 423.0 msl (17 feet below top of conservation storage);
- (4) Regional water use is exceeding the limit of the permitted supply;
- (5) The supply from Lake Texoma or some other NTMWD water supply source has become severely limited in availability;
- (6) NTMWD demand exceeds the amount that can be delivered to customers;
- (7) NTMWD demand for all or part of the delivery system seriously exceeds delivery capacity because the delivery capacity is inadequate;
- (8) NTMWD's supply source becomes contaminated;
- (9) NTMWD's water supply system is unable to deliver water due to the failure or damage of major water system components;
- (10) Demand on City's system exceeds the amount that can be delivered to customers;
- (11) Demand on City's system for all or part of the delivery system seriously exceeds delivery capacity because the delivery capacity from NTMWD is inadequate;

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- (12) The City's supply source becomes contaminated;
- (13) The City's water supply system is unable to deliver water due to the failure of or damage to major water system components.

(m) **Goal for Water Use Reduction and Actions Available under Stage 4** - the goal for water use reduction under Stage 4 is a reduction of ten percent (10%) in the amount of water produced by NTMWD. The City Manager, or an Executive Director in his absence, may implement any or all of the following actions or programs under Stage 4:

- (1) Continue with water conservation actions or programs implemented under Stages 1, 2, and 3.

(n) **Water Use Restrictions Under Stage 4** - Upon implementation of -Stage 4 and notification to the public as provided herein, the following water use restrictions shall apply to all customers, users and other persons connected to the City of Plano Water System:

- (1) All of the water use restrictions implemented during Stages 1, 2, and 3 shall continue in force except as amended or replaced by the restrictions set out herein;
- (2) Watering of any and all landscape and landscape bedding is prohibited ~~throughout~~except as amended or replaced by the City. Foundations may be watered as needed with soaker hose only restrictions set out herein;
- (3) ~~Use of potable water for landscape watering and irrigation of public parks and athletic fields is prohibited, except where necessary to protect the public health or safety~~A drip irrigation system, soaker hoses, or irrigation zones specifically designed for foundation maintenance may be used as often as deemed necessary by the property owner. Irrigation for foundation maintenance will not be subject to the watering restriction schedule set forth in section 21-60.1(j)(3);
- (4) ~~Construction of new water lines or testing of existing water lines is prohibited except where necessary for public health, welfare or safety reasons; In all instances, excessive run-off is prohibited. Water run-off is excessive when it extends for a distance greater than ten (10) feet from the property's boundary lines; onto an adjacent property; or, ten (10) feet past the targeted irrigation area for commercial sites;~~

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(5) ~~The use of potable water for construction purposes is prohibited except where necessary for public health or safety reasons~~Irrigation of City athletic fields will be allowed Monday through Friday from 10:00 pm to 6:00 am. Watering is not allowed on the weekends. The Director of Public Works will determine a percent reduction in water consumption for the City Parks and Recreation Department;

(6) The watering of golf course putting greens and tee boxes is permitted as needed;

All other golf course watering is prohibited;

Excessive run-off prohibited for all water users. (Restrictions do not apply to golf courses using non-potable water for landscape irrigation);

(7) Construction of new water lines or rehabilitation of existing water lines is prohibited except where necessary for public health or safety as determined by the Director of Public Works or as determined through the variance process set forth in section 21-60.2;

(8) The use of potable water for construction purposes is prohibited except where necessary to protect the public health or safety as determined by the Director of Public Works or as determined through the variance process set forth in section 21-60.2;

~~(6)~~(9) Municipal water use necessary to maintain the public health, or safety, and welfare including, but not limited to: fire-fighting, fire prevention and water system maintenance is allowed;

~~(7)~~(10) Notify wholesale customers of actions being taken and require them to implement similar procedures.

(o) Stage 4 may be terminated when Lake Lavon rises above an elevation of 479.0 msl and/or when Lake Chapman rises above an elevation of 427.0 msl and/or when the circumstances that caused the implementation of Stage 4 no longer prevail.

21-64.60.2 Procedures for ~~Granting~~Requesting Variances to the Plan

~~The City Manager, or an Executive Director in his absence may grant a temporary variance for an existing water use otherwise prohibited under this drought contingency plan if one or more of the following conditions are met~~(a) All petitions for variances must be in writing, utilizing the Request for Variance form and addressed to the Public Works Department, City of Plano, P.O. Box 860358, Plano, Texas 75086. The form can be accessed

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through the city website at www.plano.gov/water or by contacting the Public Works Department. The request must include the following information:

- (1) ~~Failure to grant such a variance would create an emergency condition adversely affecting the health, sanitation, or safety of the applicant (or the applicant's tenants, occupants or residents) or an emergency condition adversely affecting the health, sanitation or safety of the public at large~~Name, address, and phone number of the petitioners;
- (2) ~~(2) Strict compliance with the drought contingency plan or the water use restrictions set out in the drought or emergency response stages cannot be achieved due to serious mechanical or technical limitations which cannot be corrected~~Physical address for which variance is being requested;
- (3) ~~(3) Alternative water conservation methods that achieve the same level of reduction in potable water use for applicant can be implemented~~Petitioner's relationship to property (Owner, Contractor, Property Manager);
- (4) ~~(b) The City Manager, or an Executive Director in his absence, shall hear and decide all petitions for variances from the requirements of this ordinance. All petitions for variances must be in writing, addressed to the Public Works Department, City of Plano, P.O. Box 860358, Plano, Texas 75086 and should include the following information:~~Name, address, and phone number of owner (if different from petitioner);
 - (1) ~~Name and address of the petitioners;~~
 - (2) ~~Purpose of water use;~~
 - (3) ~~Specific provisions from which relief is requested;~~
 - (4) ~~Detailed statement of the adverse effect of the provision from which relief is requested;~~
 - (5) ~~Description~~description of the relief requested;
 - (6) Period of time for which the variance is sought;
 - (7) Alternative measures that will be taken to reduce water use;
 - (8) Other ~~pertinent information~~ deemed pertinent by the petitioner.

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~~(b) (e)~~

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~~The Director~~Water Education Coordinator shall forward~~evaluate~~ all information pertinent to the variance request to the City Manager along with a recommendation within three (3) business days following receipt of a completed petition for variance. The City Manager may conduct an informal hearing on the variance request, or he may decide the variance request on basis of the petition, written materials and recommendations received. If a hearing is called, the Manager must provide ten (10) days written notice of the date, time and place of the hearing to petitioner at petitioner's service address as indicated in the City's utility billing records. The Coordinator may make his/her recommendation on the basis of the petition or he/she may request additional written information from the petitioner. The Coordinator will provide a response to the petitioner within seven (7) business days following receipt of a petition for variance deemed complete by the Coordinator. Failure to comply with requests for additional information from the Coordinator shall cause the request for a variance to be deemed withdrawn. The Coordinator may make a recommendation to the Director of Public Works or his designee to grant the variance if one or more of the following conditions are met:

~~(1) (d) — The City Manager, or an Executive Director in his absence, shall render a decision on the variance petition within ten (10) business days following the hearing or within ten (10) business days following receipt of all information needed to render a decision. A copy of the City Manager's decision on the variance petition shall be delivered in writing to applicant and to the Director of Public Works. Failure to grant such a variance would create an emergency condition adversely affecting the health or safety of the applicant (or the applicant's tenants, occupants or residents) or an emergency condition adversely affecting the public health or safety of the public at large;~~

~~21-65. Penalty(2) Strict compliance with the drought contingency plan or the water use restrictions set out in the drought or emergency response stages cannot be achieved due to serious mechanical or technical limitations which cannot be corrected;~~

~~Any person, firm or corporation who violates any term or provision of this Ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to a fine in accordance with Section 1-4(a) of the City Code of Ordinances for each offense. Each day a violation continues shall constitute a separate offense.(3)~~

Alternative water conservation methods that achieve the same level of reduction in potable water use for applicant can be implemented;

~~21-66. Discontinuance of water service to irrigation system.(4) If variance request is made when Stage 4 restrictions have been~~

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implemented, the applicant for the variance must demonstrate the variance is necessary to preserve public health and safety.

~~(a) — In addition to the criminal penalties that may be imposed for a violation of this ordinance as set out above; upon a person's third citation of any provision of this ordinance within a ninety (90) day period during a Stage 2, 3 or 4 drought or emergency response stage, the city may also terminate water service to the residential or commercial irrigation system by locking down the backflow prevention device at the location where the violations occurred.~~

~~(c) Prior to such termination, the customer shall be given seventy-two (72) hours notice of the city's intent to terminate service and be afforded, if requested, a hearing on the termination. A hearing must be requested in writing within seventy-two (72) hours of receipt of the notice. The request for hearing shall be made to the Director of Public Works, City of Plano, P.O. Box 860358, Plano, Texas 75086. Notice of the date, time and place of the hearing will be sent by hand delivery or certified mail, return receipt requested, to the last known address of the water utility customer. Following the hearing, The Director or his designee may grant a temporary variance for an existing water use otherwise prohibited under this drought contingency plan. The Director may take into consideration the recommendation provided by the Water Education Coordinator. The Director shall make a determination with regards to the variance within 7 business days of the receipt of the recommendation of the Water Education Coordinator. The decision of the Director shall make a written determination as to whether the water service to the customer's irrigation system should be terminated and a copy of this decision shall be sent to the customer at the customer's last known address. The water service to the customer's irrigation system shall not be terminated during the appeal process. The decision of the Director shall be is final as to administrative remedies.~~

~~(e) — In order to have water service to an irrigation system restored after being terminated in accordance with this ordinance, a customer must attend and complete a water conservation course sponsored by the City and pay a fee of five hundred dollars (\$500.00) to have the lock on the backflow prevention device removed. Such fee shall be paid each time a lock from a backflow prevention device is removed in order to restore water service to an irrigation system pursuant to this section. Sec. 21-60.3 Criminal Penalty~~

Any person, firm or corporation who violates any term or provision of this Ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to a fine in accordance with Section 1-4(b) of the City Code of Ordinances for each offense. These criminal penalties may be imposed in addition to any Administrative or Civil Remedy listed herein. Each day a violation continues shall constitute a separate offense.

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Sec. 21-60.4 Administrative Remedies for Violations.

The following administrative remedies are available to the City in cases of noncompliance with the provisions of this ordinance. These administrative remedies may be assessed in addition to any criminal penalty assessed for a violation of this ordinance. Each day a violation continues shall constitute a separate violation for purposes of assessing administrative remedies.

In the event that any person violates the provisions of this ordinance, the Director of Public Works or his designee, shall give notice to such person setting forth the evidence of noncompliance with the restrictions outlined in stages 2, 3 and 4.

(a) In-Ground Irrigation Systems Violations

(1) Notification of Violation

- i. Placement of a notice flag at the person's double check irrigation valve will be provided to advise the person his double check device has been turned off and locked; and
- ii. The City will install a locking device on the person's double check valve to the irrigation system; and
- iii. Notice to be sent by letter delivered by United States Postal Service addressed to the person as recorded in the city's customer and utility billing records notifying that the irrigation system has been turned off and locked. The letter shall advise the person of the assessment of administrative remedies and fees. The letter shall advise the person the procedures for payment of the administrative fees and the procedure for requesting a hearing to contest the assessment of the administrative remedies.

(2) Remedy on First and Second Violation

- i. The administrative fee to restore service when a locking device has been installed is two hundred ten dollars (\$210) per occurrence when paid at Customer and Utility Services.
- ii. If a person requests a hearing to protest the assessment of the administrative fee, the administrative fee will be a maximum of two hundred twenty five dollars (\$225) per occurrence if the violation is upheld.

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(3) Remedy on Third Violation

i. In addition to the provisions set forth in 21.60.4(a)(1), (2) the City may elect to leave the locking device on the person's double check valve for 14 calendar days from the date the fee is paid.

(4) Remedy on Fourth and Subsequent Violations

i. In addition to the provisions set forth in 21.60.4(a)(1), (2), (3) the City may elect to leave the locking device on the person's double check valve for 28 calendar days from the date the fee is paid.

(b) Violations for Systems Without Double-Check Valves or In-Ground Irrigation Systems

(1) Violation Notification

i. Placement of a notice flag at the person's water meter will be provided to advise the person he was in violation of watering restrictions.

ii. Notice shall be sent by letter delivered by United States Postal Service addressed to the person as recorded in the city's customer and utility billing records notifying the person of the violation. The letter shall advise the person of the assessment of administrative fees. The letter shall advise the person the procedures for payment of the administrative fees and the procedure for requesting a hearing to contest the assessment of the administrative remedies.

(2) Remedy

i. The administrative fee on all violations under section 21.60.4(b) is two hundred dollars (\$200) per occurrence when paid at Customer & Utility Services.

ii. If the person requests a hearing to protest the administrative fee, the administrative fee will be two hundred fifteen dollars (\$215). If violation is upheld, the administrative fee is to be paid at Customer & Utility Services.

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- (c) Procedures for Paying Administrative Fees or Requesting a Hearing on the Fees
- (1) Personal appearance by the person listed on the city's Customer & Utility Services billing records is required to re-establish service to the irrigation system. The person's government issued photo identification must be provided at time of payment or upon request for a hearing.
 - (2) A person may request a hearing to protest the assessment of any administrative remedy. To request a hearing, the owner must make the request in person to the City of Plano Public Works Department within fifteen (15) business days from the date on the written notice of violation. If a locking device was installed it shall remain in place until the conclusion of the hearing and payment of any required fee.
 - (3) The Public Works Manager or his designee shall conduct the hearing. The Manager shall evaluate all information offered by the petitioner at the hearing. The person making the request for a hearing shall bear the burden of proof to show why, by a preponderance of the evidence, the administrative remedy should not be assessed. The Manager will provide a decision at the time of the hearing or within three (3) business days following the conclusion of the hearing.
 - (4) Payment of any fees assessed at the hearing must be made within seven (7) business days of the decision from the hearing. Any fees not paid within this time limit shall be added to the person's next water billing cycle;
 - (5) A person may appeal the decision from the hearing to the office of the Director of Public Works or his designee. The Director or his designee shall hear the appeal;
 - (6) The request for an appeal must be filed in writing with the office of the Director of Public Works within three (3) business days from the notice being given by the Manager.
 - (7) The Director or his designee shall render a decision at the time of the appeal or within three (3) business days from the conclusion of the appeal.

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- (8) A person may elect to pay the administrative fee without requesting a hearing. Any fees not paid within 15 business days from the date on the written notice shall be added to the person's next water billing cycle.
- (9) Unpaid fees related to the Drought Contingency Plan can result in the termination of the domestic water services in accordance with City of Plano Code Chapter 21, Article IV, Service Charges Generally, Section 21-131(d) and the established policies and procedures of the Customer and Utility Services Department.
- (d) Re-establishment of service to double checks that have been locked-off.
- (1) The administrative fee is to be paid at City of Plano Customer & Utility Services. The locking device will be removed within three working days after notice of payment is received from Customer & Utility Services, unless a longer lock-out time period was assessed pursuant to section 21.60.4(a)(3), (4) above.
- (2) Request for same day service to unlock double check will require an additional fee of \$40 to be paid in advance at Customer & Utility Services. Same day service is not available if a longer lock-out time was assessed pursuant to section 21.60.4(a)(3), (4) above.

(e) It shall be unlawful for a person to remove through the use of any means or otherwise cause damage to a lock that has been placed on a backflow prevention device by the director or his designee pursuant to this section.

(ef) *Administrative remedy for customers outside city.* The Director of Public Works shall advise wholesale water customers outside the city limits receiving water service from the city of actions taken under the plan by telephone and/or by letter. Noncompliance with any requirement in any stage may result in termination of service and removal of meter. Prior to such termination, the wholesale water customer shall be given notice of the city's intent to terminate service and shall have five (5) business days from the mailing of such notice to appeal the decision to the Director. Notice shall be sufficient if sent by certified mail to the last known address of the customer. If service is terminated, customer shall be liable for all costs of reinstallation. Termination of service to a wholesale water customer under this provision is subject also to the terms of any written contract between the city and the customer.

Section III. All wholesale water contracts entered into or renewed after adoption of this ordinance, including contract extensions, shall include a provision that requires all wholesale water customers of the City to comply with the provisions of this ordinance.

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Section IV. This plan shall be coordinated with the Region C Water Planning Group and with North Texas Municipal Water District, as required by TCEQ, to insure consistency with the appropriate approved regional water plan.

Section V. All provisions of the ordinances of the City of Plano, codified or uncodified, in conflict with the provisions of this Ordinance are hereby repealed upon the effective date of this Ordinance, and all other provisions of the ordinances of the City of Plano, codified or uncodified, not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

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

Section VII. The repeal of any ordinance or part of any ordinance 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 affecting any rights of the municipality under any section or provision of any ordinance at the time of passage this Ordinance.

Section VIII. This Ordinance shall become effective from and after its passage and publication as required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, on this the _____ day of _____, 2006.

Pat Evans, MAYOR
CITY OF PLANO, TEXAS

ATTESTED TO:

Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

Diane Wetherbee, CITY ATTORNEY

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**CITY OF PLANO
COUNCIL AGENDA ITEM**

| | | | | |
|------------------------------------------------------------------------------------------------------|---------------------------------------|--------------------------|-----------------------------------------|----------------------------------------------------|
| CITY SECRETARY'S USE ONLY | | Reviewed by Purchasing | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Not Applicable |
| <input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory | | Reviewed by Budget | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Not Applicable |
| Council Meeting Date: | 11/13/06 | Reviewed by Legal | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Not Applicable |
| Department: | Public Safety Services and Technology | Initials | Date | |
| Department Head | Bruce D. Glasscock | Executive Director | | |
| Dept Signature: | | City Manager | 11.07.06 | |
| Agenda Coordinator (include phone #): | | Dee Dee Davis, ext. 7747 | | |

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

CAPTION

A Resolution of the City Council of the City of Plano, Texas, adopting a 2007 state legislative program for the City of Plano; directing the City Manager or his designee to act with regard to the City's legislative program; and providing an effective date.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

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

FUND(s):

COMMENTS:

SUMMARY OF ITEM

Adopting City of Plano 2007 Legislative Program.

| | |
|-------------------------------------------------------------------------|-----------------------------------------------------------|
| List of Supporting Documents: City of Plano 2007 Legislative Program | Other Departments, Boards, Commissions or Agencies n/a |
|-------------------------------------------------------------------------|-----------------------------------------------------------|

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RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, ADOPTING A 2007 STATE LEGISLATIVE PROGRAM FOR THE CITY OF PLANO; DIRECTING THE CITY MANAGER OR HIS DESIGNEE TO ACT WITH REGARD TO THE CITY'S LEGISLATIVE PROGRAM; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the 80th Texas Legislature will convene in January of 2007; and

WHEREAS, it is anticipated that many legislative issues affecting local government will be considered during this Session; and

WHEREAS, City Staff prepared the recommended City of Plano 2007 Legislative Program attached hereto as Exhibit "A" and the Legislative Program has been reviewed by the City Council of the City of Plano; and

WHEREAS, the City Council is of the opinion that such Legislative Program is in the best interest of the City and its citizens, should be adopted, and should be forwarded for consideration by the Legislature; and

WHEREAS, the City Council is of the further opinion that the City Manager or his designee should be directed to take action with regard to the Legislative Program as outlined below.

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

Section I. The City of Plano 2007 Legislative Program that is attached hereto as "Exhibit A" is hereby adopted and approved as the Legislative Program for the City of Plano.

Section II. The City Manager or his designee is directed to communicate the items included in the City's Legislative Program to the members of the Texas Legislature, in general, and/or to the appropriate legislative committees, committee members and others designated by the City Manager.

Section III. For those items designated as "seek introduction and passage", the City Manager or his designee is directed to attempt to find a legislative sponsor of the initiative and actively pursue passage of the appropriate legislation if it is introduced by some other entity. The City Manager's efforts to obtain passage of the legislation may include drafting appropriate legislation, seeking a sponsor, and actively pursuing passage of such legislation by providing testimony and through other means.

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Section IV. For those items designated as "support", the City Manager or his designee is directed to actively pursue passage of the appropriate legislation if it is introduced by some other entity. The City Manager's efforts to obtain passage of the legislation may include drafting appropriate legislation, seeking a sponsor, and actively pursuing passage of such legislation by providing testimony and through other means.

Section V. For those items designated as "oppose", the City Manager or his designee is directed to attempt to impede the passage of any such legislation.

Section VI. The City will support the legislative program of the Texas Municipal League (TML), except to the extent it conflicts with any City position.

Section VII. It is recognized this policy will often be implemented in the context of great numbers of legislative proposals being considered within short time periods. City representatives, under the direction of the City Manager, shall be authorized to act on behalf of the City consistent with the necessary broad policy concerns set forth in this program.

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

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

Pat Evans, MAYOR

ATTEST:

Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

Diane Wetherbee, CITY ATTORNEY

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City of Plano 2007 Legislative Program

Support legislation that would:

Public Safety

- Authorize use of sobriety checkpoints as deterrent and enforcement tool for intoxicated drivers.
- Reduce the number of false burglar alarms that may occur before a penalty can be assessed and set a higher penalty for violations.
- Increase the penalty for burglary of a vehicle and unauthorized use of a vehicle to a state jail felony.
- Increase the penalties for violation of the Transportation Code, Subtitle C. Sec. 542.401 to a maximum of \$500 from current \$200.

Utilities

- Requires timely relocation of utilities.

Transportation

- Legislation that would exclude locally adopted sales tax collected for regional transportation programs from discretionary amount of sales tax available to municipalities.

Water

- Adopt the State Water Development Plan, provided the portion pertaining to Region C remains as submitted

Civil Service

- Allow police chief or fire chief in civil service city to increase number of appointments immediately below the department head level.

Economic Development

- Legislation that would protect future revenue from tax increment financing districts and the ability to enter into multi-year funding agreements.

Endorse legislation that is:

- Consistent with the legislative programs of the Texas Municipal League (TML), Cities Aggregation Power Project (CAPP), Texas Coalition of Cities for Utility Issues (TCCFUI), and Texas Civil Service Cities Coalition, except to extent it conflicts with City of Plano position.

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Oppose legislation that would:

Regulatory Authority

- Erode municipal authority to regulate development, including procedures pertaining to the issuance and termination of permits.
- Erode municipal authority to use exactions, assessments, fees and similar means to provide infrastructure required by growth and development.
- Restrict municipal power of eminent domain.
- Create a legislative standard defining a regulatory taking and/or requiring compensation related to economic loss resulting from the application of regulations.
- Decrease municipal authority to control the use of right-of-way, including authority to charge utility and telecommunication franchise fees.
- Authorize cities to set speed limits on residential streets by local ordinance without performing a street-specific engineering and traffic investigation.
- Prohibit municipalities from selling services or products otherwise available from private business.
- Erode local control over municipal water systems or conservation measures.
- Enact mandatory water rates or water rate structures.
- Decrease municipal authority to utilize automated enforcement technology on red light violations.

Economic Development

- Diminish municipal economic development authority.
- Expand the use of economic development sales tax.

Revenue

- Expand sales (including internet and catalog sales) and property tax exemptions or otherwise reduce municipal revenue.
- Reduce the percentage of increased appraised property value that is subject to taxation.
- Reduce the increase in effective tax rate permitted without being subject to a petition for a rollback election.
- Create or increase fees paid directly or indirectly by municipalities to state agencies related to administrative or other costs not clearly benefiting cities.
- Require the city to assess or collect a fee for another governmental entity.
- Mandate performance of a duty or impose a standard on a municipal service without funding.

- Require the city to provide a percentage of revenue to the state received from the use of automated enforcement technology

Human Resources

- Authorize or impose municipal employee collective bargaining.
- Create a presumption that a disease or condition is work related.

Civil Service

- Erode cities ability to select, hire, promote, terminate or discipline employees under civil service

Courts and Public Safety

- Permit waiver of appearance at a municipal court trial.
- Prohibit or hinder a police officer from making an arrest for a fine-only offense.
- Diminish existing authority to collect and use telephone line and wireless fees to provide 911 emergency response services.
- Place any mandated or minimum staffing levels on Fire Departments
- Decrease municipal authority to control the carrying of firearms in public buildings.
- Increase court costs or create additional court costs that the state does not share equally with the municipality or county collecting the court costs from defendants.

Governance

- Make substantive changes to the composition or selection of appraisal district boards of directors or appraisal review boards.
- Change or delete uniform election dates.

Public Information and Communications

- Mandate the method or manner by which municipalities offer Internet access to municipal services.
- Create detrimental amendments to the Public Information Act.
- Create detrimental amendments to the Open Meetings Act.

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