

# CITY COUNCIL

1520 AVENUE K



DATE: 11/26/2012  
CALL TO ORDER: 7:00 p.m.  
INVOCATION: Assistant Pastor Kelvin Foley  
Prestonwood Baptist Church  
PLEDGE OF ALLEGIANCE: Cub Scout Pack 261  
Christie Elementary  
and The Men of Note Chorus

ITEM NO.	EXPLANATION	ACTION TAKEN
(a)	<p>OUR MISSION - THE CITY OF PLANO IS A REGIONAL AND NATIONAL LEADER, PROVIDING OUTSTANDING SERVICES AND FACILITIES THROUGH COOPERATIVE EFFORTS THAT ENGAGE OUR CITIZENS AND CONTRIBUTE TO THE QUALITY OF LIFE IN OUR COMMUNITY.</p> <p><b>The City Council may convene into Executive Session to discuss posted items in the regular meeting as allowed by law.</b></p> <p><b><u>PROCLAMATIONS &amp; SPECIAL RECOGNITION</u></b> PRESENTATION: The Search One Rescue Team is presenting the Plano City Council a Certificate of Appreciation</p> <p><b><u>COMMENTS OF PUBLIC INTEREST</u></b> <b><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></b></p> <p><b><u>CONSENT AGENDA</u></b> <b><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></b></p> <p><b><u>Approval of Minutes</u></b> November 12, 2012</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
	<p><b><u>Approval of Expenditures</u></b></p> <p><b>Award/Rejection of Bid/Proposal: (Purchase of products/services through formal procurement process by this agency)</b></p>	
(b)	RFP No. 2012-222-C for three (3) years with two (2) City optional one-year renewal periods for the Retirement Security Plan Investment Manager Services for Human Resources to Capital One, N.A., in the amount of \$162,363 and authorizing the City Manager to execute all necessary documents.	
	<p><b>Purchase from an Existing Contract</b></p>	
(c)	To approve the purchase of one (1) Ford F-750 Truck Chassis from Chastang Ford, in the amount of \$67,760 & one (1) Petersen Crane/Brush Truck Body from Heil of Texas, in the amount of \$61,732 totaling \$129,492 for the Fleet Department, to be utilized by Environmental Services, through an existing contract/agreement with TASB/Buyboard, and authorizing the City Manager to execute all necessary documents. (TASB/Buyboard Contract #358-10 & 357-10)	
(d)	To approve the purchase of seven (7) Crane Carrier Refuse Truck Chassis's from Bond Equipment Company, Inc., in the amount of \$1,152,953, four (4) Heil Automated Single Arm Bodies, & three (3) Rear Loader Bodies from Heil of Texas, in the amount of \$661,906, totaling \$1,814,859 for the Fleet Department, to be utilized by Environmental Services, through an existing contract/agreement with TASB/Buyboard, and authorizing the City Manager to execute all necessary documents. (TASB/Buyboard Contract #358-10 & 357-10)	
(e)	To approve the purchase of CommVault-Galaxy Software Premium Support Coverage in the amount of \$121,654 from CDW Government, LLC through an existing contract with The Cooperative Purchasing Network (TCPN) and authorizing the City Manager to execute all necessary documents. (TCPN Contract No. R5106)	
	<p><b>Approval of Contract: (Purchase of products/services exempt from State of Texas Competitive Bid Laws)</b></p>	
(f)	To approve an Architectural Services Agreement by and between the City of Plano and Alliance Architects, Inc., in the amount of \$79,300 for Space Assessment - Administrative Buildings Phase II; and authorizing the City Manager to execute all necessary documents.	
	<p><b><u>Adoption of Resolutions</u></b></p>	
(g)	To confirm the appointment of Brian Crawford to serve as Plano Fire Chief beginning December 3, 2012, and providing an effective date.	
(h)	To adopt the Downtown Heritage District Design Guidelines; providing for design guidelines for preservation of heritage resource properties located within the Downtown Heritage Resource District; including amendments to the design guidelines related to roof top patio covers; and providing an effective date.	

ITEM NO.	EXPLANATION	ACTION TAKEN
(i)	To adopt the Haggard Park Heritage Resource District Preservation Guidelines; providing for design guidelines for preservation of heritage resource properties located within the Haggard Park Heritage Resource District; and providing an effective date.	
(j)	To approve a contract with David McCall of Gay, McCall, Isaacks, Gordon & Roberts, P.C. to provide collection of delinquent taxes for the City of Plano; authorizing its execution by the City Manager; and providing an effective date.	
(k)	To approve the terms and conditions of a Real Estate Contract by and between Argent Plano Realty, L.P. and the City of Plano, Texas for purchase of a 6.731 acre tract of land being more commonly known as Plano Tech Center – Site #8, located at Shiloh Road and 14th Street in the City of Plano, Collin County, Texas for future development as a passenger station for the Cotton Belt Rail station; authorizing its execution by the City Manager; and providing an effective date.	
(l)	To approve the terms and conditions of a Memorandum of Understanding between the City of Plano, the Regional Transportation Council, and the North Central Texas Council of Governments for which the City will be reimbursed for the purchase of a 6.731 acre tract of land being more commonly known as Plano Tech Center – Site #8, located at Shiloh Road and 14th Street in the City of Plano, Collin County, Texas for the purpose of developing a passenger station in the City of Plano for the Cotton Belt Rail System; authorizing its execution by the City Manager; and providing an effective date.	
(m)	To approve the terms and conditions of an Interlocal Agreement by and between City of Plano and City of Frisco to allow the reciprocal lending of library materials to the cities' respective patrons; authorizing the City Manager to take such action and execute such documents as necessary to effectuate the agreement herein; and providing an effective date.	
(n)	<p><b><u>Adoption of Ordinances</u></b></p> <p>To create Article XII of Chapter 4, Code of Ordinances, to allow non-profit search and rescue organizations to conduct search and rescue training at designated areas of City parks after obtaining a permit from the Animal Services Division; amending Section 4-1 (Definitions) of Article I, Section 4-51(d) (Public Nuisances) of Article III, and Section 15-4 (a)(6) of Article I, Chapter 15 to allow dogs participating in authorized search and rescue training to be off-leash without violating the at-large and nuisance ordinances; amending Section 4-153(d)(1) (Dangerous Animals) of Article IX to exempt dogs used for law enforcement purposes at the time of the attack, bite or mauling from the euthanasia provision per state law; and providing a penalty clause, a severability clause, a repealer clause, a publication clause and an effective date.</p>	
(o)	To abandon all right, title and interest of the City, in and to that certain 15' Water Easement recorded in Volume 640, Page 7072, of the Land Records of Collin County, Texas and being situated in the McKinney and Williams Survey, Abstract No. 650, which is located within the city limits of Plano, Collin County, Texas; quitclaiming all right, title and interest of the City in such easement to the abutting property owner, Hallmark Land Holdings, to the extent of its interest; authorizing the City Manager to execute any documents deemed necessary; and providing an effective date.	

ITEM NO.	EXPLANATION	ACTION TAKEN
	<p><b><u>ITEMS FOR INDIVIDUAL CONSIDERATION:</u></b></p> <p><b><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></b></p> <p><b><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></b></p> <p>(1) Public Hearing and consideration of an Ordinance to designate a certain area within the City of Plano, Texas, as Reinvestment Zone No. 132 for tax abatement consisting of a 13.939 acre tract of land located in the Samuel Brown Survey, Abstract No. 108, Collin County and described in Exhibit "A", attached hereto, in the City of Plano, Texas, establishing the boundaries of such zone; ordaining other matters related thereto; and providing an effective date.</p> <p>(2) Consideration of a Resolution to approve the terms and conditions of an Agreement by and between the City of Plano, Texas, and Capital One, National Association, a national association, providing for real property tax abatement; and authorizing its execution by the City Manager; and providing an effective date.</p> <p>(3) Public Hearing to provide the citizens and residents with the opportunity to review and provide comment on the projects for the proposed 2013 Bond Referendum.</p> <p>(4) Receipt of Public Comment and consideration of an Ordinance to repeal Ordinance Nos. 2008-11-16 and 2010-3-14 codified as Chapter 9, Food Code of the Code of Ordinances of the City of Plano and replacing them with a new Chapter 9, Food Code; providing a penalty clause, a repealer clause, a severability clause, a publication clause and an effective date.</p> <p>(5) Consideration of an Ordinance to repeal Ordinance No. 2010-7-8, entitled "Health Categories and Fees", and replacing it with this ordinance, to be entitled "Health Categories and Fees" to amend Animal Services and Health fees; providing a repealer clause, a severability clause, and an effective date.</p>	

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



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		11/26/2012		
Department:		City Manager's Office		
Department Head		Bruce Glasscock		
Agenda Coordinator (include phone #): <b>Melinda White X7548, Cindy Pierce X5161</b>				
<b>CAPTION</b>				
PRESENTATION: The Search One Rescue Team is presenting the Plano City Council a Certificate of Appreciation.				
<b>FINANCIAL SUMMARY</b>				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
<b>FUND(S):</b>				
<b>COMMENTS:</b>				
<b>SUMMARY OF ITEM</b>				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	

**PLANO CITY COUNCIL  
PRELIMINARY OPEN MEETING  
NOVEMBER 12, 2012**

**COUNCIL MEMBERS PRESENT**

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

**COUNCIL MEMBERS ABSENT**

Lee Dunlap

**STAFF PRESENT**

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

Mayor Dyer called the meeting to order at 5:30 p.m., Monday, November 12, 2012, in Training Room A of the Municipal Center, 1520 K Avenue. A quorum was present. Mayor Dyer then stated that the Council would retire into Executive Session in compliance with Chapter 551, Government Code, Vernon's Texas Codes, Annotated, in order to consult with an attorney and receive Legal Advice, Section 551.071; receive information regarding Economic Development, Section 551.087, and Real Estate, Section 551.072 and to discuss Personnel, Section 551.074 for which a certified agenda will be kept in the office of the City Secretary for a period of two years as required.

Mayor Dyer reconvened the meeting back into the Preliminary Open Meeting at 6:22 p.m.

**Consideration and action resulting from Executive Session discussion**

No items were brought forward.

**Comprehensive Monthly Financial Report**

Controller Cockrell advised that the September 2012 report represents the end of the City's fiscal year and that actual General Fund revenues are up \$11.5 million, primarily due to an increase in ad valorem taxes, an increase in sales tax resulting from an audit adjustment, and increases in court fines. She noted that almost every fund has expenditures under budget and that those in the General Fund will be approximately \$4.5 million under re-estimates. She advised that when final figures are in, the City should end the year with a net increase in the General Fund of \$8.1 million as compared to FY 2011's increase of \$3.4 million and FY 2010's decrease of \$1.3 million.

Ms. Cockrell spoke to sales tax collections of \$70 million and a rebounding real estate market and advised that since publication of the report, the City's unemployment rate has declined to 5.6%.

**Council items for discussion/action on future agendas**

Mayor Pro Tem Smith requested an update regarding the FEMA Flood Plan. City Manager Glasscock advised that a report will be brought forward for the November 26 meeting.

**Consent and Regular Agendas**

No items were discussed.

Nothing further was discussed. Mayor Dyer adjourned the Preliminary Meeting at 6:29 p.m.

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**Phil Dyer, MAYOR**

ATTEST

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Diane Zucco, City Secretary

**PLANO CITY COUNCIL**  
**November 12, 2012**

**COUNCIL MEMBERS PRESENT**

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

**COUNCIL MEMBERS ABSENT**

Lee Dunlap

**STAFF PRESENT**

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

Mayor Dyer convened the Council into the Regular Session on Monday, November 12, 2012, at 7:00 p.m. in the Council Chamber of the Plano Municipal Center, 1520 K Avenue. A quorum was present.

Pastor John Omewah of Redeemed Christian Church of God – Heavens Glorious Embassy led the invocation and Webelos 1 of Cub Scout Pack 285 – St. Mark Catholic School led the Pledge of Allegiance.

Mayor Dyer recognized the Salvation Army and Red Kettle Program and graduates of the Plano Citizens Government Academy. Mayor Dyer accepted, on behalf of the City, certification as a “Scenic City.”

**COMMENTS OF PUBLIC INTEREST**

Citizen Richard Howe spoke in support of promoting solar energy in the City of Plano.

**CONSENT AGENDA**

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

**Approval of Minutes** (Consent Agenda Item “A”)  
October 22, 2012

### **Approval of Expenditures**

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

**CSP No. 2012-328-B** for Wentworth and Tennyson Elevated Tanks project to J.R. Stelzer Company in the amount of \$468,384 and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “B”)

**Bid No. 2012-238-B-R** for the 2011-2012 Manhole Rehabilitation Project, Project No. 6241 to Standard Cement Materials, Inc. in the amount of \$527,440 and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “C”)

**Bid No. 2012-334-B** for Ridgeview Ground Storage Reservoirs project to J.R. Stelzer Company in the amount of \$559,602 and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “D”)

**Bid No. 2012-312-B** for the Alley Reconstruction Plano East project to Zagros Construction Company in the amount of \$574,455 and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “E”)

**Bid No. 2012-287-B** for purchase and installation of Idle Reduction and Data Collector Units for the Police Department to Energy Xtreme, LLC, in the amount of \$532,880 and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “F”)

**Bid No. 2012-319-C** for a one (1) year contract with three (3) City optional renewals to purchase Janitorial and Laundry Supplies for Inventory Control & Asset Disposal (ICAD) from Amsan, LLC, Eagle Brush & Chemical, Inc., Empire Paper, MedWaste Solutions, Inc., and XPEDX for an estimated amount of \$51,185 and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “G”)

Rescind award of Contract 2008-88-C Traffic Signal Pre-Emption Equipment to BIKO Inc., and rescind awarded line items 3 & 9 from Contract 2009-40-C Traffic Markers to BIKO Inc. (Consent Agenda Item “H”)

#### **Purchase from an Existing Contract**

To ratify and approve the purchase of the installation of a wireless irrigation connectivity project in the amount of \$73,368 from Scientel Wireless, LLC through an existing HGAC contract and authorizing the City Manager to execute all necessary documents. (HGAC CW10-09) (Consent Agenda Item “I”)

To approve Amendment 4 to the Verizon Business Services Agreement with Verizon Business Network Services, Inc. on behalf of MCI Communications Services, Inc. to terminate existing Dedicated Internet Access Services and accept the vendor's agreement to waive all early termination fees; and to approve the purchase of Dedicated Internet Access Services with Verizon Business Network Services on behalf of MCI Communications Services, Inc. for a period of 18 months in the amount of \$185,280 through an existing Department of Information Resources contract and authorizing the City Manager to execute all necessary documents. (DIR-NG-CTSA-010) (Consent Agenda Item "J")

To approve the purchase of replacement desktop and laptop computers in the amount of \$602,510 from Dell Marketing, LP through an existing Department of Information Resources (DIR) contract and authorizing the City Manager to execute all necessary documents. (DIR-SDD-890) (Consent Agenda Item "K")

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

To approve a Professional Services Agreement by and between the City of Plano and Urban Engineers Group, Inc., in the amount of \$84,580 for the Alley Replacement Dallas North Estates and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item "L")

To approve a Professional Services Agreement by and between the City of Plano and Wier & Associates, Inc., in the amount of \$131,300 for Robin Road and Linda Lane Paving and Water Line Replacement, and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item "M")

To approve a Professional Services Agreement by and between the City of Plano and Pipeline Analysis, LLC, in the amount of \$1,131,881 for Rowlett Creek Basin Sanitary Sewer Assessment and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item "N")

**Approval of Expenditure**

To approve an estimated expenditure of \$57,125 with North Central Texas Council of Governments (NCTCOG) to engage the services of Atkins North America, Inc. on behalf of the City of Plano for compliance with the Texas Pollutant Discharge Elimination System (TPDES) storm water permit requirements; and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item "O")

To approve the purchase of Cisco Switch Software and Hardware Annual Maintenance in the amount of \$248,102 from INX, LLC, a Presidio Company through the Department of Information Resources contract and authorizing the City Manager to execute all necessary documents. (DIR-SDD-1386) (Consent Agenda Item "P")

**Adoption of Resolutions**

**Resolution No. 2012-11-1(R):** To approve the terms and conditions of a Second Amendment to Office Lease by and between Granite Park III, Ltd., and the City of Plano for Granite Park Three Office Building; authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item "Q")

**Resolution No. 2012-11-2(R):** To approve the terms and conditions of an Economic Development Incentive Agreement by and between Mobius Partners, Inc. and the City of Plano, Texas; authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item “R”)

**Resolution No. 2012-11-3(R):** To approve the terms and conditions of an Interlocal Agreement by and between the North Central Texas Council of Governments (NCTCOG) and the City of Plano providing terms and conditions for an Expanded Regional Storm Water Management Program; authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item “S”)

**Resolution No. 2012-11-4(R):** To adopt a 2013 State Legislative Program for the City of Plano, Texas; directing the City Manager to act with regard to the City’s Legislative Program; and providing an effective date. (Consent Agenda Item “T”)

**Resolution No. 2012-11-5(R):** To approve the terms and conditions of an agreement by and between North Central Texas Trauma Regional Advisory Council and the City of Plano; authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item “U”)

**Resolution No. 2012-11-6(R):** To approve the terms and conditions of an annual maintenance contract in the annual amount not to exceed \$300,000 by and between the City of Plano and Motorola Solutions, Inc., the sole source provider for depot repairs, and technical support for the City of Plano’s MESH data devices; authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item “V”)

**Resolution No. 2012-11-7(R):** To review and approve the City’s written Public Funds Investment Policy; and providing an effective date. (Consent Agenda Item “W”)

**Resolution No. 2012-11-8(R):** To repeal Resolution No. 2012-7-6(R) and adopt this resolution nominating Denbury Onshore, LLC, to the Office of the Governor, Economic Development and Tourism through the Texas Economic Development Bank for designation as an Enterprise Project under the Texas Enterprise Zone Program pursuant to the Texas Enterprise Zone Act, Texas Government Code, Chapter 2303; and providing an effective date. (Consent Agenda Item “X”)

**END OF CONSENT**

**Resolution No. 2012-11-9(R):** To approve the Investment Portfolio Summary for the quarter ending September 30, 2012 and providing an effective date. (Regular Agenda Item “1”)

Treasurer Conklin advised that the quarterly investment report must be formally presented on an annual basis to comply with the Texas Public Funds Investment Act. She spoke to maintaining a market value greater than the book value of assets, the fluctuation of assets over the fiscal year as ad valorem taxes flow into the City and expenses occur, diversification of assets and maturities and comparison of the portfolio to benchmarks. Ms. Conklin spoke to the City’s yield in the quarter and fiscal year, the level of interest rates, laddering of investments and the portfolio’s value.

**Resolution No. 2012-11-9(R):**

Upon a motion made by Deputy Mayor Pro Tem Harris and seconded by Mayor Pro Tem Smith, the Council voted 7-0 to approve the Investment Portfolio Summary for the quarter ending September 30, 2012, and further to adopt Resolution No. 2012-11-9(R).

**Public Hearing and consideration of an Ordinance as requested in Zoning Case 2012-26** to amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, amending Heritage Resource Designation No. H-4 to allow the additional use of Assembly Hall, 0.5± acre located at the northwest corner of M Avenue and 16th Street, presently zoned Multifamily Residence-1 with Heritage Resource Designation H-4; directing a change accordingly in the official Zoning Map of the City; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, a publication clause, and an effective date. Applicants: Stanley E. & Pat M. Black (Regular Agenda Item “2”)

Development Review Manager Firgens spoke to the Carpenter House’s designation as a heritage resource in 1982 and revision in 1992 to allow for bed/breakfast as an additional permitted use. She spoke to the home’s location within a residential neighborhood, reviewed the process for consideration of an additional use and the zoning running with the land. Ms. Firgens advised that the request would allow for weddings and events which have been held on the property for years. She stated that while not permitted, the City has not enforced the noncompliant use due to the lack of complaints received from neighboring property owners, but that during June 2012 complaints were received and enforcement was pursued resulting in the request to amend the property’s designation. Ms. Firgens advised that the Planning and Zoning Commission recommended approval subject to the following:

1. Allow assembly hall use as defined in Section 1.600 (Definitions) of the Zoning Ordinance, as an additional permitted use with the following restrictions:
  - a. The maximum occupancy for the property (including indoor and outdoor) shall collectively be 45 people (inclusive of staff and guests);
  - b. No outdoor or indoor activity shall occur after 10:00 p.m.; and
  - c. No amplified music allowed on the property.

Ms. Firgens advised that should the Council approve the request, the applicant will need to obtain site plan approval for a proposed parking lot and a Certificate of Occupancy. She further advised that because adjacent property owners’ opposition constitutes more than 20% of the land within the 200-foot notice area, approval requires a three-quarter majority vote.

Mayor Dyer opened the Public Hearing. Robert Miklos, representing the applicant, spoke to efforts to meet the concerns of neighbors and the owner’s belief that use as a wedding chapel was permitted based on history. He advised that the City issued a cease and desist order in the summer and that the applicant is working to validate zoning for compliance. Mr. Miklos spoke to approval by the Heritage/Planning and Zoning Commissions, a reduced number of event attendees, plans for parking on the property and available parking in the area, restrictions on hours of operation/sound and requested approval.

**Zoning Case 2012-26 (cont'd)**

Applicant Pat Black spoke to the tradition of use at this location, the economic impact of event attendees, concessions made to address neighborhood concerns and the low number of complaints. Applicant Stan Black spoke to their stewardship in Plano, types of events held, average attendance, planned additional parking, and a pledge to work with neighbors. Citizen Randy Wright spoke to illegal use of the property, complaints, and concerns of neighbors. He spoke to zoning running with the land, spot zoning, and the residential nature of the area and requested the Council deny the item. Citizen Janis Allman spoke to negative interaction with those attending events, issues of enforcement, in support of bed/breakfast use and requested denial. Citizens Donna Heleins and Diane Stratton spoke to noise and parking concerns and requested denial. Citizen Debbie Cole Hamilton spoke to the owners not occupying the home and concerns regarding an assembly hall use in a residential neighborhood. Travis Black spoke in support of the request and efforts to resolve complaints when they occur. Citizen Julie Owens spoke in support of the request, lack of complaints and offered her property for overflow parking. She spoke to the potential for multi-family uses on the property. Mr. Miklos spoke to use of the site for twelve years without complaint, preservation/appropriateness of the use in the location, enforceability of proposed restrictions and requested approval. No one else spoke for or against the request. The Public Hearing was closed.

Ms. Firgens spoke to the ability to use off-site parking within 300 feet of the property, the ability to designate such a use on historic resource property, and consideration/denial of another request which was found incompatible by the Heritage Commission. She advised the Council that multi-family zoning applies; but, that the structure is protected by the Heritage designation.

The Council commended both sides on their presentations. Council Member Miner spoke to other assembly halls in the City that are not located in residential neighborhoods and have large parking areas. He stated support for the bed/breakfast use, but concern with a more commercial venture in a historic/residential portion of the City and stated his recommendation to deny the request. Council Member Gallagher spoke to the priority to develop the downtown and east Plano areas, cooperation of commercial and residential partners, and in support of the request. Mayor Pro Tem Smith and Council Members Davidson and Duggan spoke to concessions given by the applicants, importance of the Carpenter House to the downtown area and in support of the request. City Manager Glasscock advised the Council that there have been no nuisance reports registered for two years. Deputy Mayor Pro Tem Harris spoke in support of the request, citing the lack of complaints and efforts to accommodate parking and requested the parties work together in the future.

Mayor Dyer spoke to residential uses in the area and importance of the Carpenter House. He spoke to there being other ways to preserve the site and denial of the request.

Council Member Miner made a motion to deny the request. The Council spoke to the opportunity for additional discussion among the parties and subsequent consideration and Mr. Miner retracted his motion.

Upon a motion made by Council Member Miner and seconded by Council Member Gallagher, the Council voted 7-0 to table the request until the December 10, 2012, Council meeting.

**Public Hearing and adoption of Ordinance No. 2012-11-10** as requested in Zoning Case 2012-29, to amend Subsection 2.502 (Schedule of Permitted Uses) of Section 2.500 (Permitted Uses) and Section 2.800 (District Charts) of Article 2 (Zoning Districts and Uses), Article 5 (Site Plan Review), and related sections of the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, to create the Urban Mixed-Use zoning district; and providing a publication clause, a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date. Applicant: City of Plano (Regular Agenda Item “3”)

Director of Planning Jarrell advised that in April 2012, the Council amended the Comprehensive Plan to assist in the creation of an Urban Mixed-Use area while reserving sufficient land for employment and economic development related uses. She spoke to the underlying goals of the new district including higher density, compact and pedestrian-oriented development, inclusion of street grids, a variety of open space areas, reduced parking and a size of between 25-200 acres. Ms. Jarrell spoke to development that may take 10-15 years or longer to complete and establishment of a development plan to guide construction; inclusion of a governance association to assume responsibility for common areas; required inclusion of three or more use categories; an average residential density of 40 dwelling units per acre; inclusion of 20,000 square feet of nonresidential space in the first phase of development; block sizes limited to three acres; and a central “main street” element. She spoke to work with developers and reviewed requirements for a mix of uses from “primary, secondary and tertiary” categories. Ms. Jarrell advised that the Planning and Zoning Commission recommended approval as follows: (New ordinance language is underlined; strikethroughs indicate changes to existing ordinance language.)

**2.829 UMU - Urban Mixed-Use**

1. Purpose

The UMU district is intended to provide a planning, regulatory, and management framework for the design, development, and operation of urban mixed-use centers which promote social interaction, community identity, and efficient use of land and resources. The UMU district should also support and encourage a variety of transportation options, including transit, bicycles, and walking. The zoning district is applicable primarily to large undeveloped properties where higher density residential and commercial uses are appropriate.

2. Permitted Uses

See Subsection 2.502 Schedule of Permitted Uses for a complete listing.

3. Area, Yard, and Bulk Requirements

<u>Description</u>	<u>Requirement</u>	
	<u>Commercial and Multifamily</u>	<u>Single-Family Attached</u>
<u>Minimum Lot Area</u>	<u>None</u>	<u>700 square feet</u>
<u>Minimum Lot Width</u>	<u>None</u>	<u>20 feet</u>
<u>Minimum Lot Depth</u>	<u>None</u>	<u>35 feet</u>
<u>Front Yard Setbacks</u>	<u>75% of the building face shall be within 25 feet of the street curb. If easements are present, 75% of the building face shall be built to the easement line.</u>	<u>75% of the building face shall be within 25 feet of the street curb. If easements are present, 75% of the building face shall be built to the easement line.</u>
<u>Side Yard Setbacks</u>	<u>Interior Side Yard - None Exterior Side Yard (Corner</u>	<u>Interior Side Yard - None Exterior Side Yard (Corner</u>

	<u>Lot) - Shall be treated the same as front yards.</u>	<u>Lot) - Shall be treated the same as front yards.</u>
<u>Minimum Rear Yard</u>	<u>None</u>	<u>None</u>
<u>Minimum Height</u>	<u>2 story</u>	<u>2 story</u>
<u>Maximum Height</u>	<u>15 story</u>	<u>3 story</u>
<u>Maximum Lot Coverage</u>	<u>None, except as limited by applicable setback requirements from Front Yard Setbacks, Side Yard Setbacks, Minimum Rear Yard, and Maximum Height above</u>	<u>100% including accessory buildings</u>
<u>Minimum Lot Coverage</u>	<u>60%</u>	<u>60%</u>
<u>Maximum Floor Area Ratio</u>	<u>6:1 except as limited by applicable setback requirements from Front Yard Setbacks, Side Yard Setbacks, Minimum Rear Yard, and Maximum Height above.</u>	<u>None</u>
<u>Minimum Floor Area Ratio</u>	<u>1:1</u>	<u>NA</u>

4. Definitions

The following terms and definitions only apply to the regulations of this district. Where they conflict with general definitions in the Zoning Ordinance, these definitions shall control.

- a. Floor Area Ratio - The ratio of a building's gross floor area to the area of the lot on which the building is located.
- b. Gross Floor Area - The sum of floor area within the perimeter walls of a building. Gross floor area only includes air-conditioned space intended for human occupancy and excludes garages, patios, attics, balconies, roof decks, and other exposed or unair-conditioned space.
- c. Gross Leasable Area - The total floor area intended for tenant occupancy and exclusive use, but excluding garages, patios, attics, balconies, roof decks, and other exposed or un-air-conditioned space.
- d. Residential Density - The number of individual residential living units per acre of the site or lot on which they are located. Calculation of residential density shall be based on the net size of the property, exclusive of public and private street right-of-way, street easements, and park and open space accessible to the public.
- e. Effective Residential Density - A measure applied to a mixed-use building which includes residential units to estimate the potential density if the building were used solely for residential purposes. Effective density equals per acre density based on the total number of residential units plus the gross leasable area of nonresidential and/or live/work/flex space divided by the average residential unit size.
- f. Live/Work/Flex Space - A dwelling unit of not less than 700 square feet that, subject to building code compliance, may be used completely or in part for an allowed nonresidential use.

**Ordinance No. 2012-11-10 (cont'd)**

- g. Block - An area enclosed by streets on all sides, excluding divisions created by fire lanes, alleys, and service drives.
- h. Block Length - The distance along a street face uninterrupted by an intersecting street, excluding intersections with alleys and service drives.
- i. Reciprocal Easement Agreement - A contract among property owners and tenants governing the use and operation of property, including shared common areas, usable open space, and parking.
- j. Lot Coverage - The area of a site or lot covered by a building measured from the base of the perimeter walls, excluding covered walkways, porches, and unair-conditioned space.

5. District Establishment and Administration

The regulations contained within this zoning district shall be supplemented with additional standards and conditions required to execute a specific development plan. The boundary of each UMU district shall be defined on the Zoning Atlas and identified with the letters UMU followed by a unique number referencing the supplementary regulations. In considering the establishment of a UMU district, the Planning & Zoning Commission and City Council may amend the base UMU regulations to implement individual development plans, with the exception of:

- a. Requirement for an adopted development plan
- b. Requirement for a governance association
- c. Minimum residential densities for multifamily development
- d. Requirement to maintain three or more uses
- e. Requirement for nonresidential uses to be constructed within the first phase of development

6. Adopted Development Plan

A UMU district shall not be established without the concurrent adoption of a development plan for the district. The plan shall show the location and type of streets, blocks, parking areas, and open space. The plan shall specify the primary, secondary, and tertiary categories of land use, including the minimum and maximum amount of gross floor area designated for each category of use. The plan shall specify the minimum and maximum number of residential units. The plan shall enumerate all standards, conditions, and performance and implementation requirements not otherwise contained in the base zoning district requirements. The development plan shall be adopted as part of the ordinance creating the UMU district and shall only be amended by the same process by which it was created. (See Section 5.500 Adopted Development Plan.)

**Ordinance No. 2012-11-10 (cont'd)**

7. Governance Association

Applications for building permits for development within a UMU district shall not be accepted or approved until a property owners governance association is established. The association shall be responsible for maintaining all common property, improvements, and amenities within the district. It shall have power sufficient to assess and collect dues and charges as required to perform its responsibilities. It may have additional powers to administer other programs, including but not limited to security, promotion and marketing and entertainment. A Municipal Management district or Public Improvement district created in conformance with the Texas Local Government Code may be created to satisfy this requirement. A Reciprocal Easement Agreement (REA) allowing shared parking arrangements, public access to sidewalks, and to other amenities shall also be required and incorporated in the governance documents, but the REA may be deferred until a plan for common areas and amenities is submitted.

8. Mixed-Use Requirement

Each UMU district must contain three or more use categories. Each category must be designated as primary, secondary, or tertiary according to the gross floor area for each use. Only residential, retail, and office/institutional may be a primary use category. A primary use category must include not less than 50% or more than 70% of the gross floor area. Secondary use categories must include not more than 40% or less than 20% of the gross leasable area. Tertiary uses shall not represent more than 20% of the gross floor area. The percentage of primary, secondary, and tertiary uses is to be defined in the adopting ordinance. The primary use must always be the largest amount of actual building area constructed and under construction. Use categories are designated below:

<u>Use Category</u>	<u>Functional Role</u>
<u>Primary Residential Uses</u>	<u>Primary, Secondary, or Tertiary</u>
<u>Retail Uses</u>	<u>Primary, Secondary, or Tertiary</u>
<u>Educational, Institutional, Public, and Special Uses</u>	<u>Primary, Secondary, or Tertiary</u>
<u>Office and Professional Uses</u>	<u>Primary, Secondary, or Tertiary</u>
<u>Service Uses</u>	<u>Tertiary</u>
<u>Transportation, Utility, and Communications Uses</u>	<u>Tertiary</u>

9. Additional Use Regulations

- a. If multifamily residential use is a designated use, a minimum of 250 units is required. This requirement does not apply to mid-rise residential developments of 5-12 stories in height.

**Ordinance No. 2012-11-10 (cont'd)**

- b. An average residential density of 40 dwelling units per acre must be maintained within a UMU district. The average shall be computed based on the actual and effective residential density of units built and under construction (building permit issued). The reservation and allocation of residential units shall be managed by the governance association. Phased development shall have a minimum average residential density of 40 dwelling units per acre. However, no phase having less than 40 units per acre may be constructed, unless preceded by or concurrently built with a phase which maintains the minimum 40 dwelling units for the overall UMU district. No individual phase may be constructed at a residential density less than 30 units per acre, with the exception of single-family attached uses.
- c. No less than 20,000 square feet of nonresidential space must be built as part of the first phase of development, consisting of at least one restaurant and one retail space. Fitness centers, leasing offices, club and meeting rooms, and other uses associated with and managed by a multifamily use shall not be included to meet this minimum requirement. Freestanding nonresidential buildings may not be less than 10,000 square feet in size. There is no minimum size for individual lease spaces integrated vertically into a building.

10. Streets and Sidewalks

- a. All streets within a UMU district must be platted as private streets, unless the city agrees to accept dedication of some or all as public streets. All streets are to be open for public use and may not be gated or have restricted access, except as may be permitted for special events. All streets must be located in a private street lot or in public right-of-way. The width of a street lot or right-of-way shall be determined by the adopted development plan. A private street lot or public right-of-way may vary in width but must be sufficient to accommodate travel lanes, medians, sidewalks, utilities, street furniture and fixtures, and landscaping of public or common ownership. Easements may be required within the street lot for utilities and emergency access.
- b. All streets within a UMU district shall be constructed in accordance with the following general street classifications:
  - i. Major Median Divided (four 11-foot travel lanes) - Only permitted if a Type D or larger thoroughfare is required by the city's Thoroughfare Plan.
  - ii. Major Street (two 11-foot travel lanes with parallel or diagonal parking and valet or drop-off lanes)
  - iii. Minor Street (two 11-foot travel lanes with parallel parking and designated loading zones)
  - iv. Mews Street (Single-Family Attached) (two 11-foot travel lanes with three feet on each side to accommodate utilities and services) - Parking may be provided on mews streets but is not required.
  - v. Alley/Service Drive (two 12-foot travel lanes with no parking) - May also be a fire lane
- c. Street Design - A UMU district shall be organized into blocks created by a grid of streets. A variety of street types and block sizes may be incorporated to create the grid, including diagonal, off-set, and angled streets. Cul-de-sacs and curvilinear streets are prohibited.
- d. Block Size - The maximum block size is three acres, except as required for public park, hospital, or school use.

**Ordinance No. 2012-11-10 (cont'd)**

- e. Block Length - The maximum block length is 600 feet, except as may be required for park, hospital, or school use.
- f. Required Main Street - All UMU districts shall have a main street, designated on the development plan, which serves as the core of the district. It shall be a major street (two 11-foot travel lanes with parallel or diagonal parking). Buildings of a minimum of two stories shall front onto the main street. No parking garages or surface parking lots shall directly abut the main street. A 600 foot to 1,200 foot section of the street shall be the activity center of the district core. This area shall have the highest concentration of retail, restaurant, and entertainment square footage in the UMU district. The maximum width of store fronts in this area shall be limited to 100 feet. The perimeter of a superstore, food/grocery store, or regional theater must be lined with individual store fronts meeting this maximum width requirement. The specific development plan must define the main street. It shall also designate the location of at least 60% of the gross floor area along the main street for primary and secondary uses.
- g. Street Trees - Street trees are required at the rate of one tree per 40 linear feet of major and minor street frontage. Trees shall be placed in planting beds or tree grates within five feet of the back of the street curb.
- h. Sidewalks - Sidewalks shall be provided on both sides of all major and minor streets as required below. A clear pedestrian path of 7 feet in width shall be maintained on all minor streets and 12 feet in width on all major streets. Trees, landscaping, outdoor dining areas, bicycle racks, and street furniture may be placed within the sidewalk but may not reduce the clear path width. Awnings, canopies, and other detachable fixtures may extend into the street lot or public right-of-way. All public sidewalks and common areas to be maintained by the governance association shall be located in a street lot or public right-of-way. All other areas are to be on a building lot. Other walkways may be permitted to access open space, amenities, and services. All walkways are to be open to the public unless designated as private.

11. Usable Open Space

- a. Usable public open space shall be provided in an amount not less than 5% or more than 10% of the gross acreage of the development. A maximum of 25% of the required open space may be located within a floodplain or within an overhead transmission line easement if these areas are improved for open space use. Except for property located within a floodplain, open space shall fit into the grid street and building block plan. Unless arranged as a courtyard with buildings on three sides, public open space shall abut a street on two sides. At least one plaza or open space shall be located within the main street area required in 10.f. above. Smaller usable open spaces may also be provided. Individual public open space areas shall be no larger than three acres or smaller than one-quarter acre. The plan for the arrangement of common open space must be adopted when the district is established. It may be amended only through the same process as the district was created. The common open space is to be maintained by the association.

**Ordinance No. 2012-11-10 (cont'd)**

- b. Private open space is permitted consisting of interior courtyards and patios required for private amenities and individual business and residential use. Fencing and other enclosures may be used for building security, protection of play and pool areas, or as may be required for business and individual residential use. Exterior yards may not be fenced, except front yards assigned to individual residential units and townhouses may be enclosed with a maximum four-foot tall vertical rail metal fence.
- c. Multifamily development is exempt from the requirements of Subsections 3.104 (Multifamily Residence) and 3.117 (Usable Open Space).

**12. Parking Requirements**

- a. UMU districts shall be designed as compact, pedestrian-oriented developments. With the exception of neighborhood theaters, regional theaters, religious facilities, and assembly halls, the maximum permitted parking for nonresidential uses is capped at one space for each 250 square feet of gross leasable area. Theaters and assembly halls are capped at one space per 2.5 persons accommodated. On-street parking is included in the parking calculations for the UMU district. No more than 25% of the capped parking requirement for the entire development, as shown on the development plan, may be located in a surface parking lot. Parking in excess of 10% over the above maximum caps may be provided only in parking garages.
- b. Parking for multifamily residential uses shall be required as follows:
  - i. One bedroom or less: One parking space per unit
  - ii. Two bedrooms: 1.5 parking spaces per unit
  - iii. Three bedrooms or more: Two parking spaces per unit
- c. On-street parking is required on all major and minor streets except in locations designated for loading, services, and pedestrian crossings.
- d. All surface parking lots with 50 or more spaces must be designed as future development sites. They must be located on the outside edge of the development. No surface parking lot may contain more than 300 spaces.
- e. A minimum five-foot landscape edge shall be provided between all surface parking lots and major and minor streets. Within this landscape edge, ten shrubs (five gallon minimum) shall be planted per 500 square feet. The landscape edge along major median divided streets shall comply with the requirements of Section 3.1200 (Landscaping Requirements) or the overlay districts contained in Article 4 (Special District Regulations) if applicable.
- f. Private garages may be located (tucked) directly under and assigned to an individual residential unit.
- g. Podium parking or grade level parking may be located under a horizontal structural concrete or steel structure separating the parking level from uses located on the podium.
- h. One full level of a multi-level parking structure at or below grade must be open for general public parking. No parking structure serving primarily residential use shall serve more than two residential buildings. A residential parking garage must directly connect to at least one residential building and each level of the garage must be directly accessible from the residential building.

**Ordinance No. 2012-11-10 (cont'd)**

13. Building Placement and Design

- a. Buildings in a UMU district must be designed and oriented to reinforce the street grid. The distance from building face to building face shall not exceed 100 feet on major streets, unless separated by usable open space.
- b. Single-Tenant Maximum First Floor Square Footage - 30,000 square feet, with the exception of schools and hospitals
- c. Permeability of First Floor - With the exception of parking garage, podium garages, and loading and service areas, 60% of the first floor of nonresidential buildings and live/work/flex space units must consist of windows and doors. Live/work/flex space units must have an exterior entrance.
- d. Nonresidential space must have a minimum floor-to-ceiling height of 12 feet; however, live/work/flex space must have a minimum floor-to-ceiling height of 10 feet.

14. Single-Family Attached (Townhouse) Residence Regulations

- a. Each dwelling unit shall be on an individually-platted lot. No more than 50% of the lots within a development may abut a mews street as the only point of street frontage and access.
- b. Maximum Density: 40 dwelling units per acre
- c. Minimum Density: 25 dwelling units per acre
- d. Minimum Floor Area per Dwelling Unit: 800 square feet
- e. Stoops and landscape areas adjacent to the building may extend a maximum distance of five feet into the area between the front facade of the building and the back of the street curb.
- f. Maximum Building Length: 200 feet
- g. Buildings must be separated by a minimum distance of ten feet.
- h. No usable open space areas are required.
- i. Each dwelling unit shall have a garage with a minimum of two parking spaces. Tandem garage spaces are allowed. Garage entrances shall be allowed only from a mews street or alley. The distance from the garage to the travel lane of the alley or mews street shall be 5 or less feet in length or shall be 20 feet or greater in length. The elimination of the garage space, by enclosing the garage with a stationary wall, shall be prohibited.

15. Additional Requirements and Restrictions

- a. A UMU district or a group of buildings within the district may not be walled, fenced, or restricted from general public access.
- b. The second building constructed and all subsequent buildings may not be further than 150 feet from another building.
- c. The regulations, specifications, and design standards for signs contained in Subsection 3.1605 (Downtown Sign District) Area A shall apply unless otherwise specified in this ordinance or in the adopted development plan.

**Ordinance No. 2012-11-10 (cont'd)**

Article 2. Zoning Districts and Uses

2.502 Schedule of Permitted Uses

Uses to be allowed in the Urban Mixed-Use district by right are listed below:

Adult Day Care Center

Antenna

Antenna Support Structure (Commercial and Amateur)

Antique Shop

Assembly Hall

Assisted Living Facility

Automobile Parking Lot/Garage

Bank, Savings and Loan, or Credit Union

Commercial Amusement (Indoor)

Construction Yard (Temporary)

Continuing Care Facility

Convenience Store (without gasoline pumps)

Day Care Center

Day Care Center (Accessory)

Field Office

Florist Shop

Food/Grocery Store

Fraternal Organization, Lodge, or Civic Club

Furniture, Home Furnishings, and Equipment Store

Gymnastics/Dance Studio

Health/Fitness Center

Home Occupation

Homebuilder Marketing Center

Hospital

Hotel/Motel

Independent Living Facility

Laundromat

Licensed Massage Therapy

Live/Work/Flex Space

Long-term Care Facility

Medical Office

Multifamily Residence

Office-Professional/General Administrative

Park/Playground

Personal Service Shop

Pet Shop

Post Office

Print Shop (Minor)

Private Club

Private Utility (other than listed)

Religious Facility

Research and Development Center

Restaurant/Cafeteria (no drive-through service)

Retail Stores and Shops

School – Primary or Secondary (Private)

School - Primary or Secondary (Public or Parochial)

Single-Family Residence Attached

Studio for Photographer, Musician, Artist, Radio, and/or TV

Tattooing and Permanent Cosmetics (See End Note 37; permitted as an accessory use to a personal service shop only and allowed in districts where that use is permitted, and in accordance with Subsections '3.116 Tattooing, Permanent Cosmetics, and Body Piercing' and '2.502 Schedule of Permitted Uses')

Theater - Neighborhood

Transit Center/Station

Transportation and Utility

Structures/Facility

University/College

Utility Distribution/Transmission Line

**Ordinance No. 2012-11-10 (cont'd)**

Uses to be allowed by specific use permit are listed below:

Arcade

Theater - Regional

Trade/Commercial School

**Article 5. Site Plan Review**

**5.500 Adopted Development Plan**

**5.501 General**

An adopted development plan must accompany a zoning petition for the Urban Mixed-Use zoning district and is only applicable in conjunction with that specific district. The purpose of the plan is to:

1. Ensure compliance with applicable development regulations and previously approved, valid plans affecting development of the property.
2. Determine the placement, configuration, coverage, size, use, and height of buildings.
3. Specify the primary, secondary, and tertiary categories of land use, including the minimum and maximum number of residential units.
4. Determine the design of public and private street improvements and rights-of-way and the design and location of drives, aisles, and parking.
5. Determine location and preliminary design of open space, landscaping, walls, screens, and amenities.
6. Enumerate all standards, conditions, performance, and implementation requirements not contained within the base zoning district.
7. Determine the preliminary design of drainage facilities and utilities.

**5.502 Applicability**

An adopted development plan approved as part of the zoning action establishing an Urban Mixed-Use district shall be required prior to the consideration of a preliminary site plan or site plan for development of property defined in Subsection 5.101 and located within an Urban Mixed-Use zoning district. The adopted development plan must include all property contained within the district.

**Ordinance No. 2012-11-10 (cont'd)**

5.503 Application Procedure and Requirements

1. Pre-application

Before preparing an adopted development plan, the applicant shall meet with the staff of the Planning and Engineering Departments. The purpose of the pre-application meeting is to review the proposed development with regard to storm water quality and quantity goals of the City of Plano's Texas Commission on Environmental Quality (TCEQ) Non-Point Discharge Elimination System (NPDES) permit and the proposed development for general compliance with development regulations as well as to discuss application procedures and submittal requirements.

2. General Application

The property owner shall file an application for the approval of an adopted development plan in conjunction with a petition for Urban Mixed-Use zoning. This application shall include the information listed below on one, dimensioned, scaled drawing on a sheet size 24" x 36". The drawing shall include existing and proposed site conditions and improvements, as follows:

- a. Site boundaries and dimensions, lot lines, site acreage and square footage, and approximate distance to the nearest cross street.
- b. Location map, north arrow, scale, title block, and site data summary table.
- c. Topography at two foot contours or less.
- d. Natural features including tree masses and anticipated tree loss, floodplains, drainage ways, and creeks. (See Section '3.1200 Landscaping Requirements'.)
- e. Land use onsite and on adjacent properties, including the primary, secondary, and tertiary categories of land use.
- f. Building locations and footprints, including building size, intensity, density, height, setback, and use.
- g. Public streets, private drives, and fire lanes with pavement widths, rights-of-way, median openings, turn lanes (including storage and transition space), and driveways (including those on or planned on adjacent property) with dimensions and radii.
- h. Parking areas and structures, aisles and spaces, handicap spaces, ramps, crosswalks, and loading areas with typical dimensions.
- i. Access easements and offsite parking.
- j. Proposed dedications and reservations of land for public use including, but not limited to, rights-of-way, easements, park land, open space, drainage ways, floodplains, and facility sites.
- k. Screening walls, fences, living screens, retaining walls, headlight screens, and service area screens.
- l. Landscaping and open space areas. (See Section '3.1200 Landscaping Requirements'.)
- m. Phases of development, including delineation of areas, building sites, land use, and improvements to be constructed in independent phases and the scheduled timing and sequencing of development.

**Ordinance No. 2012-11-10 (cont'd)**

- n. If the proposed development intends to take advantage of development incentives as defined in Section 3.1700 (Storm Water Management), the areas of the site intended for storm water conservation shall be delineated. (ZC 2006-02; Ordinance No. 2006-4-24)

3. Standards of Approval

The Planning & Zoning Commission and City Council may approve, conditionally approve, table, or deny an adopted development plan based on: (See Section '5.900 Appeals'.)

- a. Conformance with the Comprehensive Plan and adopted design guidelines.
- b. Compliance with the Zoning Ordinance and other applicable regulations and previously approved, valid plans for the property.
- c. Compliance with previously approved, valid site-specific storm water management plan. (ZC 2006-02; Ordinance No. 2006-4-24)
- d. Impact on the site's natural resources and effect on adjacent and area property and land use.
- e. Safety and efficiency of vehicular and pedestrian circulation, traffic control, and congestion mitigation.
- f. Safety and convenience of off-street parking and loading facilities.
- g. Access for firefighting and emergency equipment to buildings.
- h. Use of landscaping and screening to shield lights, noise, movement, or activities from adjacent properties and to complement the design and location of buildings and parking.
- i. The location, size, and configuration of open space areas to ensure that such areas are suitable for intended recreation and conservation uses.

4. Effect

Approval of an adopted development plan by the Planning & Zoning Commission and City Council shall constitute authorization by the city for the owner(s) to submit an application for preliminary site plan approval for development of the entire site or a portion thereof provided that the preliminary site plan conforms to the adopted development plan and any conditions attached to its approval. As long as the adopted development plan remains valid, the location of buildings, landscape areas, open space, streets, drives, fire lanes, median breaks, curb cuts, and parking shall remain fixed except as to permit minor adjustments resulting from subsequent engineering improvements or to prevent a condition affecting public health or safety which was not known at the time of approval. Except where authorized by ordinance, an adopted development plan may not be used to approve an exception to development regulations. Where an approved plan conflicts with an adopted regulation and no variance or exception is expressly approved, the regulation shall apply.

5. Lapse

An adopted development plan does not have an expiration date and is valid as long as the property retains the Urban Mixed-Use zoning classification. (See Section 5.600 for amendment procedures.)

**Ordinance No. 2012-11-10 (cont'd)**

~~5.500~~5.600 Amendments

At any time following the approval of a concept plan, preliminary site plan, adopted development plan, or site plan and before the lapse of such approval, the property owner(s) may request an amendment. Amendments shall be classified as major and minor. Minor amendments shall include corrections of distances and dimensions, adjustments of building configuration and placement, realignment of drives and aisles, layout of parking, adjustments to open space, landscaping, and screening, changes to utilities and service locations which do not substantially change the original plan. Amendments to previously approved storm water conservation areas, increases in building height and/or building proximity to an adjacent offsite residential use, and all other amendments shall be considered major amendments and may be considered by the Planning & Zoning Commission at a public meeting in accordance with the same procedures and requirements for the approval of a plan. Major amendments to an adopted development plan for the Urban Mixed-Use District may only be approved through the same process by which it was initially adopted. The Director of Planning may approve or disapprove a minor amendment. Disapproval may be appealed to the Planning & Zoning Commission.

~~5.600~~5.700 Extension and Reinstatement Procedure

1. Sixty days prior to or following the lapse of approval for a concept plan, preliminary site plan, or site plan as provided in these regulations, the property owner may petition the Planning & Zoning Commission to extend or reinstate the approval. Such petition shall be considered at a public meeting of the Planning & Zoning Commission.
2. In determining whether to grant such request, the Planning & Zoning Commission shall take into account the reasons for lapse, the ability of the property owner to comply with any conditions attached to the original approval, and the extent to which newly adopted regulations shall apply to the plan. The Planning & Zoning Commission shall extend or reinstate the plan, or deny the request, in which instance the property owner must submit a new application for approval.
3. The Planning & Zoning Commission may extend or reinstate the approval subject to additional conditions based upon newly enacted regulations or such as are necessary to assure compliance with the original conditions of approval. The Planning & Zoning Commission may also specify a shorter time for lapse of the extended or reinstated plan than is applicable to original approvals.

**Ordinance No. 2012-11-10 (cont'd)**

~~5.700~~5.800 Revocation of Approval

The City Council or the Planning & Zoning Commission may revoke approval of a concept plan, preliminary site plan, adopted development plan, or site plan if it determines that the conditions of the approval have not been met or if the plan contains, or is based upon, incorrect information which affects a significant health or safety interest.

Any plan approved prior to March 13, 1986, on which no progress has been made toward completion of the project ~~will expire~~ expired as of May 11, 2004. All other plans expire according to the lapse of approval standards within this section. (ZC 2003-15; Ordinance No. 2003-9-22)

~~5.800~~5.900 Appeals

(ZC 96-23; Ordinance No. 96-6-20)

The decision of the Planning & Zoning Commission to approve or deny a concept plan, preliminary site plan, adopted development plan, and site plan shall be final and binding unless an appeal of the decision is made to the City Council. The applicant, Director of Planning, or two members of City Council may appeal the decision of the Commission with regard to a plan by filing a Notice of Appeal in the office of the Director of Planning, no later than ten days after the date on which the Commission notifies the applicant of its decision. Such notification may take place by means of an oral ruling by the Commission at a public meeting. Written notice of any appeal shall be sent to the property owner. The Notice of Appeal shall set forth in clear and concise fashion the basis for the appeal. The City Council shall consider the appeal at a public meeting no later than 45 days after the date on which the Notice of Appeal is filed. The City Council may affirm, modify, or reverse the decision of the Commission and may, where appropriate, remand the plan to the Commission for further proceedings consistent with City Council's decision.

~~5.900~~5.1000 Additional Development and Redevelopment

Following the completion of improvements shown on an approved site plan, additional development, site modifications, or redevelopment of the site shall be permitted subject to the approval of a revised site plan. Minor expansions and redevelopment may be approved by the Director of Planning under the terms of Section ~~5.500~~5.600. All other expansions or redevelopment shall require submittal of a revised site plan and the approval of the Planning & Zoning Commission under the requirements and procedures then in effect.

**Ordinance No. 2012-11-10 (cont'd)**

5.10005.1100 Design Standards and Specifications

The following design standards and specifications are incorporated by reference into this ordinance:

<b>Design Standards and Specifications</b>
Water & Sewer Design Manual
Standard Construction Details
Standard Specifications for Public Works Construction with City of Plano Special Provisions
Thoroughfare Standards Rules & Regulations
Flood Damage Prevention Ordinance
Erosion Control Ordinance
Storm Drainage Design Manual
Fire Code
Retail Corner Design Guidelines
Multifamily Design Guidelines
Subdivision Ordinance
Downtown Development Plan
Douglass Area Study
White Rock Creek and Tributaries Floodplain Management Study
Comprehensive Plan Design Studies Element
Spring Creekwalk Master Development Plan

Mayor Dyer opened the Public Hearing. Lucy Billingsley of Billingsley Company stated concern regarding forced structured parking and its impact on rental rates and the ability to accommodate a variety of products within such developments. Lucilo A. Peña, of Billingsley Company thanked Staff for their work and stated concern regarding the potential for townhomes given the required density, floor-area ratio and three-acre block restriction. Ms. Billingsley and Mr. Peña spoke to working on future developments. Ms. Jarrell spoke to the recommendation allowing for a mix of residential uses and providing walkable blocks. She spoke to hospitals, schools or parks which could have a larger footprint. No one else spoke for or against the request. The Public Hearing was closed.

Upon a motion made by Deputy Mayor Pro Tem Harris and seconded by Council Member Davidson, the Council voted 7-0 to amend Subsection 2.502 of Section 2.500 and Section 2.800 of Article 2, Article 5 and related sections of the Comprehensive Zoning Ordinance of the City to create the Urban Mixed-Use zoning district as recommended by the Planning and Zoning Commission and as requested in Zoning Case 2012-29; and further to adopt Ordinance No. 2012-11-10.

**Public Hearing and adoption of Ordinance No. 2012-11-11** to amend the Comprehensive Plan originally adopted by Resolution No. 86-11-22(R) to amend the Mixed-Use Policy Statement with guidelines for reviewing zoning requests for mixed-use projects; providing procedures approving the utilization of said policy statement 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”)

Planning Manager Firgens advised that the Mixed-Use Policy Statement was approved in 2009 to provide guidelines when reviewing requests. She stated that the proposed changes reflect consistency with redevelopment and undeveloped land policy recommendations and Urban Mixed-Use standards. Ms. Firgens spoke to providing clarification regarding: land area for urban centers, multi-family densities, public open space, parking, residential setbacks and design parameters. She advised that the policy statement will assist with assessment and appropriateness of urban mixed-use zoning requests and may require additional amendments with the creation of neighborhood mixed-use standards. Ms. Firgens advised that the Planning and Zoning Commission recommended approval as submitted.

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

Upon a motion made by Deputy Mayor Pro Tem Harris and seconded by Mayor Pro Tem Smith, the Council voted 7-0 to amend the Comprehensive Plan originally adopted by Resolution No. 86-11-22(R) to amend the Mixed-Use Policy Statement with guidelines for reviewing zoning requests for mixed-use projects; as recommended by the Planning and Zoning Commission; and further to adopt Ordinance No. 2012-11-11.

Mayor Dyer spoke regarding his service on Council and advised that he would not be seeking reelection in May 2013. Nothing further was discussed. Mayor Dyer adjourned the meeting at 9:20 p.m.

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**Phil Dyer, MAYOR**

ATTEST

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Diane Zucco, City Secretary



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>					
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory					
Council Meeting Date:		11/26/2012			
Department:		Human Resources			
Department Head		Jim Parrish			
Agenda Coordinator (include phone #): <b>Sharron Mason - Ext. 7247</b>					
<b>CAPTION</b>					
RFP No. 2012-222-C for three (3) years with two (2) City optional one-year renewal periods for the Retirement Security Plan Investment Manager Services for Human Resources to Capital One, N.A., in the amount of \$162,363 and authorizing the City Manager or his designee to execute all necessary documents.					
<b>FINANCIAL SUMMARY</b>					
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	<b>2012-13 thru 2016-17</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget		0	162,363	649,452	<b>811,815</b>
Encumbered/Expended Amount		0	0	0	<b>0</b>
This Item		0	-162,363	-649,452	<b>-811,815</b>
BALANCE		0	0	0	<b>0</b>
<b>FUND(S):    RETIREMENT SECURITY PLAN (RSP)</b>					
<p><b>COMMENTS:</b> This item approves funding for investment manager services for the City's Retirement Security Plan (RSP). Expenditures will be made from the RSP fund balance. The annual amount to be spent is \$162,363 and the total future amount to be spent is \$649,452, if all renewal years are exercised. The term of the contract will be three (3) years with two (2) City optional one-year renewal periods.</p> <p><b>STRATEGIC PLAN GOAL:</b> Providing investment manager services for the City's Retirement Security Plan relates to the City's Goal of Financially Strong City with Service Excellence.</p>					
<b>SUMMARY OF ITEM</b>					
Staff recommends the award of RFP No. 2012-222-C to Capital One, N.A., in the annual amount of \$162,363 and the total future amount to be spent is \$649,452, if all renewal years are exercised, and conditioned upon timely execution of any necessary contract documents.					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		
Recommendation Memo, Recap and RSP Investment Agreement					



**DATE:** December 13, 2010

**TO:** Sharron Mason, Buyer

**CC:** Diane Palmer, Purchasing Manager

**FROM:** Myra Conklin, Treasurer

**SUBJECT:** Recommendation of Award for 2012-222-C RFP for Retirement Security Plan Investment Manager Services

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This memo is being written to describe the process and methodology used in the selection of the Capital One, N.A. as the City's RFP for Retirement Security Plan Investment Manager Services..

**Description of Services**

Plan Investment Manager Services to include:

- A. Authority to manage, acquire, invest or dispose of all or any part of the Plan Fund.
- B. Comply with funding policy established for the Plan.
- C. Provide written instructions and directions to the Trustee regarding the investment of assets.
- D. Prepare and provide monthly reports as follows:
  - 1. Statement of Account to include:
    - a. Current Asset Allocation & Estimated Income
    - b. Investment Returns
    - c. Portfolio Detail Reports
    - d. Detail of all Transactions including:
      - 1) Purchases
      - 2) Sales
    - e. Unrealized Gain (Loss)
    - f. Provide economic outlook projections and the potential effect on the Trust
  - 2. Annual statement of account
- E. As needed, assist with schedules and documentation requests related to annual and fiscal year end audits.

F. Attend quarterly meetings to be held at Municipal Center, 1520 Ave K and present investment report to the Trustees.

### **Evaluation Process**

The evaluation team met with the Buyer from the City of Plano Purchasing Division to “kickoff” the evaluation process. Each team member was provided a set of proposals to review the scope of services of each investment manager. Team members were instructed to review all 13 proposals and score each section as listed below in the “Evaluation Criteria”.

- A. Experience – 30%
  - 1. The firm’s overall experience as evidenced by Section VIII. Submittals D 1.
  - 2. Professional background and experience level of personnel that will be assigned to the account as evidenced by Section VIII. Submittals D 2 and 3.
- B. Qualifications to provide Scope of Services – 30%
  - 1. The firm’s qualifications to provide services to the City of Plano as specified, and as evidenced by Section VIII. Submittals C and E.
- C. Cost – 40%
  - 1. Cost of the proposed investment manager services.

On September 6, 2012, the evaluation team and Buyer met to discuss all of the submissions. The evaluators discussed and scored each respondent based on the evaluation criteria above. The evaluators also requested the Purchasing Department to obtain additional information from each respondent. The information was collected by the Purchasing Department and the committee met again on September 27, 2012. The Committee decided that the top proposal would be selected if that respondent could meet the City’s insurance requirements. The Purchasing Department verified that the respondent would meet the requirements.

Based on the final scoring it was determined that the Capital One, N.A. was the highest rated RFP and the Evaluation Committee recommends that we award the RFP to Capital One, N.A. Please review and begin the necessary steps for award of this contract.

CITY OF PLANO

RFP No.: 2012-222-C

RFP for RETIREMENT SECURITY PLAN INVESTMENT MANAGER SERVICES

RFP RECAP

RFP Opening Date/Time: **Monday, July 9, 2012 @ 3:30 p.m. (CDT)**

**BidSync # of Vendors Notified:** 1827

**BidSync # of Vendors that viewed:** 81

**BidSync Non-responsive received:** None

<b><u>Responses Received:</u></b>	<b><u>Pricing</u></b>
Anderson Financial, Inc.	\$129,190
Regions Investment Services	\$155,028
Capital One, N.A.	\$162,363
South Texas Money Management, Ltd.	\$215,317
Wells Fargo Bank, N.A.	\$215,317
DANA Investment Advisors, Inc.	\$215,317
Corbin & Company Capital Management	\$215,317
BNY Mellon Asset Management	\$275,606
CS McKee, L.P.	\$324,401
JP Morgan	\$357,007
Garcia Hamilton & Associates, L.P.	\$430,634
Turtle Creek Management, LLC	\$450,634
Aberdeen Asset Management, Inc.	\$645,951

**Recommended Vendor(s):**

Capital One, N.A. in the amount of \$162,363.

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

*Sharron Mason*

*October 11, 2012*

Sharron Mason  
Sr. Buyer

Date

## **RETIREMENT SECURITY PLAN**

### **INVESTMENT MANAGEMENT AGREEMENT**

This agreement (this "Agreement") is entered into effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 2012 (the "Effective Date"), by and among the City of Plano, Texas (the "City"); the Committee (as hereinafter defined) acting on behalf of the City of Plano, Texas Retirement Security Plan (as amended, the "Plan"); and Capital One, N.A. ("Manager").

#### **WITNESSETH**

WHEREAS, the City adopted the Plan effective January 1, 1983 for the benefit of eligible employees and retirees of the City and established a trust to hold the assets of the Plan (the "Trust");

WHEREAS, in accordance with Article IX of the Plan the City has appointed a committee (the "Committee") to administer the Plan;

WHEREAS, the City has entered into a trust agreement effective as of October 20, 2011 (as amended, the "Trust Agreement") with Comerica Bank as trustee of Trust (including any successor, the "Trustee");

WHEREAS, in accordance with Section 10.2 of the Plan and Section 5.2 of the Trust Agreement, the Committee is authorized to appoint one or more investment manager(s) to manage all or a portion of the assets of the Trust (the "Trust Fund");

WHEREAS, the Committee has established an investment policy for the portion of the Trust Fund subject to this Agreement (as amended, the "Investment Policy");

WHEREAS, the Manager (or its predecessor) has served as the investment manager for the Trust Fund since 1983 and has demonstrated its ability to manage the Trust Fund consistent with the Investment Policy at competitive rates; and

WHEREAS, the Manager has represented to the Committee that it is qualified to serve as the investment manager of the portion of the Trust Fund subject to this Agreement in accordance with Section 802.204 of the Texas Government Code (the "Government Code") and all other applicable laws;

NOW THEREFORE, in consideration of the premises and of the mutual covenants contained herein and intending to be legally bound hereby, the parties hereto agree as follows:

1. Appointment. The Committee hereby appoints and retains the Manager as the sole investment manager of the portion of the Trust Fund that is designated from time to time by the Committee as part of the investment management account of the Manager (the "Account"), and the Manager agrees to serve as investment manager and fiduciary of the Account in accordance with and subject to the terms of this Agreement beginning on the Effective Date and continuing until the Agreement is terminated in accordance with Section 7.

(a) Nothing in this Agreement shall constitute a commitment by the Committee to designate or maintain any minimum amount of assets or minimum portion of the Trust Fund in the Account.

(b) The services of the Manager and its personnel to be provided under this Agreement are not exclusive, and the Manager may provide services to others and engage in other activities, but the Manager will allocate such personnel and devote such efforts as are necessary for it to carry out its duties under this Agreement.

(c) Immediately after receiving notice from the Committee, the Manager shall remove from the Account such amounts as are designated for removal from time to time by the Committee; provided, however, that all trades executed but not settled prior to such notice shall be settled prior to removal from the Account. The Manager shall not be responsible for the investment or management of amounts removed from the Account and credited to the Trustee or a successor investment manager.

2. Investment Authority and Responsibility of the Manager. The Manager, as investment manager and fiduciary of the Account and agent for the Trust, shall have the authority and responsibility to direct the Trustee as to the management, acquisition, investment, and disposition of the Account in accordance with Section 5.2 of the Trust Agreement, the terms of the Investment Policy, and all applicable laws.

(a) The Manager shall have the power generally to perform any acts necessary to enable the Manager to carry out its obligations under this Agreement. With respect to the Account, the Manager shall have the sole power, authority, and discretion to direct the Trustee with respect to all of the power and authority that would otherwise be exercised by the Trustee under Section 5.1 of the Trust Agreement, a copy of which is attached hereto as Exhibit A.

(b) The Manager, in its sole discretion, shall direct the Trustee as to the investment and reinvestment of the Account in accordance with this Agreement and in compliance with the terms of, and subject to the permissible investments designated under, the Investment Policy as set forth on Exhibit B. The Committee shall provide the Manager with any amendments to the Investment Policy that are adopted or effective after the Effective Date, and each amendment provided to the Manager shall be considered part of Exhibit B as of the later to occur of (i) the effective date of the amendment and (ii) the date the amendment is provided to the Manager.

(c) The Manager may give advice and take action in the performance of its duties with respect to any of its clients which may differ from the advice given, or the timing or nature of action taken, with respect to the Account, so long as the Manager adheres to a policy of allocating investment opportunities to the Account over a period of time on a fair and equitable basis relative to other clients. Nothing in this Agreement shall impose upon the Manager any obligation to purchase or sell for the Account any security or other property which the Manager purchases or sells for its own account or the account of any other client if, in the opinion of the Manager, such transaction or investment appears unsuitable, impracticable or undesirable for the Account taking into account the Investment Policy.

(d) The Trustee, and not the Manager, shall be responsible for the custody of the portion of the Trust Fund that constitutes the Account.

3. Representations by the Manager. The Manager represents, warrants, and acknowledges that

(a) It is a fiduciary with respect to the Account;

(b) It is a bank as defined under the Investment Advisers Act of 1940; and

(c) It has the power to manage, invest, acquire, and dispose of the assets of the Plan subject to the Account.

On or before the Effective Date, the Manager shall provide written acknowledgment of the foregoing to the Trustee in accordance with Section 5.2 of the Trust Agreement.

4. Standard of Care. The Manager shall discharge its duties under this Agreement solely in the interest of participants in the Plan and their beneficiaries and for the exclusive purpose of providing benefits to such persons and defraying reasonable expenses of administering the Plan and the Trust, with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, and by diversifying the investments of the Account in accordance with the Investment Policy so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so. In addition and in accordance with section 2263.004 of the Government Code, the Manager shall comply with any applicable standards of conduct adopted by the Committee and included in the Investment Policy. Nothing contained in this Agreement shall reduce the standard of care or any responsibility, obligation, or duty imposed on the Manager under Chapter 802 of the Government Code or any other applicable law.

5. Compensation of the Manager. The Manager shall be entitled to reasonable compensation for services rendered under this Agreement in accordance with the fee schedule set forth on Exhibit C. Such fees shall be paid from the Trust Fund except to the extent first paid by the City without reservation of a right of reimbursement from the Trust. No fees or expense reimbursements shall be payable to Manager except in accordance with Exhibit C.

6. Indemnification and Release.

(a) **THE MANAGER AGREES TO DEFEND, INDEMNIFY AND HOLD THE COMMITTEE, PLAN, TRUST, AND CITY AND THEIR RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES (THE "INDEMNIFIED PARTIES"), HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT (WHETHER BROUGHT OR INCURRED DURING OR AFTER THE TERM OF THIS AGREEMENT), SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE**

**OUT OF OR BE OCCASIONED BY MANAGER'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE MANAGER, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE MANAGER IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE APPLICABLE INDEMNIFIED PARTY OR OF ANY SEPARATE INVESTMENT MANAGER. THE INDEMNIFIED PARTIES DO NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE INDEMNIFIED PARTIES AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.**

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

(b) The Indemnified Parties shall release the Manager from and against any and all loss, damage, penalty, liability, cost, and expense (including reasonable attorneys' fees and disbursements) that may be incurred by, imposed upon, or asserted against the Manager by reason of its taking action pursuant to a direction, notice, writing or consent contemplated herein or its failing to act in the absence of such a direction, notice, writing or consent, unless such action or failure to act constitutes negligence of the Manager.

7. Term of Agreement. The initial term of this Agreement shall be the period of three (3) years (as may be extended, the "Term") commencing on January 1, 2013 and ending on December 31, 2016; provided however, that the Committee shall have the right and option to extend the Term hereof by two (2) additional twelve (12)-month periods by giving written notice

to the Manager of the Committee's election to extend the Term, such notice to be given not more than ninety (90) days prior to the expiration of the initial term (or, in the case of the second extension, prior to the expiration of the initial extended term). Either party may terminate this Agreement after the expiration of the Term by providing at least thirty (30) days written notice to the other party of its intent to terminate the Agreement. In addition, the Agreement may be terminated during or after the expiration of the Term without notice by the Committee if the Manager violates any applicable standards of conduct under section 2263.004 of the Government Code. The provisions of this Agreement shall remain in effect until the effective date of the termination of the Agreement, and provisions relating to performance after the termination of the Agreement, including Section 6 and this Section 7, shall survive such termination.

(a) In the event of a material breach of this Agreement by the Manager or the occurrence of a removal event specified below, the Committee may remove the Manager during the Term by giving at least thirty (30) days' written notice of the intended action to the Manager; provided that such removal shall not be effective if such breach or removal event is cured prior to the effective date of the removal. Any failure of the Manager to comply with the terms of the Investment Policy shall constitute a material breach of this Agreement for purposes of this Section. The following events, as determined in the sole discretion of the Committee, shall constitute removal events: (i) the indictment or conviction of the Manager or any of its directors or executive officers of any crime involving moral turpitude or any crime (other than a vehicular offense) which could reflect in some material fashion unfavorably upon the Manager, without regard to whether such crime or alleged crime relates specifically to the Account or this Agreement; (ii) the commencement of bankruptcy or insolvency proceeding with respect to the Manager; (iii) the commencement of an investigation of the Manager by the Office of the Comptroller of the Currency, the Texas Department of Banking, the Securities Exchange Commission, or any similar regulatory authority based on allegations of fraud, mismanagement, or similar misfeasance or nonfeasance of duty by the Manager, without regard to whether such allegations relate specifically to the Account or this Agreement; and (iv) the commission of any fraud, embezzlement, or similar conduct involving moral turpitude by the Manager or any of its directors or executive officers, without regard to whether such conduct relates specifically to the Account or this Agreement. The Manager shall immediately notify the Committee of the occurrence of any event which might reasonably be considered a removal event.

(b) In the event of a material breach of this Agreement by the City or the Committee, the Manager may resign during the Term by giving at least thirty (30) days' written notice of the intended action to the City and the Committee; provided that such resignation shall not be effective if such breach is cured prior to the effective date of the resignation.

(c) Upon the termination of the Agreement, the Manager shall within 30 days following the effective date of the termination file with the Committee (i) a written statement of accounts and proceedings concerning the acts of the Manager with respect to the Account since the date of the last quarterly statement and report of the Manager and (ii) any other report or information required pursuant to applicable law.

(d) After the termination of the Agreement, the Manager shall cooperate with the Committee in transferring records and other information relating to the management and

investment of the Account to the Trustee or to the successor investment manager designated by the Committee.

(e) Upon the termination of the Agreement, the Manager shall promptly forward to the Committee an itemized statement setting forth any compensation it is entitled to be paid under the provisions of this Agreement. Fees for any partial period shall be pro-rated. The Manager shall not be entitled to any additional compensation for services provided pursuant to this Section 7 in connection with the termination of the Agreement.

#### 8. Manager Records and Reports.

(a) The Manager shall maintain accurate and detailed records and accounts of all investments of the Account and all investments, receipts, disbursements, and other transactions under the Account. The Manager shall take all necessary steps to secure such records and accounts from the risk of fire, storm, theft, unauthorized access, or any other potential casualty or misappropriation.

(b) After the end of each quarter during the Term of this Agreement, the Manager shall render a statement of all Account transactions during the quarter to the Committee and the Trustee, together with a portfolio analysis of the Account and performance comparisons related thereto. The Manager shall also furnish to the Committee and the Trustee such additional reports with respect to the Account as they shall reasonably request from time to time. On a quarterly basis, within thirty (30) days following the end of the quarter, the Manager shall also deliver to the Committee and the Trustee a report of all transactions in the Account during the prior quarter and a listing of each investment in the portfolio and its net asset value at the end of said quarter. The Manager shall make all such records open to inspection and audit at all reasonable times by the Committee or its designated audit representative. Transaction reports may be rendered on a settlement basis provided settlement occurs within the normal period required by the NASD or other applicable regulatory authority.

(c) To the extent requested by the Committee, the Manager will arrange to have brokers who effect transactions for the Account send to the Committee and the Trustee confirmations of purchases and sales.

(d) The Manager shall attend at least quarterly meetings with the Committee or its designated staff to discuss the Account, the investment outlook for the Account, and coordination with the Trustee.

(e) The Committee shall cause the Trustee to provide the Manager with an appraisal of the assets in the Account as of the last business or trading day of each quarter, together with a transaction statement for the quarter listing all transactions occurring during the quarter as well as opening and closing cash balances. This statement shall include any accrued income calculations and may be rendered on a settlement basis provided settlement occurs within the normal period required by the NASD or other applicable regulatory authority. The Manager shall be responsible for reconciliation of the Account with the Trustee on a quarterly basis, and shall promptly notify the Committee of all unresolved material differences.

(f) The Manager shall promptly notify the Committee in writing (i) of any change in the Manager's representations in this Agreement during the Term of this Agreement; (ii) of any change in the key investment professionals providing services to the Account; (iii) of any change in the senior portfolio management team of the Account; (iv) of any change in approach to the management of the Account; (v) of any other material change in the Manager's business activities or circumstances, including changes affecting the Manager's equity capital; (vi) of any action taken by the Manager that is contrary to or inconsistent with this Agreement, including the Investment Policy; and (vii) of the commencement by any governmental regulatory or law enforcement agency of any investigation, examination or other proceeding directly involving the Manager, its owners, or employees, except such investigations, examinations or other proceedings as are routinely conducted in the ordinary course of the Manager's business.

(g) As soon as practicable after the close of each calendar year, the Manager shall certify to the Committee that the Manager has not deviated from the Investment Policy. If the Manager is unable to provide such certification, the Manager shall provide the Committee with a detailed written explanation of the reasons for the failure to provide the certification.

(h) Prior to recommending or directing any investment for the Account with respect to which the Manager or any of its affiliates may receive a fee, discount, or other remuneration or benefit (including "soft dollars") from any person (including the entity selling or benefiting from the investment or any other third party such as a broker or fund manager), Manager shall identify and provide a written description to the Committee of the arrangement with such person. In the event Manager fails to disclose any such arrangement in advance of any such investment, the amount of any such fee, discount, or other remuneration or benefit provided to or for the benefit of Manager or its affiliate shall be itemized and deducted from any fees otherwise payable to Manager pursuant to Section 5.

(i) The Manager shall make such written disclosures to and file such written statements with the Committee as are required by section 2263.005 of the Government Code and other applicable laws.

9. Information from the Committee. The Committee agrees to furnish the Manager with such information and documentation as the Manager may reasonably require from time to time to enable it to carry out its obligations under this Agreement.

10. Confidentiality.

(a) The Manager shall maintain in strictest confidence the investment advice and information it furnishes to or receives from the Committee in connection with this Agreement; provided, however, that the Manager shall be permitted to disclose or communicate to a proper party any information received from the Committee or developed by the Manager under the terms of this Agreement, if such disclosure or communication is necessary to carry out the purposes of this Agreement or is required by law. Before such disclosure or communication, the Manager, unless prohibited by law, shall notify the Committee of the information to be disclosed or communicated and the party to whom that information will be disclosed or communicated. The terms of this Section shall not be interpreted so as to prevent the Manager

from providing investment advice to other clients who share comparable investment objectives with the Account, or to prohibit the Manager from utilizing the Manager's investment experience or performance with respect to the Account on an undisclosed basis for use in composite performance presentations.

(b) Manager shall not share information about this Agreement and the services provided hereunder with affiliates of the Manager, except as allowed by law, such as to provide customer service or protect the identity of the Committee or the Plan and Trust. Manager shall not allow its affiliated companies to use shared information for marketing purposes.

(c) The Manager shall not disclose the name, address, and security positions of the Trust or the Committee to companies in which the Trust owns securities as part of the Account and that are registered in "nominee" or "street" name.

(d) The Manager hereby approves of periodic reports by the Committee of the Manager's investment program and investment results hereunder, recognizing that such reports may be public records available to the media and the public.

11. Disputed Matters. In order to facilitate an efficient and economical resolution of any disputed matter arising under this Agreement, the parties hereto agree that prior to the instigation of litigation by either of the parties; they will use their best efforts to resolve such dispute by first mediating the dispute in good faith and second, by using such other alternative dispute resolution procedures (other than binding arbitration) as may be mutually agreed to by the parties from among the procedures provided in "Alternate Methods of Dispute Resolution," Texas Civil Practice and Remedies Code.

12. Insurance. During the Term of this Agreement, the Manger shall procure and maintain insurance for the faithful performance of its duties under this Agreement and shall provide to the Committee a certificate of insurance showing the Committee, the Trust, and the City as additional insureds under such insurance. Such insurance shall satisfy the requirements set forth on Exhibit D.

13. No Prohibited Interest. The Manager 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 the Manager shall execute the affidavit set forth on Exhibit E. The Manager understands and agrees that the existence of a prohibited interest during the Term of this Agreement shall render the Agreement voidable.

14. Authority. Each of the parties to this Agreement represents that it is duly authorized and empowered to execute, deliver and perform this Agreement, that such action does not materially conflict with or violate any provision of law, rule or regulation, contract, deed of trust, or other instrument to which it is a party or to which any of its property is subject, and that this Agreement is a valid and binding obligation, enforceable against such party in accordance with its terms.

(a) The Manager shall from time to time certify to the Committee and to the Trustee the name of the person or persons authorized to act on its behalf and shall provide a specimen of his or their signatures. Any person so certified shall be an authorized representative of the Manager for purposes of this Agreement, and his authority to act on behalf of the Manager shall continue until notice to the contrary is given by the Manager and received by the Committee and the Trustee.

(b) The Committee may from time to time designate the person or persons to act on its behalf in giving instructions, directions, notices, or other communications to the Manager and shall certify the name of such person or persons to the Manager and provide a specimen of his or their signatures. The authority of any such person to act on behalf of the Committee shall continue until notice to the contrary is given to the Manager.

15. Amendments and Waivers. Any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and is signed, in the case of an amendment, by the Committee and the Manager, or in the case of a waiver, by the party against whom the waiver is to be effective. No failure or delay by any party in exercising any right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power, or privilege. To the maximum extent permitted by law, (a) no waiver that may be given by a party shall be applicable except in the specific instance for which it was given and (b) no notice to or demand on one party shall be deemed to be a waiver of any obligation of such party or the right of the party giving such notice or demand to take further action without notice or demand.

16. Successors and Assigns. This Agreement may not be assigned by any party hereto without the prior written consent of the other party; provided, that the Manager may assign its rights and duties hereunder in whole or in part to one or more of its affiliates, but no such assignment shall relieve Manager from its obligations hereunder in the event such assignee should fail to perform any of the obligations hereunder. Subject to the foregoing, all of the terms and provisions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective executors, heirs, personal representatives, successors and assigns.

17. Governing Law. This Agreement and the Exhibits hereto shall be governed by and interpreted and enforced in accordance with the laws of the State of Texas, without giving effect to any choice of law or conflict of laws rules or provisions (whether of the State of Texas or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Texas.

18. Counterparts. This Agreement may be executed in any number of counterparts, and any party hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. This Agreement shall become effective when each party hereto shall have received a counterpart hereof signed by the other parties hereto. The parties agree that the delivery of this Agreement may be effected by means of an exchange of facsimile signatures which shall be deemed original signatures thereof.

19. Third Party Beneficiaries. No provision of this Agreement is intended to confer upon any person other than the parties hereto any rights or remedies hereunder; except that the provisions of Section 6(a) are intended for the benefit of the Indemnified Parties specified therein, and, in such case, the intended third party beneficiaries of such Section shall have the right to enforce such Section in their own names.

20. Entire Agreement. This Agreement and the documents, instruments and other agreements specifically referred to herein or delivered pursuant hereto or thereto set forth the entire understanding of the parties with respect to the Account. All Exhibits referred to herein are intended to be and hereby are specifically made a part of this Agreement. Any and all previous agreements and understandings between or among the parties regarding the subject matter hereof, whether written or oral, are superseded by this Agreement.

21. Severability. Any provision of this Agreement which is invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

22. Notices. Any notice, direction, instruction, acknowledgment, or other communication contemplated by this Agreement, including directions provided to the Trustee, shall be in writing. Such communications sent by U.S. mail shall be deemed duly given, made or delivered, when deposited in the mail, addressed to the recipient's address as provided below, and sent by certified or registered mail, postage prepaid. All other communications shall be deemed duly given when received by the recipient. Any writing contemplated herein shall include a writing by electronic means, including e-mail, electronic data transfer, and facsimile. To be valid, a communication must be addressed as follows:

(a) If to the Committee, to:

City of Plano Retirement Security Plan Committee  
c/o City of Plano Human Resources Department  
Katherine McGuire  
Attn: Retirement Administrator  
Facsimile: (972) 461-9370

(b) If to the Manager, to:

Capital One, N.A.  
Wealth and Asset Management  
5718 Westheimer Road, Suite 825  
Houston, TX 77057  
Attn: Eric Plangman  
Facsimile: 713-435-5460

or to such other address or to the attention of such person or persons as the recipient party has specified by prior written notice to the sending party. If more than one method for sending notice as set forth above is used, the earliest notice date established as set forth above shall control.

23. Interpretation.

(a) All captions contained in this Agreement are for convenience of reference only, do not form a part of this Agreement, and shall not affect in any way the meaning or interpretation of this Agreement.

(b) The meaning assigned to each term defined herein shall be equally applicable to both the singular and the plural forms of such term and vice versa, and words denoting either gender shall include both genders as the context requires. Where a word or phrase is defined herein, each of its other grammatical forms shall have a corresponding meaning. The meaning assigned to each defined term herein shall also apply for purposes of each Exhibit to this Agreement except as otherwise specified in the Exhibit.

(c) The terms "hereof," "herein," and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole (including Exhibits) and not to any particular provision of this Agreement. The word "include," "includes," and "including" when used in this Agreement shall be deemed to be followed by the words "without limitation," unless otherwise specified.

(d) When a reference is made in this Agreement to a Section, paragraph, or Exhibit, such reference is to a Section, paragraph, or Exhibit to this Agreement unless otherwise specified.

(e) A reference to any party to this Agreement or any other agreement or document shall include such party's predecessors, successors and permitted assigns.

(f) Reference to any law means such law as amended, modified, codified, replaced, or reenacted, and all rules and regulations promulgated thereunder.

(g) The parties have participated jointly in the negotiation and drafting of this Agreement. Any rule of construction or interpretation otherwise requiring this Agreement to be

construed or interpreted against any party by virtue of the authorship of this Agreement shall not apply to the construction and interpretation hereof.

IN WITNESS WHEREOF, the Committee and the Manager have caused this Investment Management Agreement to be executed by their respective duly authorized representatives on this \_\_\_\_ day of \_\_\_\_\_, 2012 effective as of the Effective Date.

**CITY OF PLANO, TEXAS**

By: \_\_\_\_\_

Bruce D. Glasscock, City Manager

**CITY OF PLANO, TEXAS RETIREMENT  
SECURITY PLAN COMMITTEE**

By: \_\_\_\_\_

Casey Srader, Chairperson of the Committee

**MANAGER**

\_\_\_\_\_  
Capital One, N.A.

By: \_\_\_\_\_

Title: \_\_\_\_\_

**TRUST AGREEMENT BETWEEN CITY OF PLANO, TEXAS AND  
COMERICA BANK, TRUSTEE UNDER  
CITY OF PLANO, TEXAS RETIREMENT SECURITY TRUST**

THIS TRUST AGREEMENT, effective October 20, 2011 (the "Effective Date") is by and between the CITY OF PLANO, TEXAS (the "Employer") and COMERICA BANK, a Texas banking corporation (the "Trustee").

**RECITALS:**

The Employer has established the "CITY OF PLANO, TEXAS RETIREMENT SECURITY TRUST," as amended (the "Plan"), for the exclusive benefit of its employees and their beneficiaries who qualify under the terms and conditions of the Plan; under the Plan, funds will be contributed to a trustee to be held in a trust for the benefit of the Plan participants or their beneficiaries, and a Retirement Committee (the "Committee") as provided in the Plan will administer the Plan.

COMERICA BANK has served as Trustee for the Employer's Plan since July 2007. Employer desires for COMERICA BANK to continue its trustee bank services for the Employer's Plan pursuant to the terms and conditions under this Agreement.

NOW, THEREFORE, the Employer and the Trustee agree:

**ARTICLE I  
MANAGEMENT OF THE TRUST**

The Employer has established an employees' retirement trust under the Plan (the "Trust"). As of the Effective Date, Trustee agrees to manage and hold the assets of the Trust and all income thereon (the "Fund") pursuant to the terms and conditions of this Agreement. This Agreement supersedes all previous trust agreements between the Employer and the Trustee.

**ARTICLE II  
CONTRIBUTIONS TO THE FUND**

The Trustee shall receive and place in the Fund any contributions paid to it by Automated Clearing House ("ACH") transfers from the Employer. The Trustee shall be accountable to the Employer for all such contributions received by the Trustee, but the Trustee shall have no duty to see that the contributions received comply with the provisions of the Plan, nor shall the Trustee be obliged to collect any contributions from the Employer, or otherwise see that contributions are deposited according to the provisions of the Plan.

**ARTICLE III  
PAYMENTS**

The Trustee shall, as directed by the Committee, make payments out of the Fund to such persons (including the Committee or any member thereof), in such manner and amounts, and for such purposes as may be specified in such direction.

**ARTICLE IV  
DIVERSION PROHIBITED**

**4.1** Subject to the provisions of this Article, it shall be impossible, at any time prior to the satisfaction of all liabilities with respect to the Plan participants and their beneficiaries, for any part of the Fund (other than such part as is required to pay taxes and expenses) to be used for, or diverted to, purposes other than for the exclusive benefit of such Plan participants or their beneficiaries. Upon termination of the Plan, and after satisfaction of all liabilities of the Plan, such part of the Fund as may remain because of "erroneous actuarial computations" as defined in Section 1.401-2 of the Federal Income Tax Regulations, Section 401 of the Internal Revenue Code of 1986 as attached (the "Code") or its counterpart hereafter in force, or other applicable authority, may revert to the Employer.

**4.2** In making payment upon a direction authorized herein, the Trustee may accept such direction as a certification that such payment complies with this Article and need make no further investigation.

**4.3** Notwithstanding anything herein contained to the contrary, any contributions made or to be made by the Employer and held by the Trustee pursuant to the provisions of the Plan and this Agreement shall be and hereby are made subject to the condition that such contribution shall be repaid to the Employer by the Trustee without liability therefore to any participant, beneficiary or other person in the event:

(a) The Plan shall not be approved by the Commissioner of Internal Revenue, or his/her delegate, as qualified and exempt under the requirements of Sections 401(a) and 501(a) of the Internal Revenue Code of 1986, as amended (the "Code"); or

(b) The Employer shall make an excessive contribution under a mistake of fact, and the Employer shall demand repayment of such excess contribution at any time within one year following the time of payment, in which event the Trustee shall return the principal amount of such excess contribution, without earnings or gains but reduced for any losses, within such one year period.

**ARTICLE V  
TRUSTEE'S ROLE**

5.1 Except and to the extent that a duly appointed independent Investment Manager or the Employer is exercising investment discretion pursuant to this Agreement, the Trustee shall have the powers and authority customarily granted to and exercised by trustees of qualified retirement plans.

Without limiting the generality of the foregoing, to the extent the Trustee has investment authority, the Trustee may cause any part or all of the Fund to be invested as a part of the collective investment funds maintained by the Trustee or its affiliates. The portion of the Fund so invested may be commingled with the funds of other trusts, to the extent allowed by law. The portion of the Fund so invested shall be subject to all of the provisions of the declaration(s) of trust creating said collective investment fund(s), as amended from time to time. Such declaration(s) of trust, as amended, are hereby (or shall be) incorporated by reference into and made a part of this Agreement.

5.2 The Committee will select an investment manager (or managers) who will direct the Trustee to invest any part of the Fund in any securities or other property (except Employer property or securities), and direct that it make sales of any securities or property constituting part of the Trust, and the Trustee shall act on such directions and shall have no liability for acting in accordance with such directions or for the retention of any securities or property so purchased. The Trustee will be protected in relying upon any authorized written instrument purporting to have been sent by the investment manager which it believes in good faith to be genuine. The Trustee shall be fully protected in relying upon the certification of the Committee with respect to the selection of such investment manager and it shall not be the responsibility of the Trustee to determine or review investment instructions given to it by such investment manager. Each investment manager shall be a fiduciary under the Trust and shall acknowledge that it is a fiduciary under the Trust in writing delivered to the Trustee and the Employer.

**ARTICLE VI  
TERM, TAXES, TRUSTEE'S COMPENSATION, AND OTHER EXPENSES**

6.1 The initial term of this Contract shall be a period of twelve (12) months commencing upon the effective date hereof; provided however, that the City shall have the right and option to extend the term hereof by three (3) additional twelve (12) month periods by giving written notice to Trustee 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.

6.2 The Trustee shall pay out of the Fund all real and personal property taxes, income taxes and other taxes of any kind levied or assessed under existing or future laws upon or in respect to the Trust or any money, property or securities in the Fund.

6.3 If any taxes are assessed on or in respect to the Trust or the Fund, the Trustee may assume that the assessment is lawful unless the Employer, after notice,

advises the Trustee in writing to the contrary; in such event, the Trustee at the request and expense of the Employer may contest the validity of such taxes under the direction of the Employer, or its counsel, or the Employer may itself contest such validity.

6.4 The Trustee shall be entitled to receive compensation pursuant to Exhibit "A" to this Agreement. The Trustee's compensation shall be payable from the Fund, unless and except to the extent that the Employer shall pay the same. However, the total compensation to be paid to Trustee shall not exceed **THIRTY ONE THOUSAND AND NO/100 DOLLARS (\$31,000.00)** annually.

6.5 All payments under this Article may be made without seeking the approval or directions of the Committee.

6.6 The Employer intends to maintain the qualification of the Plan under Sections 401(a), 404, and 501(a) of the Code or their respective counterparts as hereafter in effect. Until advised to the contrary, the Trustee may assume that the Plan is so qualified and that the Trust is exempt from federal income tax. The Employer shall be solely responsible for taking such actions as are necessary to secure the determination of the Internal Revenue Service that the Trust is exempt from taxation under Section 501(a) of the Code and for preserving the tax exempt status of the Trust, including, but not limited to, the duty to provide professional representation for the Trust in administrative contests or litigation which affects or may affect the tax exempt status of the Trust.

## ARTICLE VII ACCOUNTS OF TRUSTEE

7.1 The Trustee shall render monthly, quarterly and annual accounts of its transactions to the Employer and to the Committee; the Employer and the Committee may approve such accounts by written instruments delivered to the Trustee. If neither the Employer nor the Committee files with the Trustee written objection to any such account within 90 days of receipt, the Employer and the Committee shall be deemed to have approved the account; and in such case, or upon the written approval of the Employer or the Committee, the Trustee shall be released, relieved and discharged with respect to all matters set forth in such account as though the same had been judicially settled.

7.2 No person except the Employer or the Committee may require an accounting or bring any action against the Trustee with respect to the Trust or its actions as Trustee.

7.3 The Trustee shall maintain appropriate records concerning all disbursements from the Trust, including benefit payments to Plan participants or their beneficiaries.

7.4 The Trustee utilizes various standard industry pricing services and brokerage contacts to provide current pricing information for active publicly traded securities. The Trustee shall attempt to provide a reasonably accurate current market

value for assets not publicly traded. Many fixed income securities are priced on a matrix system, resulting in a mathematical approximation of price derived by computer. Although the Trustee will make reasonable and good faith efforts to provide accurate pricing, in some instances prices may not reflect the most accurate pricing readily available or the true value of the asset. The Trustee shall have no liability for such an occurrence.

**ARTICLE VIII  
TRUSTEE'S RESPONSIBILITIES AND IMMUNITIES**

**8.1** The Trustee shall not be responsible for:

- (a) Any actuarial matters, or the adequacy of the Fund to meet the requirements of the Plan;
- (b) Making or enforcing any collection from the Employer.

**8.2** The Trustee shall be fully protected in relying and acting upon:

- (a) A certification of the Committee (or such other person as the Committee may designate) with respect to any instruction, direction or approval of the Committee;
- (b) A certification of any officer of the Employer as to the membership of the Committee as it now exists and the continuance of such membership until a new certification is filed;
- (c) Any instrument, certificate or paper believed by it to be genuine and signed or presented by the proper person or persons; and, as to all of the foregoing, the Trustee is hereby relieved of any duty to make investigation or inquiry as to any statement contained in any such writing and is authorized to accept the same as conclusive evidence of the truth and accuracy of the statements therein contained.

**8.3** The Trustee shall be under no liability for any payment made pursuant to written directions of the Committee, or for the proper application of any payment so directed, and it shall be under no duty to inquire whether the payment so directed conforms to the Plan.

**8.4** If responsibility for investment management resides directly with the Employer and/or an outside investment manager, the following will apply:

- (a) The Trustee subscribes to various standard industry notification services pertaining to capital actions including puts, calls, tenders, mergers, conversions, stock distributions and other activities. The Trustee agrees to process assets in accordance with the instructions of the Employer and/or investment manager, provided the Trustee receives timely written authorization from the Employer and/or investment manager. In no event

shall the Trustee be liable for failure to respond to a capital action if proper notification and authorization has not been provided to the Trustee by the Employer and/or investment manager within the required time frames as specified in the capital action notice. The Trustee shall attempt to notify the Employer and/or investment manager if it becomes aware of a voluntary action or provision which may affect an asset, but shall not be obligated to do so, and under no circumstances shall the Trustee be liable for failure to provide such notice. Further, the Trustee shall have no responsibility and no obligation with respect to any asset to take any action which shall pertain to stock dividends, warrants, rights to subscribe, offers to purchase, exercising of options, plans of reorganization, plans of exchange of securities, claims or settlements pertaining thereto, other than that which is directly authorized by the Employer and/or investment manager by written instruction received by the Trustee within required time frames.

(b) The Trustee shall have no obligation or liability with respect to the receipt, distribution, or reporting of an event of a bond default or a filing of a bankruptcy, and shall have no obligation or liability for the filing of any related report or claim other than that which is directly authorized by the Employer and/or investment manager by written instruction received by the Trustee within required time frames.

(c) The Trustee shall not be liable for any loss resulting from the physical presence of any property in a foreign country including, but not limited to, losses resulting from nationalization, expropriation, exchange controls or acts of war or terrorism.

8.5 The Trustee shall not be liable hereunder, except for its own gross negligence or willful misconduct.

#### ARTICLE IX CHANGE OF TRUSTEE

The Trustee may resign at any time by written notice to the Employer which shall be effective 60 days after delivery. The Trustee may be removed at any time by the Employer by written notice to the Trustee which shall be effective 60 days after delivery. Prior to the effective date of such resignation or removal, the Employer shall appoint a successor Trustee which shall have the same powers and duties as are conferred upon the Trustee hereunder, and in default thereof, such successor Trustee may be appointed by a court of competent jurisdiction. Trustee shall deliver all property of the Fund, less such reasonable amount as it shall deem necessary to provide for its expenses, compensation and any taxes or advances chargeable or payable out of the Fund, on the effective date of the resignation or removal, or as soon thereafter as practicable. The successor Trustee shall thereupon have the same powers and duties as are conferred upon the Trustee. The receipt and acceptance by the successor Trustee of the assets of the Fund and such records and accounts shall be a full and complete acquittance and discharge of the Trustee. No successor Trustee shall have any obligation or liability with respect to the acts or omissions of its predecessors.

**ARTICLE X  
AMENDMENTS**

Subject to Article IV hereof, this Agreement may be amended or modified at any time by the Employer, but the duties or obligations of the Trustee hereunder shall not be increased without its consent. Any amendment or modification shall be by written instrument delivered to the Trustee.

**ARTICLE XI  
TERMINATION**

**11.1** This Agreement may be terminated at any time by the Employer. Upon such termination, or upon the dissolution or liquidation of the Employer, or upon termination of this Trust, the Trustee shall first reserve such reasonable amounts as the Trustee may deem necessary to provide for the payment of any expenses then or thereafter chargeable to the Fund. The balance of the Fund, together with any excess amounts reserved by the Trustee in accordance with the preceding sentence, shall be liquidated and distributed by the Trustee upon direction of the Committee to or for the benefit of the Plan participants and their beneficiaries as provided in the Plan. The Committee shall have full responsibility to see that such distribution is proper and within the terms of the Plan, this Trust and applicable law and regulations of governmental agencies. The Trustee shall not be obliged to distribute any portion of the Fund upon termination of the Plan until it receives notice of a favorable ruling from the Internal Revenue Service upon the Employer's application for determination as to the effect of termination on the Plan's qualified status. Such liquidation and distribution may be implemented through the continuance of this Trust, the execution of a new trust, or by the purchase of nontransferable annuity contracts for persons entitled to distributions. Except as provided in Section 4.3, the Employer shall not have a beneficial interest in the Fund either during its continuance or upon termination of this Trust.

**11.2** Upon termination of this Trust, the Trustee shall have all of the powers provided herein as are necessary or desirable for the orderly liquidation and distribution of the Fund.

**ARTICLE XII  
INTERPRETATION**

This Agreement and the Trust created hereby shall be construed, regulated and administered under the laws of Texas to the extent not preempted by federal law, and the Trustee shall be liable to account only in the courts of that State. All contributions are effective when received by the Trustee. The Trustee may at any time initiate legal action for the settlement of its accounts or for the determination of any question of construction which may arise or for instructions, the only necessary parties defendant to such action shall be the Employer and the Committee, except that the Trustee may elect to bring in others as defendants.

**ARTICLE XIII  
SPENDTHRIFT CLAUSE**

Except as otherwise provided in the Plan or as required by law, no right or claim of any Plan participant or beneficiary to any of the monies or other assets of the Fund may be assigned or pledged, nor shall such right or claim be subject to garnishment, attachment, execution or levy of any kind, and any attempt to transfer, assign, or pledge the same will not be recognized by the Trustee.

**ARTICLE XIV  
MISCELLANEOUS**

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

**TRUSTEE AT ITS OWN EXPENSE IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF TRUSTEE'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF TRUSTEE'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. TRUSTEE 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 TRUSTEE FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN**

BEHALF AND TRUSTEE SHALL BE LIABLE FOR ALL REASONABLE COSTS INCURRED BY THE CITY.

**14.2 Insurance.** Trustee shall procure and maintain for the duration of the contract insurance as set forth in Exhibit "B" attached hereto and incorporated herein by reference.

**14.3 Affidavit of No Prohibited Interest.** Trustee 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 Comerica shall execute the affidavit shown in Exhibit "C". Trustee understands and agrees that the existence of a prohibited interest during the term of this Agreement will render the Agreement voidable.

IN WITNESS WHEREOF, this instrument has been executed on the 7<sup>th</sup> day of October, 2011, and effective as of the date noted above.

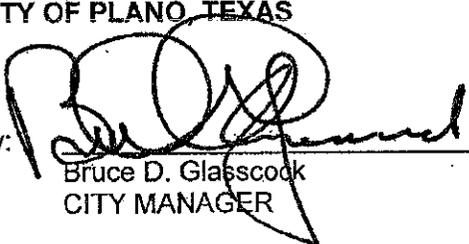
COMERICA BANK, TRUSTEE

Date: 10/7/2011

By:   
Name: Cliff Langwith  
Title: Vice President

CITY OF PLANO, TEXAS

Date: 10/20/11

By:   
Bruce D. Glasscock  
CITY MANAGER

APPROVED AS TO FORM:

  
Diane C. Wetherbee, CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS )  
 )  
COUNTY OF DALLAS )

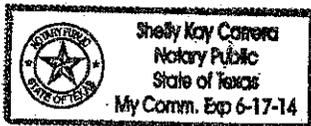
This instrument was acknowledged before me on the 7<sup>th</sup> day of OCTOBER, 2011, by **CLIFF LANGWITH, Vice President**, of **COMERICA BANK**, a Texas banking corporation, on behalf of said banking corporation.



Karen Hoskins  
Notary Public, State of Texas

STATE OF TEXAS )  
 )  
COUNTY OF COLLIN )

This instrument was acknowledged before me on the 20 day of October, 2011 by **BRUCE D. GLASSCOCK**, City Manager of the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, on behalf of said corporation.



Shelly Kay Conner  
Notary Public, State of Texas

**City of Plano**

**Comerica Bank – Fee Exceptions  
Competitive Sealed Bid No. 2011-173-C  
CSP- Retirement Security Plan Trustee Bank Services**

**Market Value Fee**

First \$50,000,000 .0004 (4 basis points)  
Next \$50,000,000 .00025 (2.5 basis points)

**Activity Fee**

Wire Transfers Out \$17.00 per wire

**Pension Payment Services**

Postage Charged at Current Rate

EXHIBIT A  
PAGE 1 OF 2

EXHIBIT A  
PAGE 11 OF 18

Supplier: **COMERICA BANK**

**FEE SCHEDULE  
ATTACHMENT B  
RETIREMENT SECURITY PLAN  
TRUSTEE BANK SERVICES**

Provide the fee for each of the itemized services as listed below:

	SERVICE	Estimated Annual Qty	Fee Cost/each	Extended Cost
1	Fund Transfer: Buy or Sell	75	\$0.00	\$0.00
2	Process monthly retiree distribution via ACH	419	\$1.25	\$523.75
3	Process monthly retiree distribution via check	30	\$1.25	\$37.50
4	Process lump sum distribution as direct rollover	22	\$15.00	\$330.00
5	Process transfer of federal income tax	21	\$0.00	\$0.00
6	Process transfer of state income tax where applicable	37	\$0.00	\$0.00
7	Preparation and distribution of year end 1099's	471	\$0.00	\$0.00
8	Prepare monthly reports	12	\$0.00	\$0.00
9	Prepare quarterly reports	4	\$0.00	\$0.00
10	Prepare annual reports (calendar year and fiscal year)	2	\$0.00	\$0.00
11	Process non response mandatory IRA rollovers	1	\$15.00	\$15.00

**Total Extended Cost = \$ 906.25**  
(sum of extended cost line 1 – 11)

EXHIBIT   A    
PAGE   2   OF   2



# CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)  
08/25/2011

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Aon Risk Services Northeast, Inc. New York NY Office 199 Water Street New York NY 10038-3551 USA	CONTACT NAME:	
	PHONE (A/C. No. Ext): (866) 283-7122	FAX (A/C. No.): (847) 953-5390
E-MAIL ADDRESS:		
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURED Comerica Incorporated Comerica Bank Tower 1717 Main Street, 3rd Floor, MC 6585 Dallas TX 75201 USA	INSURER A: Liberty Insurance Corporation	42404
	INSURER B: Liberty Mutual Insurance Co.	23043
	INSURER C: Liberty Mutual Fire Ins Co	23035
	INSURER D: St Paul Fire & Marine Insurance Co.	24767
	INSURER E:	
	INSURER F:	

COVERAGES **CERTIFICATE NUMBER: 570043603295** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS. **Limits shown are as requested**

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
B	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input type="checkbox"/> OCCUR  GENT. AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC			TB1641004358041	04/01/2011	04/01/2012	EACH OCCURRENCE	\$2,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$100,000
							MED EXP (Any one person)	\$5,000
							PERSONAL & ADV INJURY	\$2,000,000
							GENERAL AGGREGATE	\$4,000,000
							PRODUCTS - COMP/OP AGG	\$2,000,000
C	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS			AS2-641-004358-031	04/01/2011	04/01/2012	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
							BODILY INJURY (Per person)	
							BODILY INJURY (Per accident)	
							PROPERTY DAMAGE (Per accident)	
D	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$10,000			QK09002329 Umbrella Liability SIR applies per policy terms & conditions	04/01/2011	04/01/2012	EACH OCCURRENCE	\$2,000,000
							AGGREGATE	\$2,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y/N N	WA7640004358121 Deductible (AOS)	04/01/2011	04/01/2012	<input checked="" type="checkbox"/> WC STATUTORY LIMITS	OTHER
							E.L. EACH ACCIDENT	\$1,000,000
							E.L. DISEASE-EA EMPLOYEE	\$1,000,000
							E.L. DISEASE-POLICY LIMIT	\$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

RE: Bid #2011-173-C. City of Plano is included as Additional Insured as required by written contract, but limited to the operations of the Insured under said contract, per the applicable endorsement with respect to the General Liability policy. A waiver of Subrogation is granted in favor of Certificate Holder as required by written contract but limited to the operations of the Insured under said contract, with respect to the General Liability and Workers' Compensation policies.

## CERTIFICATE HOLDER

## CANCELLATION

City of Plano Office of Risk Management 7501 A Independence Pkwy. Plano TX 75025 USA	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE  <i>Aon Risk Services Northeast Inc.</i>

# ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
5/31/2011

**PRODUCER**  
**Alliant Insurance**  
 New York - Executive Risk  
 99 Park Avenue - 19th Floor  
 New York, NY 10016

**INSURED**  
**Comerica, Inc.**  
 1717 Main Street  
 Comerica Bank Tower  
 Dallas, TX 75201

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: Everest National Insurance Comp	
INSURER B: Illinois National Insurance Com	23817
INSURER C: Max Bermuda Ltd.	
INSURER D: XL Specialty Insurance Company	
INSURER E:	

### COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
		<b>GENERAL LIABILITY</b> <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$
		<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
		<b>EXCESS/UMBRELLA LIABILITY</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
		<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				<input type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A		OTHER BPL 1st xs	FL2EE00016111	06/01/11	06/01/12	\$5MM x \$5MM
B		BPL 2nd xs	018782888	06/01/11	06/01/12	\$10MM x \$10MM
C		BPL 3rd xs	678244371PLFF201	06/01/11	06/01/12	\$5MM x \$20MM

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS  
 D ELU1214311 Eff Date: 06/01/11 Exp Date: 06/01/12 Limit: \$5MM x \$25MM - BPL 4th xs  
 A FL5EE00119111 Eff Date: 06/01/11 Exp Date: 06/01/12 Limit: \$5MM x \$30MM - BPL 5th xs  
 C 678244371PLFF2011 Eff Date: 06/01/11 Exp Date: 06/01/12 Limit: \$5MM x \$35MM - BPL 6th xs

<b>CERTIFICATE HOLDER</b>	<b>CANCELLATION 30 Days for Non-Payment</b>
FOR INFORMATION PURPOSES ONLY	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL _____ DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.
	AUTHORIZED REPRESENTATIVE <i>Fred T. Podolski</i>
	EXHIBIT <u>B</u> PAGE <u>2</u> OF <u>5</u>

## IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

## DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

EXHIBIT B  
PAGE 3 OF 5

# ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
8/29/2011

**PRODUCER**  
New York - Executive Risk  
99 Park Ave, Suite 1910  
New York, NY 10016

**INSURED**  
Comerica, Inc.  
1717 Main Street  
Comerica Bank Tower  
Dallas, TX 75201

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

<b>INSURERS AFFORDING COVERAGE</b>	<b>NAIC #</b>
INSURER A: Underwriters At Lloyds, London	
INSURER B: Illinois National Insurance Co.	
INSURER C: HCC Specialty Insurance Co.	
INSURER D:	
INSURER E:	

**COVERAGES**

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
		<b>GENERAL LIABILITY</b> <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$
		<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
		<b>EXCESS/UMBRELLA LIABILITY</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
		<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				<input type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A		OTHER FI Bond	B0509QA093010	12/01/10	12/01/11	\$2,000,000
B		D&O	01-421-24-22	1/1/11	1/1/12	\$2,000,000
C		Fiduciary	S710-60188	11/30/10	11/30/11	\$2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

<b>CERTIFICATE HOLDER</b> City of Plano Office of Risk Management Bid #2011-173-C 7501 A Independence Pkwy Plano, TX 75025	<b>CANCELLATION 30 Days for Non-Payment</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE <i>Fred T. Poddaris</i>
--	---

EXHIBIT B  
PAGE 4 OF 5

## IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

## DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

EXHIBIT B  
PAGE 3 OF 5

AFFIDAVIT OF NO PROHIBITED INTEREST

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

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

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

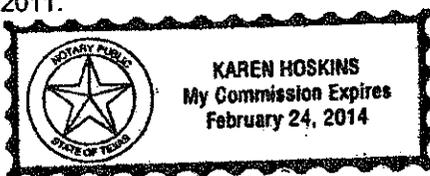
I further understand and acknowledge that a violation of Section 11.02 of the City Charter at anytime during the term of this contract will render the contract voidable by the City.

**COMERICA BANK**

By: Cliff Langwith  
Signature  
Cliff Langwith  
Print Name  
Vice President  
Title  
10/7/2011  
Date

STATE OF TEXAS §  
COUNTY OF DALLAS §

SUBSCRIBED AND SWORN TO before me this 7<sup>th</sup> day of OCTOBER, 2011.



Karen Hoskins  
Notary Public, State of Texas

EXHIBIT C  
PAGE 1 OF 1

EXHIBIT A  
PAGE 18 OF 18

**EXHIBIT B**

**INVESTMENT POLICY**

**STATEMENT OF INVESTMENT OBJECTIVES AND POLICIES  
CITY OF PLANO RETIREMENT SECURITY PLAN**

Adopted \_\_\_\_\_ :

Introduction

This Statement of Investment Objectives and Policies (this "Policy") is adopted by the Retirement Security Plan Committee (the "Committee") as of the date specified above. All capitalized terms used herein and not otherwise defined shall have the meaning specified by the City of Plano Retirement Security Plan (the "Plan"). In the event of any conflict between the terms of this Policy and the terms of the Plan Document, the terms of the Plan Document shall be controlling.

Purpose

The Committee has established this Policy for the purpose of identifying the risk and return objectives for the Plan and providing guidelines, limitations, and directions for the investment of the assets of the Plan. This Policy provides such objective, guidelines, limitations, and directions for the assets contributed to the Plan pending the adoption of a comprehensive investment policy for the Plan.

This document represents the conclusions and decisions made after a deliberate and focused review of the Plan's investment objectives, risk tolerance levels, time horizons, income needs, taxation, and other investment concerns, taking into account the requirements of applicable law. Notwithstanding anything contained herein to the contrary, the Committee may waive any requirement, limitation, or provision of this Policy to the extent the Committee determines in their discretion that such waiver is prudent and consistent with their fiduciary obligations under applicable law.

Relationship to Plan and Funding Policy

The City has established a Trust Fund ("Trust Fund") under the Plan to fund certain Plan benefits for eligible Participants and their beneficiary. The Committee has adopted this Policy and desires to incorporate this policy into the agreement to comply with Section 802.204 of the Government Code.

Responsibilities of the Committee

The Committee intends to measure portfolio management performance quarterly and to evaluate performance over a three to five year period or full market cycle. Nevertheless, Committee may terminate the Investment Manager prior to such time if the Investment Manager is under-performing consistently with no adequate plan for improvement. Furthermore, the Committee retains the right to terminate the Investment Manager at any time for any reason subject only to any notice required under the terms of the applicable agreement with the Investment Manager.

The Committee shall not make or control specific investment decisions. The Investment Manager shall be solely responsible for the investment of the portion of the Trust Fund with respect to which the Investment Manager has been retained.

The Committee shall avoid any conflict of interest or self-dealing in the selection of the Investment Manager. No Committee member may be affiliated with, or receive any compensation or other economic benefit, directly or indirectly, from the Investment Manager or any investment selected by the Investment Manager. A Committee member shall not be considered to have such a conflict solely because a committee member has funds invested in the same investment vehicles as the Trust Fund or has an account at or receives services from the same bank or other institution as the committee member or the Investment Manager.

### Investment Objective

The investment objective for the Trust Fund is to achieve an average annual rate of return equal to or above the targeted annual rate of return (including interest, dividends, and capital gains and after deducting management, administrative, and transaction costs) of seven and 75/100 percent (7.75%) for the aggregate investments over an evaluation period of three to five years.

The Committee does not expect that the investment objective will change frequently. Short-term changes in the financial markets generally will not require an adjustment in the investment objective.

### Investment Philosophy

The assets of the Trust Fund shall be invested in a manner that is consistent with generally accepted standards of fiduciary responsibility, and the requirements of applicable law. The Investment Manager shall observe the safeguards that would guide a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. All transactions undertaken on behalf of the Trust Fund shall be for the exclusive benefit of the Participants and their beneficiaries.

The City intends to maintain the qualification of the Plan under Sections 401(a), 404 and 501(a) of the Code or their respective counterparts as hereafter in effect. Until advised to the contrary, the Trust Fund is exempt from federal income tax. As such, income tax efficiencies are generally not a factor and should not affect investment decisions regarding the Trust Fund. However, the Trust Fund should be invested in a manner that does not generate unrelated business taxable income, excise taxes, or other-taxable income under federal or state law.

The Trust Fund shall be actively managed by the Investment Manager on a fully discretionary basis subject to the terms of this Policy and provided that the level of asset turnover and trading action is prudent taking into account expenses incurred. To the extent prudent the Trust Fund should be essentially fully invested at all times.

### Asset Allocation

Taking into consideration the long term performance and risk characteristics of various asset classes and balancing the risk and rewards of market behavior with the long term objectives of the Trust Fund, the Committee has selected the following assets classes for the investment of the assets of the Trust Fund:

<u>Asset Class</u>	<u>Allocation Range</u>
Cash Equivalents	0-5%

Fixed Income	25-40%
Domestic Equity	45-70%
International Equity	5-15%
Real Estate	0-5%

Based on the Trust Fund's investment horizon, risk tolerances, performance expectations, the Investment Manager shall maintain the Trust's investments within the acceptable allocation ranges (as a percentage of total assets of the Trust Fund) set forth above.

Notwithstanding the allocation range specified above, the amount of assets invested in cash equivalents shall not be less than the amount required to cover current liabilities.

Equity investments shall be further maintained within the following market capitalization guidelines:

<u>Market Capitalization</u>	<u>Allocation Range</u>
Total Large Cap	40-60%
Total Medium Cap	25-40%
Total Small Cap	3-20%

The Investment Manager should maintain the Plan's investments within the acceptable ranges set forth above and with the long-term goal of achieving the target allocations; provided, however, that the Investment Manager may deviate from the acceptable ranges set forth above if such deviation is consistent with the Investment Manager's duty of prudence under this Policy and applicable law and if written notice of such deviation is promptly provided to the Committee.

Such notice must be separate from the periodic reports the Investment Manager regularly provides to the Committee and must specify that a deviation has occurred and explain the reason for and expected duration of such deviation.

Consistent with the desire for prudent diversification, this Policy is based on the assumption that the volatility of each asset class should not differ significantly from its respective market. Consequently, it is expected that the volatility of the total portfolio, in aggregate, will be reasonably close to the volatility of a weighted composite of market indices.

### Diversification

Investment diversification is important to minimize the risk of large losses to the Trust Fund. It shall be the responsibility of the Investment Manager to maintain a diversified portfolio and acceptable balance between various industries, market sectors, credit ratings, maturity ranges, and other appropriate measures of diversification, including country and region allocations for international investments. No percentage of the portfolio in common stocks should exceed the S&P 500 percentage allocation for each individual classification.

### Investment Guidelines and Limitations

The Investment Manager shall comply with the specific investment guidelines set forth below unless, in

a particular case, the investment manager determines that compliance with such guidelines would clearly not be prudent or would not be consistent with its fiduciary obligations or applicable law. In each such case, the Investment Manager shall promptly notify the Committee of the investments which are outside the scope of the guidelines set forth below, the reasons for making such investment, and the expected duration of such investments.

Only the following types of readily marketable investments are permitted.

- Cash equivalents, including certificates of deposit at U.S. banks, money market and similar bank accounts, and money market mutual funds;
- Corporate bonds, including convertibles;
- Commercial paper;
- U.S. Government and agency securities;
- Common and preferred stocks; and
- Mutual funds.

The Investment Manager shall

- Emphasize quality in security selection;
- Avoid the risk of large loss through diversification;
- Not invest in any assets that would subject the Trust Fund to any state or federal unrelated business income tax or that would generate unrelated business taxable income for the Trust;
- Not invest any portion of the Trust Fund beyond the reach of the United States courts;
- Periodically review asset holdings for general compliance with this Policy; and
- Effect transactions for the Plan subject to the "best price in execution" available to the Investment Manager.

#### Amendment

This Policy shall be reviewed annually by the Committee to ensure that it remains relevant and effective within prevailing economic conditions and other conditions affecting the Trust Fund. Such evaluation shall generally occur within 90 days after the end of each calendar year.

The Committee may amend this Policy at any time by a written instrument duly adopted by the Committee and provided to the Investment Manager.

**Retirement Security Plan Investment Manager Services  
Best and Final Offer  
City of Plano**

Assumptions Total Portfolio: \$87,600,000.00			
ASSETS			FEE
• First	\$ 1,000,000	@ 1.25%	\$ 1,000,000
• Next	\$ 1,000,000	@ .90%	\$ 9,000
• Next	\$ 3,000,000	@ .80%	\$24,000
• Next	\$ 5,000,000	@ .70%	\$35,000
• Next	\$15,000,000	@ .50%	\$75,000
• Over	\$25,000,000	@ .40%	\$62,500
<b>TOTAL</b>			<b>\$87,600,000</b>
<b>(60%) DISCOUNT</b>			<b>(\$243,540)</b>
<b>TOTAL FEE</b>			<b>\$162,363 = 18.5 bps</b>

## EXHIBIT D

### INSURANCE REQUIREMENTS

#### 1.0 General Provisions

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

#### 2.0 Minimum Insurance Coverage & Limits

**2.1 Commercial General Liability.** Contractor shall maintain commercial general liability and, if necessary commercial umbrella insurance as specified below.

2.1.1 Commercial general liability insurance shall be written on an ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, product-complete operations, personal and advertising injury and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

2.1.2 City, the City Council and its members, the City's agents, officers, directors and employees shall be included as an additional insured under the commercial general liability using **ISO additional insured endorsement CG 20 10 and CG 20 37** or their equivalent, including coverage for City with respect to liability arising out of the completed operations of Contractor.

2.1.3 Limits of Insurance

2.1.3.1 \$1,000,000 Per Occurrence

2.1.3.2 \$1,000,000 Personal/Advertising Injury

2.1.3.3 \$2,000,000 General Aggregate

2.1.3.4 \$2,000,000 Products/Completed Operations Aggregate

**2.2 Professional Liability-Errors and Omissions.** Contractor shall maintain commercial professional liability insurance covering errors, including omissions, due to negligence in the performance or failure to perform professional services under this contract in accordance with Federal and State Laws and the Retirement Security Plan and policy.

2.2.1 Limits of Insurance

2.2.1.1 \$1,000,000 Per Occurrence

**2.3 Commercial Crime-Fidelity.** Contractor shall maintain commercial crime employee dishonesty policy covering loss including but not limited to theft committed by employees, burglary, robbery, theft, forgery, computer fraud and extortion, for loss of or damage to money, securities and other property.

2.3.1 Limits of Insurance

2.3.1.1 \$1,000,000 Per Occurrence

2.3.1.2 \$2,000,000 Aggregate

**2.4 Fiduciary Liability.** Contractor shall maintain a fiduciary liability policy covering loss of or damage to money, securities and other property for failure to prudently act or breach of their fiduciary duties in the performance of professional services under this contract in accordance with Federal and State Laws and the Retirement Security Plan and policy.

2.4.1 Limits of Insurance

2.4.1.1 \$1,000,000 Per Occurrence

2.4.1.2 \$2,000,000 Aggregate

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

2.6 Contractor may obtain coverage for the above as an endorsement to their General Liability policy or as a stand-alone policy.

3.0 Evidence of Insurance

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

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

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

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

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

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



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
10/23/2012

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Marsh USA Inc. Three James Center 1051 East Cary Street, Suite 900 Richmond, VA 23219  407922-CONA1-Prim-12-13	<b>CONTACT NAME:</b> PHONE (A/C, No, Ext): _____ FAX (A/C, No): _____ E-MAIL ADDRESS: _____ <b>PRODUCER CUSTOMER ID #:</b> _____	
	<b>INSURER(S) AFFORDING COVERAGE</b>	
<b>INSURED</b> Capital One Financial Corp. its' affiliates and subsidiaries including Capital One National Association Attn: Carl Miller 12075-0250 15000 Capital One Drive Richmond, VA 23238	<b>INSURER A:</b> Federal Insurance Company	20281
	<b>INSURER B:</b> Axis Insurance Company	37273
	<b>INSURER C:</b>	
	<b>INSURER D:</b>	
	<b>INSURER E:</b>	
	<b>INSURER F:</b>	

**COVERAGES**                      **CERTIFICATE NUMBER:** CLE-003876594-02                      **REVISION NUMBER:** 2

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>GENERAL LIABILITY</b> <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE  DEDUCTIBLE RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						<input type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Bankers Professional Liability			8211-9323	06/30/2012	06/30/2013	BPL Limit: 15,000,000
B	Financial Institution Bond			MNN71855102012	06/30/2012	06/30/2013	FI Bond Limit: 10,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

<b>CERTIFICATE HOLDER</b>  Bid No: 2012-222-C City of Plano- Purchasing Division Attn: Sharron Mason-Sr. Buyer P.O. Box 860358 Plano, TX 75086-0358	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  <b>AUTHORIZED REPRESENTATIVE</b> of Marsh USA Inc. Barbara B. Cannady <i>Barbara B. Cannady</i>
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# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
10/22/2012

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Marsh USA Inc. Three James Center 1051 East Cary Street, Suite 900 Richmond, VA 23219 Attn: Attn: Donna Orange 804-344-8651 407922-CONA-5MM-12-13	<b>CONTACT NAME:</b> PHONE (A/C, No, Ext): E-MAIL ADDRESS:	FAX (A/C, No):
	<b>INSURER(S) AFFORDING COVERAGE</b>	
<b>INSURED</b> Capital One National Association Attn: Carl Miller 12075-0150 15000 Capital One Drive Richmond, VA 23238	INSURER A : St. Paul Fire & Marine Ins Co	24767
	INSURER B : Liberty Insurance Corporation	42404
	INSURER C : Travelers Property Casualty Co. Of America	25674
	INSURER D :	
	INSURER E :	
	INSURER F :	

**COVERAGES**                      **CERTIFICATE NUMBER:** CLE-003876367-02                      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> \$2,000,000 PER LOCATION AGGREGATE GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC			ZLP12T65793	02/28/2012	02/28/2013	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 20,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	<b>AUTOMOBILE LIABILITY</b>			ZLP12T65793 (AOS)	02/28/2012	02/28/2013	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
A	<input checked="" type="checkbox"/> ANY AUTO			ZLP12S09553 (VA)	02/28/2012	02/28/2013	BODILY INJURY (Per person) \$
C	<input type="checkbox"/> ALL OWNED AUTOS		<input type="checkbox"/> SCHEDULED AUTOS	BA4B480427 (MA)	02/28/2012	02/28/2013	BODILY INJURY (Per accident) \$
	<input checked="" type="checkbox"/> HIRED AUTOS		<input checked="" type="checkbox"/> NON-OWNED AUTOS				PROPERTY DAMAGE (Per accident) \$
							COMP & COLL DED \$ 500
A	<input checked="" type="checkbox"/> UMBRELLA LIAB		<input checked="" type="checkbox"/> OCCUR	ZLP12T65793	02/28/2012	02/28/2013	EACH OCCURRENCE \$ 5,000,000
	<input type="checkbox"/> EXCESS LIAB		<input type="checkbox"/> CLAIMS-MADE				AGGREGATE \$ 5,000,000
	<input checked="" type="checkbox"/> DED		RETENTION \$				\$
B	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>			WA7-65D289864-022 (AOS)	02/28/2012	02/28/2013	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER
B	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		<input type="checkbox"/> Y <input checked="" type="checkbox"/> N / A	WC7-651289864-012 (OR & WI)	02/28/2012	02/28/2013	E.L. EACH ACCIDENT \$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
							E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

The City of Plano, the City Council and its members, the City's agents, officers, directors, and employees are included as additional insured (except workers' compensation) under a blanket endorsement where required by written contract. This insurance is primary and non-contributory over any existing insurance and limited to liability arising out of the operations of the named insured and where required by written contract.

### CERTIFICATE HOLDER

Bid No. 2012-222-C  
 City of Plano - Purchasing Division  
 Attn: Sharron Mason - Sr. Buyer  
 P.O. Box 860358  
 Plano, TX 75086-0358

### CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE  
 of Marsh USA Inc.

Donna M. Orange



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**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		11/26/12		
Department:		Purchasing		
Department Head		Diane Palmer-Boeck		
Agenda Coordinator (include phone #): <b>Earl Whitaker x7074</b>				
<b>CAPTION</b>				
To approve the purchase of one (1) Ford F-750 Truck Chassis from Chastang Ford, in the amount of \$67,760, & one (1) Petersen Crane/Brush Truck Body from Heil of Texas, in the amount of \$61,732, totaling \$129,492 for the Fleet Department, to be utilized by Environmental Services, through an existing contract/agreement with TASB/Buyboard, and authorizing the City Manager to execute all necessary documents. (TASB/Buyboard contract #358-10 & 357-10)				
<b>FINANCIAL SUMMARY</b>				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: <b>2012-13</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget	0	135,000	0	<b>135,000</b>
Encumbered/Expended Amount	0	0	0	<b>0</b>
This Item	0	-129,492	0	<b>-129,492</b>
<b>BALANCE</b>	0	5,508	0	<b>5,508</b>
<b>FUND(s):     EQUIPMENT REPLACEMENT FUND</b>				
<b>COMMENTS:</b> Funds are included in the FY 2012-13 Adopted Budget to purchase One (1) Ford F-750 Chasis and One (1) Heil Refuse Crane Body for the replacement of unit #02802 in Cost Center #751/Special Waste. Remaining balance will be used for other Fleet and Equipment purchases. <b>STRATEGIC PLAN GOAL:</b> Providing a Refuse Crane/Brush Truck for the City's Special Waste Department relates to the City's Goal of a Financially Strong City with Service Excellence.				
<b>SUMMARY OF ITEM</b>				
Staff recommends the purchase of one (1) Ford F-750 Truck Chassis from Chastang Ford in the amount of \$67,760, & one (1) Petersen Crane/Brush Truck Body from Heil of Texas in the amount of \$61,732, totaling \$129,492 for the Fleet Department, to be utilized by Environmental Services, through an existing contract/agreement with TASB/Buyboard. The City is authorized to purchase from a Local Cooperative Organization pursuant to Chapter 271 subchapter F of the Local Government Code and by doing so satisfies any State Law requiring local governments to seek competitive bids for Items. (TASB/Buyboard contract #358-10 & 357-10 / City of Plano Internal Contract No. 2013-54-O & 2013-55-O)				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
Memo		NA		



## **MEMORANDUM**

Date: November 14, 2012  
To: Bruce D. Glasscock, City Manager  
From: Reid Choate, Fleet Manager  
Subject: Refuse Crane/Brush Truck Purchase Recommendation

It is the recommendation of Fleet Services to purchase one (1) Ford F-750 Truck Chassis from Chastang Ford through the TASB/Buyboard contract #358-10 in the amount of \$67,760.00.00 and one (1) Petersen Crane/Brush Truck Body from Heil of Texas through the TASB/Buyboard contract #357-10 in the amount of \$61,732.00.

This unit is for the replacement of unit 02802 in Cost Center 751. This item is a scheduled replacement in the FY12-13 Equipment Replacement Fund.

Equipment replacement is analyzed based on age, mileage, maintenance cost and re-sale value in determining the need for replacement. Based on these criteria, Fleet Services recommends the replacement of the above vehicles. If these vehicles are not replaced, we will incur additional maintenance cost and salvage value will be greatly depreciated. In addition, the user department will be limited in their ability to perform their duties due to additional down time of the older equipment.

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



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular <input type="checkbox"/> Statutory
Council Meeting Date:	11/26/12
Department:	Purchasing
Department Head	Diane Palmer-Boeck
Agenda Coordinator (include phone #): <b>Earl Whitaker x7074</b>	

**CAPTION**

To approve the purchase of seven (7) Crane Carrier Refuse Truck Chassis's from Bond Equipment Company, Inc., in the amount of \$1,152,953, four (4) Heil Automated Single Arm Bodies, & three (3) Rear Loader Bodies from Heil of Texas, in the amount of \$661,906, totaling \$1,814,859 for the Fleet Department, to be utilized by Environmental Services, through an existing contract/agreement with TASB/Buyboard, and authorizing the City Manager to execute all necessary documents. (TASB/Buyboard contract #358-10 & 357-10)

**FINANCIAL SUMMARY**

NOT APPLICABLE       OPERATING EXPENSE       REVENUE       CIP

FISCAL YEAR: <b>2012-13</b>	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	1,815,000	0	<b>1,815,000</b>
Encumbered/Expended Amount	0	0	0	<b>0</b>
This Item	0	-1,814,859	0	<b>-1,814,859</b>
BALANCE	0	141	0	<b>141</b>

**FUND(S):      EQUIPMENT REPLACEMENT FUND**

**COMMENTS:** Funds are included in the FY 2012-13 Budget to purchase Four (4) Crane Carrier Automated Single Arm Chassis and Three (3) Crane Carrier Rear Loader Chassis. Also a purchase of Four (4) Heil Automated Single Arm Bodies and Three (3) Rear Load Trucks. Four (4) Automated Single Arm trucks are for the scheduled replacements of unit #07910, #07912, #07914, & #07916 Cost Center 748/Environmental Waste. Three (3) Rear Load Trucks are for the scheduled replacement of unit #05904, #05906, & #05908 Cost Center 748. Remaining balance will be used for other Equipment Replacement purchases.

**STRATEGIC PLAN GOAL:** Providing Automated Single Arm Trucks and Rear Load Trucks for the City's Fleet Services Department relates to the City's goal of a Financially Strong City with Service Excellence.

**SUMMARY OF ITEM**

Staff recommends the purchase of seven (7) Crane Carrier Refuse Truck Chassis's from Bond Equipment Company, Inc., in the amount of \$1,152,953, four (4) Heil Automated Single Arm Bodies, & three (3) Rear Loader Bodies from Heil of Texas in the amount of \$661,906, totaling \$1,814,859 for the Fleet Department, to be utilized by Environmental Services, through an existing contract/agreement with TASB/Buyboard. The City is authorized to purchase from a Local Cooperative Organization pursuant to Chapter 271 subchapter F of the Local Government Code and by doing so satisfies any State Law requiring local governments to seek competitive bids for Items. (TASB/Buyboard contract #358-10 & 357-10 / City of Plano Internal Contract No. 2013-35-O & 2013-36-O)



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

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



## **MEMORANDUM**

Date: November 7, 2012  
To: Bruce D. Glasscock, City Manager  
From: Reid Choate, Fleet Manager  
Subject: Refuse Truck Purchase Recommendation

It is the recommendation of Fleet Services to purchase seven (7) Crane Carrier Refuse Truck Chassis from Bond Equipment Company, Inc., through the TASB/Buyboard contract #358-10 in the amount of \$1,152,953.00, four (4) Heil Automated Single Arm Bodies and three (3) Rear Loader Bodies from Heil of Texas through the TASB/Buyboard contract #357-10 in the amount of \$661,906.00.

Four (4) Automated Single Arm trucks are for the replacements of unit 07910, 07912, 07914 and 07916 in Cost Center 748. Three (3) Rear Load truck is for the replacement of unit 05904, 05906 and 05908 in Cost Center 748. These items are scheduled replacements in the FY12-13 Equipment Replacement Fund.

Equipment replacement is analyzed based on age, mileage, maintenance cost and re-sale value in determining the need for replacement. Based on these criteria, Fleet Services recommends the replacement of the above vehicles. If these vehicles are not replaced, we will incur additional maintenance cost and salvage value will be greatly depreciated. In addition the user department will be limited in their ability to perform their duties due to additional down time of the older equipment.

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



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		11/26/2012		
Department:		Technology Services		
Department Head		David Stephens		
Agenda Coordinator (include phone #): <b>Dianna Wike x7549</b>				
<b>CAPTION</b>				
Approval of the purchase of CommVault-Galaxy Software Premium Support Coverage in the amount of \$121,654 from CDW Government, LLC through an existing contract with The Cooperative Purchasing Network (TCPN) and authorizing the City Manager to execute all necessary documents. (TCPN Contract No. R5106)				
<b>FINANCIAL SUMMARY</b>				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: <b>2012-13</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget	0	2,795,189	0	<b>2,795,189</b>
Encumbered/Expended Amount	0	-552,351	0	<b>-552,351</b>
This Item	0	-121,654	0	<b>-121,654</b>
<b>BALANCE</b>	0	2,121,184	0	<b>2,121,184</b>
<b>FUND(S):    TECHNOLOGY SERVICES FUND</b>				
<b>COMMENTS:</b> Funds are included in the 2012-13 Technology Services budget for this maintenance agreement. The remaining balance will be used throughout the year for other maintenance agreements. <b>STRATEGIC PLAN GOAL:</b> Maintenance agreements relate to the City's Goal of Financially Strong City with Service Excellence.				
<b>SUMMARY OF ITEM</b>				
Technology Services staff recommends approval of the purchase of CommVault-Galaxy Software Premium Support Coverage from CDW Government, LLC, through The Cooperative Purchasing Network contract in the amount of \$121,654. The CommVault software is used to back up every server and database used by the City of Plano. There is also a compliance database for email retention. The City is authorized to purchase from a cooperative purchasing program with another local government or a local cooperative organization pursuant to Chapter 271 Subchapter F of the Local Government Code; and by doing so satisfies any State Law requiring local governments to seek competitive bids for items. (TCPN Contract No. R5106)				
List of Supporting Documents: Memorandum			Other Departments, Boards, Commissions or Agencies	

# Memo

Date: 11/7/2012

To: Diane Palmer-Boeck, Chief Purchasing Officer

From: David Stephens, Director Technology Services

RE: CommVault-Galaxy Software Premium Support Coverage for FY2012-13

We propose purchasing CommVault-Galaxy Software Premium Support Coverage from CDW-G. They are an authorized CommVault reseller on TCPN contract R5106. CDWG's proposal was the most cost effective from three proposals that were received.

This maintenance contract will allow the City of Plano to obtain software maintenance and support for all of our CommVault backup software. The CommVault software is used to back up every server and database used by the City of Plano. There is also a compliance database for email retention. If we were not able to backup up these critical servers then we may not be able to restore information in the event of a hardware or software failure on a specific server. This may impact the operation of other departments. This maintenance contract provides 7x24 coverage and a 4 hour response for our CommVault software.

This contract would be in the amount of \$121,654.23 for a one year agreement and effective from January 1, 2013 to December 31, 2013.



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		11/26/12		
Department:		Public Works		
Department Head:		Gerald Cosgrove		
Agenda Coordinator (include phone #):			Kathleen Schonke (x7198)	
			<b>Project No. 6292</b>	
<b>CAPTION</b>				
To approve a Architectural Services Agreement by and between the City of Plano and Alliance Architects, Inc., in the amount of \$79,300 for Space Assessment - Administrative Buildings Phase II; and authorizing the City Manager to execute all necessary documents.				
<b>FINANCIAL SUMMARY</b>				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: <b>2012-13</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	-79,300	0	<b>-79,300</b>
<b>BALANCE</b>	<b>0</b>	<b>-79,300</b>	<b>0</b>	<b>-79,300</b>
<b>FUND(S):    GENERAL FUND</b>				
<b>COMMENTS:</b> This item was not included in the FY 2012-13 Approved Budget. However, funding will come from General Fund balance savings and will be covered in the FY 2012-13 Re-Estimate Budget process.				
STRATEGIC PLAN GOAL: Approval of this space assessment item relates to the City's Goal of Financially Strong City with Service Excellence.				
<b>SUMMARY OF ITEM</b>				
This agreement with Alliance Architects, Inc., is for further evaluation of a proposed option for addressing space requirements for City administrative facilities (Municipal Center and Joint Use Facility), developing schematic designs and preliminary pricing.				
The contract fee is \$79,300, and is detailed as follows:				
CADD documentation of facilities for test fits and pricing				\$ 5,800
Test fits and space plans in greater detail for preferred option				\$16,500
Develop phasing and moving plans, pricing and scheduling				\$37,250
Develop options for furniture configuration, including new and re-use of existing furniture				\$11,750
Develop preliminary mechanical/plumbing/electrical design requirements for reconfigured spaces				\$ 8,000
				<u>\$79,300</u>
Funding is available from the General Fund. Staff feels the fee is reasonable for this work.				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Professional Services Agreement			N/A	

**SPACE ASSESSMENT – ADMINISTRATIVE BUILDINGS PHASE II**

**PROJECT NO. 6292**

**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 **ALLIANCE ARCHITECTS, INC.**, a **TEXAS** Corporation, 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 prepare construction plans, specifications, details and special provisions and to perform other related architectural services in connection with the **SPACE ASSESSMENT – ADMINISTRATIVE BUILDINGS PHASE II** 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.

**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.

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

#### **VII. INDEMNITY**

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

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

ARCHITECT AT ITS OWN EXPENSE IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF ARCHITECT'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF ARCHITECT'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. ARCHITECT 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 ARCHITECT FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED 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 THE 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.

#### **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  
Public Works Department  
P.O. Box 860358  
Plano, TX 75086-0358  
Attn: James Razinha  
Facilities Manager

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

Alliance Architects, Inc.  
1600 North Collins Boulevard, Suite 1000  
Richardson, Texas 75080  
Attn: Charles J. Reagan  
Principal

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

## **XVI. Miscellaneous**

### **A. Paragraph Headings:**

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

### **B. Contract Interpretation:**

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

### **C. Venue/Governing Law:**

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

### **D. Successors and Assigns:**

City and 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.

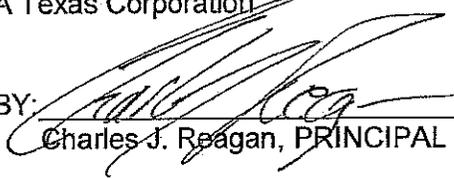
### **G. Authority to Sign:**

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

**SIGNED** on the date indicated below.

**ALLIANCE ARCHITECTS, INC.**  
A Texas Corporation

DATE: 14-Nov-2012

BY:   
Charles J. Reagan, PRINCIPAL

**CITY OF PLANO, TEXAS**

DATE: \_\_\_\_\_

BY: \_\_\_\_\_  
Bruce D. Glasscock  
CITY MANAGER

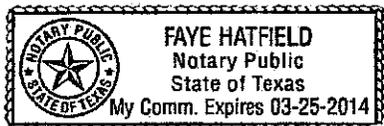
**APPROVED AS TO FORM:**

\_\_\_\_\_  
Diane C. Wetherbee  
CITY ATTORNEY

**ACKNOWLEDGMENTS**

STATE OF TEXAS       §  
                                  §  
COUNTY OF DALLAS   §

This instrument was acknowledged before me on the 14 day of November, 2012, by **CHARLES J. REAGAN, PRINCIPAL** of **ALLIANCE ARCHITECTS, INC.**, a **TEXAS** corporation, on behalf of said corporation.



*Faye Hatfield*  
\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS       §  
                                  §  
COUNTY OF COLLIN   §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2012, **BRUCE D. GLASSCOCK, CITY MANAGER** of the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

\_\_\_\_\_  
Notary Public, State of Texas

## EXHIBIT "A"

### SCOPE OF SERVICES

#### PROJECT DESCRIPTION

Generally, this proposal is to take the spatial efficiency analysis and preliminary planning into Schematic Design and Preliminary Pricing Plans to determine feasibility for proposed Option B. The scope of work will generally consist of:

- A. CADD documentation of Municipal Buildings required for test fits & pricing plans.
- B. Create test fits and space plans to more fully develop the strategy for Option B.
- C. Develop phasing and moving plans to facilitate pricing and scheduling.
- D. Develop and present options for re-use and refurbishment of systems furniture and potential new workstation layouts.
- E. Preliminary MPE design for reconfigured spaces.

This proposal includes definitions, ownership and use of documents, scope of services/order of schedule, and compensation.

#### SCOPE OF SERVICES

##### **A. CADD Documentation of existing facilities.**

1. Review all documents and scan for use for field verifications and spatial use diagrams.
2. Prepare/print copies for field verifications, walk-thrus and department meetings.
3. Review/Input workstation foot prints/panels and determine use or vacancy.
4. Field verification of the Joint Use Facility systems furniture (excluding areas of no work/changes - Police, etc.).
5. Field verification and CADD documentation of Cox Building.

##### **B. Test Fits for Option B**

1. Prepare preliminary layouts for discussion with facilities and ultimately, individual staff. Attend (1) meeting, prepare (1) space plan and allow up to (2) revisions for each of the following departments/groups:
  - a. Customer/ Utility Services
  - b. Human Resources and Risk
  - c. Property Standards
  - d. Environmental Health
  - e. Micrographics
  - f. PTN and Public Information
  - g. Engineering, Planning and Public Works
  - h. Finance
  - i. Budget
  - j. Parks and Recreation
  - k. Shared functions
2. Propose options for minor renovation as well as re-use and reconfiguration of furniture.
3. Prepare preliminary budgets for construction and furniture.

**C. Phasing and Moving Plans**

1. Meeting (1) with department representatives to review space plan(s).
2. Prepare a schedule showing phasing, sequence and timing of relocations.
3. Prepare plans for budgeting by general contractors and furniture vendors.

**D. Furniture Reconfiguration Options**

1. As part of early planning, review and determine re-use, reconfiguration and refurbishment of furniture systems.
2. Research "pre-owned" market for suitable systems.
3. Develop and present pricing options for each with up to (3) vendors.

**E. MPE Design Scope**

1. Preliminary design of ductwork reconfiguration required for renovated space.
2. Preliminary design of lighting and electrical for reconfigured furniture and renovated space.

**EXHIBIT "B"**

**SCHEDULE OF WORK**

Field Investigation; Architectural, MEP	5 days
CADD Documentation	10 days
Option B Test Fits	20 days
Plan Review	1 day
Phasing and Moving Plans	15 days
City of Plano Review	1 day
Furniture reconfiguration Options	15 days
City of Plano Review	1 day
MPE Design scope	15 days

**EXHIBIT "C"**

**COMPENSATION AND METHOD OF PAYMENT**

**COMPENSATION**

Compensation for Architectural & Interior Design Services as outlined below. Adjustment in size of project will justify fee increase proportionally as scope changes.

**Architectural/Interior Design Basic Services**

	Main/JUF
A CADD Documentation	\$ 5,800.00
B Test Fits/ Space Planning	\$16,500.00
C Phasing/moving plans/budget pricing	\$37,250.00
D Furniture Reconfiguration Options/budget	\$11,750.00
E Preliminary MPE design scope	\$ 8,000.00
<b>Total Fee</b>	<b>\$79,300.00</b>

**HOURLY RATE SCHEDULE**

Fees for Additional Services approved by The Client as described within this proposal will be computed on an hourly rate basis per the rate schedule listed below:

Principal	175.00/hr
Project Manager	145.00/hr
Project Architect	105.00/hr
Project Designer	95.00/hr
CADD/Architect	70.00/hr
Administrative	55.00/hr

**PAYMENT**

Invoices shall be issued monthly for compensation earned based on the percentage of each phase completed and/or reimbursable expenses incurred during the previous month. Invoices are due & payable within thirty (30) days following receipt by Client. Unpaid invoices will accrue interest after Forty-five (45) days from the date of the invoice at a rate of one (1%) percent per month.

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, without first providing the Risk Manager, City of Plano, at least ten (10) days prior written notice."
- 1.3 No acceptance and/or approval of any insurance by the City shall be construed as relieving or excusing the 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.

**3.0 Consultant's Insurance – Claims Made**

**Professional Errors and Omissions**

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

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

## ARCHITECTURE

### City of Plano - Insurance Checklist

("X" means the coverage is required.)

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



**EXHIBIT "E"**

**AFFIDAVIT OF NO PROHIBITED INTEREST**

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

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

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

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

ALLIANCE ARCHITECTS, INC.

Name of Consultant

By:

*[Handwritten Signature]*

Signature

CHARLES J. REAGAN

Print Name

PRINCIPAL

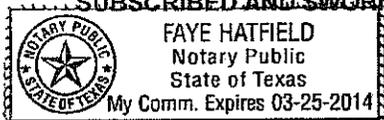
Title

14-Nov-2012

Date

STATE OF TEXAS §  
§  
COUNTY OF DALLAS §

SUBSCRIBED AND SWORN TO before me this 14 day of November, 2012.



*[Handwritten Signature]*  
Notary Public, State of Texas

Architectural Services Agreement  
Space Assessment – Administrative Buildings Phase II  
Project No. 6292

Exhibit E – Page 1



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		11-26-12		
Department:		City Manager		
Department Head		Bruce Glasscock		
Agenda Coordinator (include phone #): <b>Cindy Pierce, ext. 5161</b>				
<b>CAPTION</b>				
A Resolution of the City Council of the City of Plano, Texas, confirming the appointment of Brian Crawford to serve as Plano Fire Chief beginning December 3, 2012, and providing an effective date.				
<b>FINANCIAL SUMMARY</b>				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: <b>2012-13</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget	0	145,000	0	<b>145,000</b>
Encumbered/Expended Amount	0	0	0	<b>0</b>
This Item	0	-145,000	0	<b>-145,000</b>
BALANCE	0	0	0	<b>0</b>
<b>FUND(S):    GENERAL FUND</b>				
<b>COMMENTS:</b> Funding for this item is included in the FY 2012-13 Fire Department Budget.				
<b>STRATEGIC PLAN GOAL:</b> Confirming the appointment of a new Fire Chief relates to the City's Goal of Safe, Large City and Financially Strong City with Service Excellence.				
<b>SUMMARY OF ITEM</b>				
As required by state law, a resolution confirming the appointment of Brian Crawford as the new Fire Chief for the City of Plano beginning December 3, 2012.				
List of Supporting Documents: Resolution			Other Departments, Boards, Commissions or Agencies	

**A Resolution of the City Council of the City of Plano, Texas, confirming the appointment of Brian Crawford to serve as Plano Fire Chief beginning December 3, 2012, and providing an effective date.**

**WHEREAS**, William Peterson has served as interim Fire Chief since the retirement of Hugo Esparza earlier this year; and

**WHEREAS**, after an extensive search process, the City Manager has appointed Brian Crawford of Shreveport, Louisiana to serve as Fire Chief beginning December 3, 2012; and

**WHEREAS**, state law requires the City Council to confirm the appointment of the Fire Chief.

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

**Section I.** The City Council confirms the appointment of Brian Crawford as Fire Chief, his service to begin December 3, 2012.

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

**DULY PASSED AND APPROVED** this the 26<sup>th</sup> day of November, 2012.

---

Phil Dyer, MAYOR

ATTEST:

---

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

---

Diane C. Wetherbee, CITY ATTORNEY



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>				
<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		11/26/12		
Department:		Planning		
Department Head		P. Jarrell		
Agenda Coordinator (include phone #): <b>Doris Carter, x 5350</b>				
<b>CAPTION</b>				
A Resolution of the City of Plano, Texas, adopting the Downtown Heritage District Design Guidelines; providing for design guidelines for preservation of heritage resource properties located within the Downtown Heritage Resource District; including amendments to the design guidelines related to roof top patio covers; and providing an effective date.				
<b>FINANCIAL SUMMARY</b>				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: <b>2012-13</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	<b>0</b>
This Item	0	0	0	0
<b>BALANCE</b>	0	0	0	<b>0</b>
<b>FUND(s): N/A</b>				
<b>COMMENTS:</b> This item has no fiscal impact.				
STRATEGIC PLAN GOAL: Adoption of the Downtown Heritage District Design Guidelines relates to the City's goal of Partnering for Community Benefit.				
<b>SUMMARY OF ITEM</b>				
See Attached Memo.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
Memo				
Attachment to Memo				
Resolution		Heritage Commission		
Attachment A				

## MEMORANDUM

Date: November 15, 2012

To: Mr. Bruce D. Glasscock, City Manager  
Mr. Frank F. Turner, Deputy City Manager

From: Mr. Bhavesh Mittal, Heritage Preservation Officer

Subject: Adoption of Downtown Heritage District Design Guidelines

The Downtown Heritage District Design Guidelines were adopted by the Heritage Commission on May 25, 2004. Based on staff's research the City Council has not reviewed and approved the Downtown Heritage District Design Guidelines in the past. After further consultation with the Legal Department and review of the City's heritage resource preservation ordinance, these guidelines should be formally adopted by Council.

At its October 23, 2012 meeting, the Heritage Commission recommended approval of amendments to the district guidelines related to roof top patio covers. Section 10 of the design guidelines was amended to include "Roof top patio covers shall be considered as building additions and shall comply with the same design guidelines for building additions", and Section 6 was refined to specifically address canopies and awnings above doors and windows (see attachment).

Phyllis Jarrell, Director of Planning and Tina Firgens, Planning Manager will be in attendance at the Council meeting on November 26, 2012 and available to answer questions.

cc: Ms. Phyllis Jarrell, Planning Director

ADDITIONS ARE SHOWN AS UNDERLINED TEXT; DELETIONS ARE SHOWN AS STRIKETHROUGH TEXT

# DOWNTOWN HERITAGE DISTRICT DESIGN GUIDELINES

Adopted  
May 25, 2004

The following drawings illustrate the form of typical early 20th-century commercial buildings, including the individual features that define the building. Notice that while size and scale play a significant role, architectural features, rhythm of openings and storefront elements are important parts of the whole. These drawings merely represent the typical commercial building common to the era that most structures in downtown Plano were built. They are intended to illustrate the features of historic commercial buildings only. Because every building is unique, decisions should be case specific. However, these guidelines form the foundation for review.

## Character-Defining Features

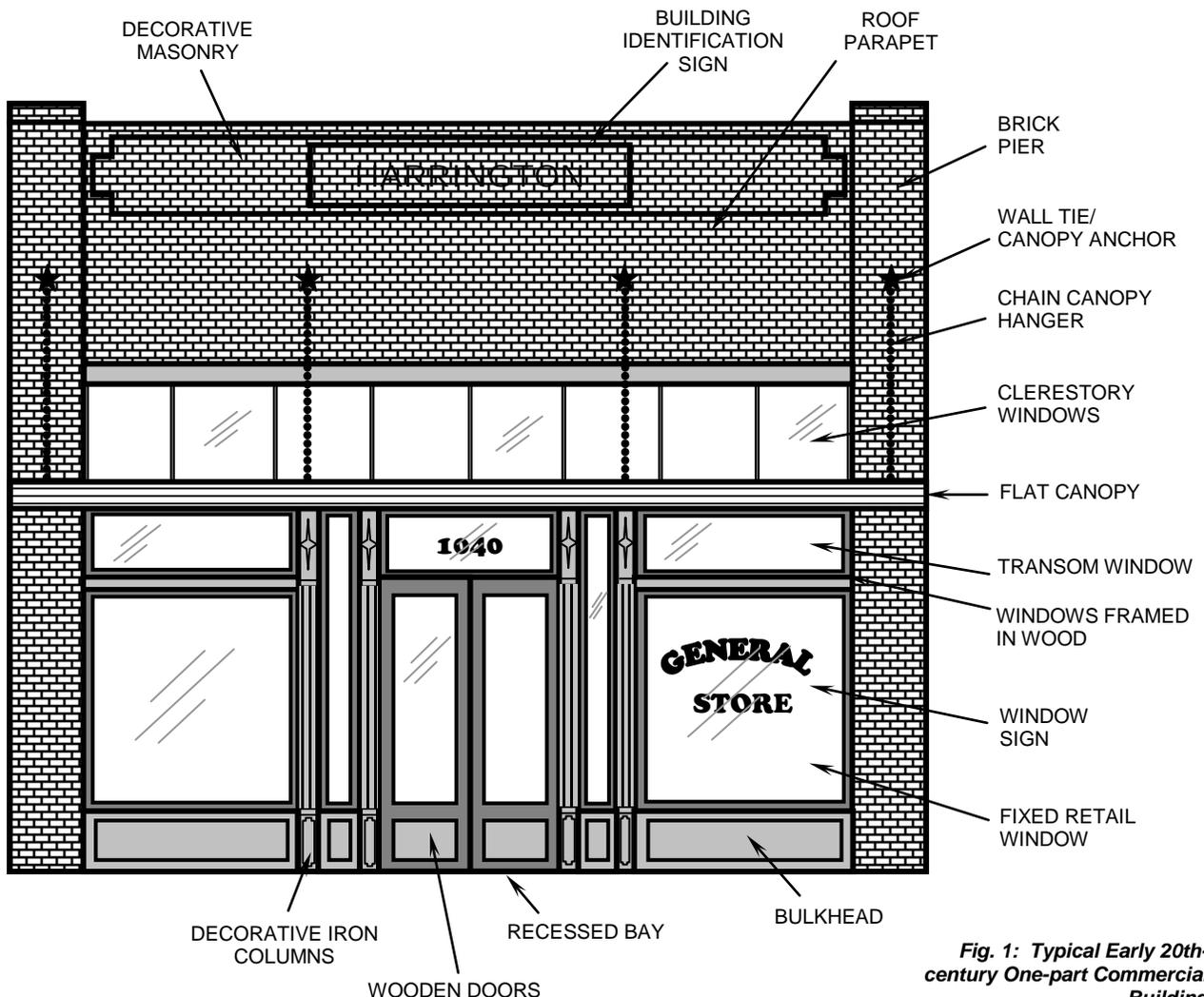


Fig. 1: Typical Early 20th-century One-part Commercial Building



## **Preservation**

The following guidelines refer to the renovation of existing buildings. Although these guidelines apply primarily to contributing buildings, changes made to non-contributing buildings must be reviewed and following the spirit of these guidelines. Preservation and restoration materials and methods used should comply with the Preservation Briefs published by the United States Department of the Interior. The Heritage Commission may approve a Certificate of Appropriateness for work that does not strictly comply with these guidelines providing that: a) the proposed work is historically accurate and is consistent with the spirit and intent of these guidelines; and/or b) the proposed work will not adversely affect the historic character of the property or district.

### ***General***

- 1.1. Preserve, stabilize and restore building form, ornament and materials. Replace missing or deteriorated elements with replicas of the original. Ensure that roof, window, cornice and parapet treatments replicate the original building. Preserve the original masonry features, mortar joint style and mortar composition and color.
- 1.2. Preserve older renovations that have achieved historic significance and have been deemed contributing. This is consistent with the Secretary of the Interior's Standards for Rehabilitation. Older structures may have, at some time, been renovated with such care and skill that the renovation itself is worthy of preservation.
- 1.3. Remove *non-historic* alterations. Often, "modern" renovations merely conceal the original façade details. If not, the original style should be recreated through the use of historic photographs.

- 1.4. Where replication of original elements is not possible, a new design consistent with the original style of the building should be used. Reconstruction of building elements should reflect the size, scale, material and detail of the original style.

***Facades /  
Storefronts***

- 2.1. Maintain original elements and style of the storefront -- cornices, transoms, display windows, kick plates, spandrels and upper story windows.
- 2.2. Maintain recessed entries where they exist. They provide weather protection, protect passing pedestrians from opening doors, and add attractive detail to the storefront.
- 2.3. Integrate access to upper story offices or other uses with the historic features of the building.
- 2.4. Where backs of buildings are used for commercial purposes, preserve the utilitarian character of the architecture and site. The backs of buildings were areas where service and loading were handled, but now these areas are being used as additional entries and potentially, for food service and other activities. These areas should be improved and treated as secondary entrances. However, the general architectural style and utilitarian character should be preserved. Exception: additions made to the rear of buildings on the north side of 15th St. may extend to the rear property line; the new wall facing 15th Place *may* be treated as a front façade, rather than a rear façade. The use of period commercial light fixtures and small painted signs is encouraged. The improvement of the rear of all buildings, including those on the south side of 15th Street is strongly encouraged.

- 2.5. Sandblasting and other highly abrasive methods should not be used to clean historic brick. Old brick is soft and its mortar is crumbly. Always begin with the gentlest means possible, working up to detergents and chemicals if necessary.
- 2.6. When tuck pointing an historic brick wall, mortar should match the historic lime mortar composition. Old bricks are softer than new bricks and will crack if pointed with a modern cement mortar.
- 3.1. Historic doors and windows should remain intact, except when replacement is necessary due to excessive damage or deterioration.
- 3.2. Doors and windows that have been altered and no longer match the historic appearance should be replaced with appropriate ones.
- 3.3. Replacement doors and windows should express muntin (the wooden divisions between each pane of glass) and mullion (the frame of each window sash) size, light configuration, and material to match the historic.
- 3.4. Decorative ironwork and burglar bars over windows are not appropriate to the age and character of the district. Interior mounted burglar bars may be used where appropriate and necessary. If used, interior bars should be a "swing away" style so they are not visible in the window during operating hours.
- 3.5. Glass and glazing should match historic materials as much as practical. Films and tints or reflective glass are not appropriate.

***Windows  
and Doors***

- 3.6. New door and window openings in facades should only be made where safety of life is threatened or where evidence exists of historic openings that, over time, have been filled or altered.
- 3.7. The Secretary of the Interior's Standards for Rehabilitation should be referred to for acceptable techniques to improve the energy efficiency of historic fenestration if necessary.

### **Roofs**

- 4.1. Historic slope, massing, and configuration of roofs should be preserved and maintained.
- 4.2. The following roofing materials are appropriate: flat (built-up), metal, single-ply membrane, and composition shingles. The following materials are not appropriate: clay tiles (except on decorative architectural details, slate tiles, terra-cotta tile, wood shingles, synthetic wood shingles, and synthetic clay tile.
- 4.3. Historic eaves, coping, cornices, dormers, parapets, and roof trim should be retained, and should be repaired with material matching in size, finish, module and color.
- 4.4. Mechanical equipment, skylights, and solar panels on the roof should be set back or screened so that they are not visible to a person standing at ground level on the opposite side of the street.

### **Colors**

- 5.1. Colors should be consistent with the age and character of the downtown area and used to embellish façade elements. Color palettes should enhance the attractive details of the building, not disguise them or overpower them.

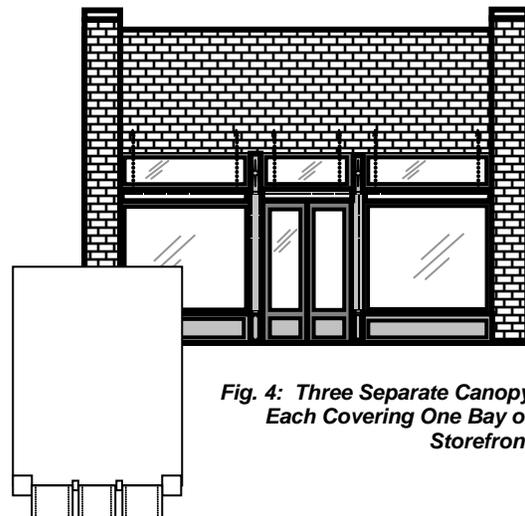
5.2. Colors should complement neighboring buildings and reflect the original historic color palette. Bright colors should be used cautiously. Metals should not be shiny or highly reflective.

6.1. Flat canopies should be retained if present and replaced where needed. Awnings should be a "drop-front" style. Historically, the most common and appropriate sidewalk covering is the flat, rigid canopy. A building may, however, have cloth (canvas) awnings in appropriate colors for visual interest. Awnings should not be a "bubble" style. Metal awnings may be retained and/or replaced if they have been on a building at least 40 years.

6.2. Awnings should not be continuous, but rather relate to each window or bay. This rhythm of awnings is typical of historic styles, and provides greater interest to pedestrians; long continuous awnings are more appropriate for strip retail centers, which relate to automobile traffic. Flat canopies, however, may be full width or relate to each bay (see figs. 3 and 4).

**Canopies  
and Awnings  
Above Doors  
and Windows**

**Fig. 3: Continuous or Full-Width Canopy Covering All Three Bays**



**Fig. 4: Three Separate Canopy Each Covering One Bay of Storefront**

## ***Lighting***

- 7.1. Fully recessed down lights, gooseneck lights or approved historic district fixtures should be encouraged. Lighting is an important element in retail areas. Fixtures should be consistent with the historic character of the area.
- 7.2. Avoid exposed lighting of any kind on the building itself (not referring to signs), unless part of an historic fixture. For example, early 20th-century theaters and diners are examples of building styles where exposed lighting and neon were used architecturally, but other commercial structures should avoid the uses of these lighting styles.

## ***Site / Landscaping***

- 8.1. New driveways, sidewalks, steps and walkways should be constructed of brick, brick pavers, concrete, asphalt or other material deemed appropriate. Artificial grass, exposed aggregate concrete, artificially-colored concrete and outdoor carpet are not appropriate.
- 8.2. Landscaping should enhance the structure and surroundings and not obscure significant views of protected facades.
- 8.3. Any new mechanical equipment should be erected on the roof or in the rear yard, and should not be visible from the public right-of-way. It should also be screened with a brick or stucco wall or natural screening if placed on the ground and screened by architectural metal or a building parapet if placed on a roof.
- 8.4. Fences should be limited to the rear of a structure and should not exceed six feet in height. Fences less than three feet tall and at least 70% open, constructed of metal pickets, may be used where necessary for sidewalk service at restaurants. Fences should be

constructed of brick, cast stone, iron, a combination of these materials, or other appropriate materials. Plastic, vinyl and chain-link are not appropriate. Fences should be 70% open. Wooden privacy fences are not allowed. Solid masonry fences/walls are appropriate only when screening is required by the zoning ordinance (i.e., for dumpsters or mechanical equipment).

8.5. Patios and outdoor dining areas are appropriate at the rear of a building and appropriate in front (on existing sidewalks) where ample right-of-way and an agreement with the City of Plano exist.

8.6. Patio and porch floors should be brick or concrete. Brick or concrete patio floors should not be covered with carpet.

9.1. Signs in this district must follow the City of Plano Development Regulations (Ordinance 86-3-14, as amended) for downtown signs.

## ***Signs***

9.2. The building itself should be considered part of the sign. Avoid garish colors or patterns, but use the detail and style of the building's architecture to enhance the building's identity. Locate signs so that they relate to architectural features of the building. Signs should not cover transoms or historic building features.

9.3. Focus on merchandise, not signs. Signs that compete for attention detract from the retail district as a whole. Avoid visual clutter and limit the number and size of signs (see Ordinance 86-3-14).

9.4. Awning, projecting, hanging, window and cornice signs are the most appropriate sign types in downtown. Such

signs should be constructed of high quality material consistent with its historic style.

- 9.5. Sign lettering should be consistent with the style of architecture. Generally, serif styles for Italianate, Germanic/Federal and Revival buildings, and sans serif for Art Deco and buildings from the later modernism movement are recommended.

## **New Construction and Additions**

The following guidelines refer to new infill construction in the historic district and additions to existing buildings. Demolition in the Downtown Heritage District is firmly discouraged. However, were a building to be seriously damaged or destroyed, new construction would be encouraged and must meet these guidelines. Also, several buildings in the heritage district present opportunities for expansion. This is also encouraged if compatible. New buildings do not have to replicate an old building but must respect the same patterns of building line, window and door placement and rhythm, mass, height, architectural design, etc. Roof top patio covers shall be considered as building additions and shall comply with the same design guidelines for building additions.

- 10.1. All new construction should reflect the architectural character of the downtown district, reflecting existing buildings in form, scale, rhythm, materials, color, roof form, shape, solid-to-void ratio, detail and general appearance, paying particular attention to the elements pointed out in the first section of these guidelines.
- 10.2. New buildings should abut the sidewalk. The setbacks for all new construction should match the setback of other buildings on the block. Infill buildings between

- historic buildings should be similar in setback, roof form, cornice line, and materials, to nearby buildings.
- 10.3. Horizontal additions are appropriate on the rear of buildings, where feasible. Vertical additions to historic buildings in the district are discouraged but may be appropriate if set back to the rear of the property and not visible to a person standing on the opposite side of the street to which the building faces.
  - 10.4. Maintain the height and rhythm of buildings along the street face. New buildings and additions should respect both the height and bay spacing of adjacent buildings. They should also ensure continuity of cornice lines and windows. The height of an addition and the height of a new building should not exceed the height of the tallest building on the block. New buildings or additions along the south side of 15th Place may exceed the height of the tallest building as long as it cannot be seen by a person standing on the south side of 15th Street.
  - 10.5. Downtown buildings almost exclusively have brick or plaster-over-brick facades. The sides of corner buildings also reflect this construction. Any other materials should be used cautiously and should be compatible with the style and character of existing buildings. Brick should be uniform in color with little to no variation. Aluminum siding, wood siding, metal, stucco (other than traditional smooth coat cement plaster stucco), synthetic stucco and vinyl cladding are not appropriate.

**A Resolution of the City of Plano, Texas, adopting the Downtown Heritage District Design Guidelines; providing for design guidelines for preservation of heritage resource properties located within the Downtown Heritage Resource District; including amendments to the design guidelines related to roof top patio covers; and providing an effective date.**

**WHEREAS**, the heritage resource preservation ordinance for the City of Plano (Ordinance 2007-10-23 adopted by City Council on October 8, 2007) provides for preparing and adopting a Preservation Plan for the city's heritage resource preservation program, and the Preservation Plan was adopted by City Council on April 25, 2011 (Resolution 2011-4-17); and

**WHEREAS**, the Preservation Plan includes establishing adoption of heritage resource district design guidelines for the preservation of heritage resource properties; and

**WHEREAS**, heritage resource district design guidelines are used in determination of whether to grant or deny certificates of appropriateness for proposed alterations to the exterior of a designated heritage resource, as reviewed by the Heritage Preservation Officer and/or the Heritage Commission; and

**WHEREAS**, the Downtown Heritage Resource District was established by City Council on February 10, 2003 (Ordinance 2003-2-14); and

**WHEREAS**, the Downtown Heritage District Design Guidelines were originally adopted by the Heritage Commission on May 25, 2004, and more recently amended on October 23, 2012 by the Heritage Commission to include amendments related to roof top patio covers; and

**WHEREAS**, City Council desires to adopt the Downtown Heritage District Design Guidelines for preservation of heritage resource properties within the Downtown Heritage Resource District.

**IT IS, THEREFORE, RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:**

**Section I.** The Downtown Heritage District Design Guidelines, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference, having been reviewed by the City Council of the City of Plano and found to be in the best interest of the City of Plano and its citizens, is hereby approved and adopted.

**Section II.** The Downtown Heritage District Design Guidelines shall be utilized by property owners, Heritage Commission, City Council, city staff and other city personnel, departments, boards and commissions as a guiding document for matters relating to the proposed alterations to the exterior of a designated heritage resource located within the Downtown Heritage Resource District.

**Section III.** This resolution shall become effective immediately upon its passage.

**DULY PASSED AND APPROVED THIS 26TH DAY OF NOVEMBER, 2012.**

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Phil Dyer, MAYOR

ATTEST:

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Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

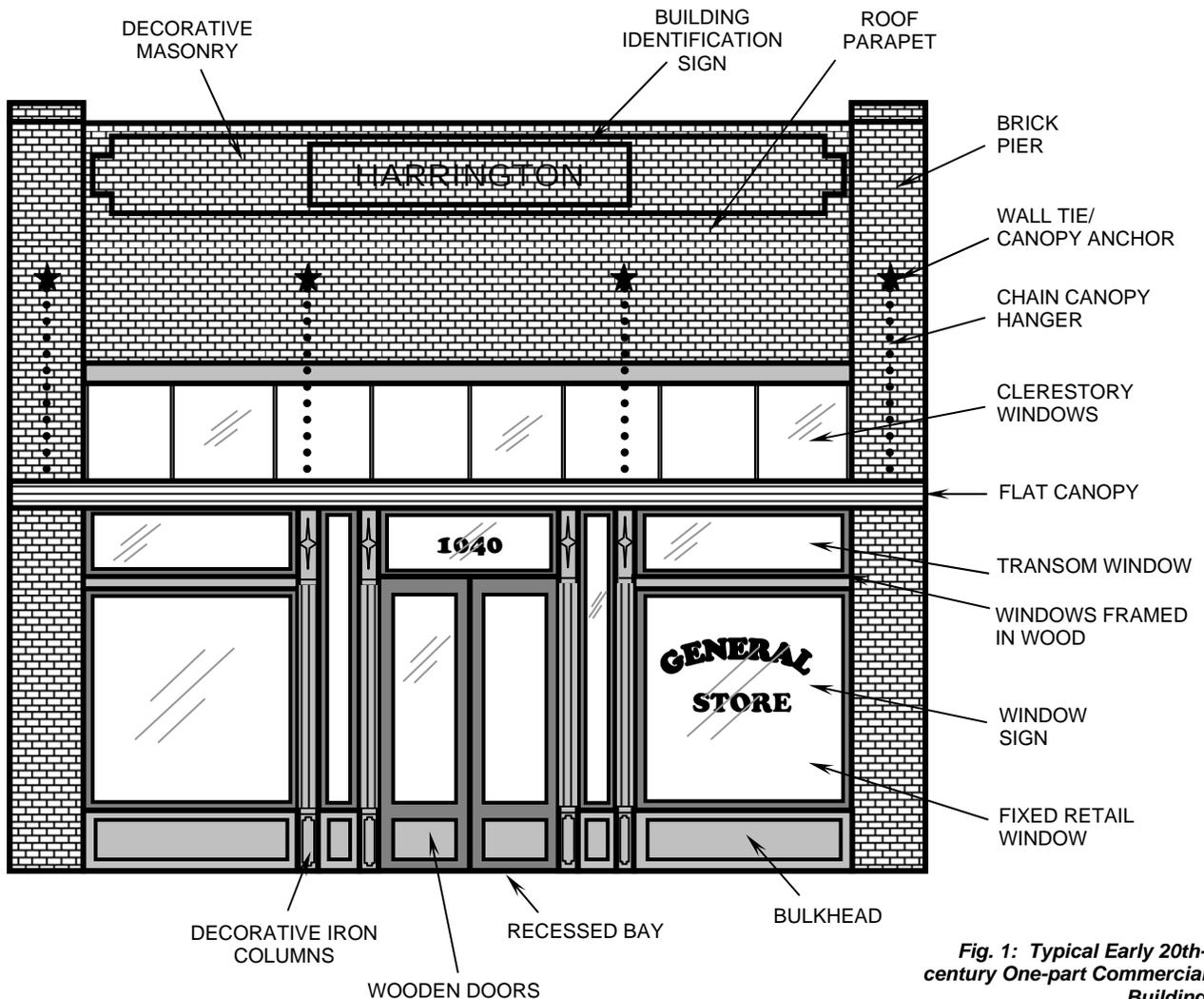
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Diane C. Wetherbee, CITY ATTORNEY

# DOWNTOWN HERITAGE DISTRICT DESIGN GUIDELINES

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## Character-Defining Features



**Fig. 1: Typical Early 20th-century One-part Commercial Building**



Fig. 2: Typical Early 20th-century Two-part Commercial Building

## **Preservation**

The following guidelines refer to the renovation of existing buildings. Although these guidelines apply primarily to contributing buildings, changes made to non-contributing buildings must be reviewed and following the spirit of these guidelines. Preservation and restoration materials and methods used should comply with the Preservation Briefs published by the United States Department of the Interior. The Heritage Commission may approve a Certificate of Appropriateness for work that does not strictly comply with these guidelines providing that: a) the proposed work is historically accurate and is consistent with the spirit and intent of these guidelines; and/or b) the proposed work will not adversely affect the historic character of the property or district.

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***Facades /  
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***Windows  
and Doors***

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### **Roofs**

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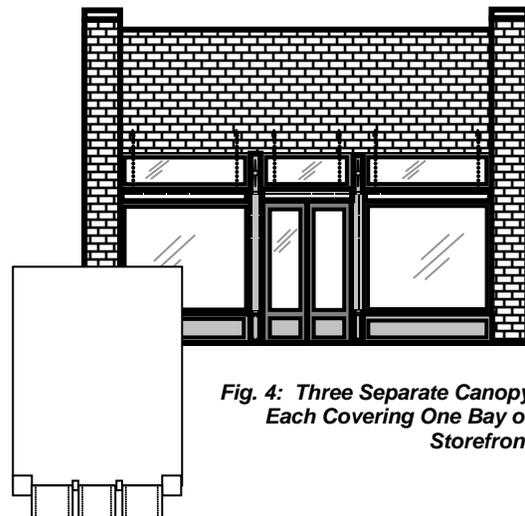
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6.2. Awnings should not be continuous, but rather relate to each window or bay. This rhythm of awnings is typical of historic styles, and provides greater interest to pedestrians; long continuous awnings are more appropriate for strip retail centers, which relate to automobile traffic. Flat canopies, however, may be full width or relate to each bay (see figs. 3 and 4).

**Canopies  
and Awnings  
Above Doors  
and Windows**

**Fig. 3: Continuous or Full-Width Canopy Covering All Three Bays**



**Fig. 4: Three Separate Canopy Each Covering One Bay of Storefront**

## ***Lighting***

- 7.1. Fully recessed down lights, gooseneck lights or approved historic district fixtures should be encouraged. Lighting is an important element in retail areas. Fixtures should be consistent with the historic character of the area.
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## ***Signs***

9.2. The building itself should be considered part of the sign. Avoid garish colors or patterns, but use the detail and style of the building's architecture to enhance the building's identity. Locate signs so that they relate to architectural features of the building. Signs should not cover transoms or historic building features.

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### **New Construction and Additions**

The following guidelines refer to new infill construction in the historic district and additions to existing buildings. Demolition in the Downtown Heritage District is firmly discouraged. However, were a building to be seriously damaged or destroyed, new construction would be encouraged and must meet these guidelines. Also, several buildings in the heritage district present opportunities for expansion. This is also encouraged if compatible. New buildings do not have to replicate an old building but must respect the same patterns of building line, window and door placement and rhythm, mass, height, architectural design, etc. Roof top patio covers shall be considered as building additions and shall comply with the same design guidelines for building additions.

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- 10.2. New buildings should abut the sidewalk. The setbacks for all new construction should match the setback of other buildings on the block. Infill buildings between

historic buildings should be similar in setback, roof form, cornice line, and materials, to nearby buildings.

- 10.3. Horizontal additions are appropriate on the rear of buildings, where feasible. Vertical additions to historic buildings in the district are discouraged but may be appropriate if set back to the rear of the property and not visible to a person standing on the opposite side of the street to which the building faces.
- 10.4. Maintain the height and rhythm of buildings along the street face. New buildings and additions should respect both the height and bay spacing of adjacent buildings. They should also ensure continuity of cornice lines and windows. The height of an addition and the height of a new building should not exceed the height of the tallest building on the block. New buildings or additions along the south side of 15th Place may exceed the height of the tallest building as long as it cannot be seen by a person standing on the south side of 15th Street.
- 10.5. Downtown buildings almost exclusively have brick or plaster-over-brick facades. The sides of corner buildings also reflect this construction. Any other materials should be used cautiously and should be compatible with the style and character of existing buildings. Brick should be uniform in color with little to no variation. Aluminum siding, wood siding, metal, stucco (other than traditional smooth coat cement plaster stucco), synthetic stucco and vinyl cladding are not appropriate.



## CITY OF PLANO COUNCIL AGENDA ITEM

<b>CITY SECRETARY'S USE ONLY</b>				
<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		11/26/12		
Department:		Planning		
Department Head		P. Jarrell		
Agenda Coordinator (include phone #): <b>Doris Carter, x 5350</b>				
<b>CAPTION</b>				
A Resolution of the City of Plano, Texas, adopting the Haggard Park Heritage Resource District Preservation Guidelines; providing for design guidelines for preservation of heritage resource properties located within the Haggard Park Heritage Resource District; and providing an effective date.				
<b>FINANCIAL SUMMARY</b>				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: <b>2012-13</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	<b>0</b>
This Item	0	0	0	0
<b>BALANCE</b>	0	0	0	<b>0</b>
<b>FUND(s): N/A</b>				
<b>COMMENTS:</b> This item has no fiscal impact.				
STRATEGIC PLAN GOAL: Adoption of the Haggard Park Heritage Resource District Preservation Guidelines relates to the City's goal of Partnering for Community Benefit.				
<b>SUMMARY OF ITEM</b>				
See Attached Memo.				
List of Supporting Documents: Memo Resolution Exhibit "A"			Other Departments, Boards, Commissions or Agencies Heritage Commission	

## MEMORANDUM

Date: November 15, 2012

To: Mr. Bruce D. Glasscock, City Manager  
Mr. Frank F. Turner, Deputy City Manager

From: Mr. Bhavesh Mittal, Heritage Preservation Officer

Subject: Adoption of Haggard Park Heritage Resource District Preservation Guidelines

The Haggard Park Heritage Resource District Preservation Guidelines were adopted by the Heritage Commission on December 14, 1999 and subsequently amended in 2001 and 2002. Based on staff's research the City Council has not reviewed and approved the Haggard Park Heritage Resource District Preservation Guidelines in the past. After further consultation with the Legal Department and review of the City's heritage resource preservation ordinance, these guidelines should be formally adopted by Council. There are no changes proposed to the existing Haggard Park Heritage Resource District Preservation Guidelines.

Phyllis Jarrell, Director of Planning and Tina Firgens, Planning Manager will be in attendance at the Council meeting on November 26, 2012 and available to answer questions.

cc: Ms. Phyllis Jarrell, Planning Director

**A Resolution of the City of Plano, Texas, adopting the Haggard Park Heritage Resource District Preservation Guidelines; providing for design guidelines for preservation of heritage resource properties located within the Haggard Park Heritage Resource District; and providing an effective date.**

**WHEREAS**, the heritage resource preservation ordinance for the City of Plano (Ordinance 2007-10-23 adopted by City Council on October 8, 2007) provides for preparing and adopting a Preservation Plan for the city's heritage resource preservation program, and the Preservation Plan was adopted by City Council on April 25, 2011 (Resolution 2011-4-17); and

**WHEREAS**, the Preservation Plan includes establishing adoption of heritage resource district design guidelines for the preservation of heritage resource properties; and

**WHEREAS**, heritage resource district design guidelines are used in determination of whether to grant or deny certificates of appropriateness for proposed alterations to the exterior of a designated heritage resource, as reviewed by the Heritage Preservation Officer and/or the Heritage Commission; and

**WHEREAS**, the Haggard Park Heritage Resource District was established by City Council on January 10, 2000 (Ordinance 2000-1-6); and

**WHEREAS**, the Haggard Park Heritage Resource District Preservation Guidelines were originally adopted by the Heritage Commission on December 14, 1999, and amended on February 20, 2001, and August 27, 2002; and

**WHEREAS**, City Council desires to adopt the Haggard Park Heritage Resource District Preservation Guidelines for preservation of heritage resource properties within the Haggard Park Heritage Resource District.

**IT IS, THEREFORE, RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:**

**Section I.** The Haggard Park Heritage Resource District Preservation Guidelines, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference, having been reviewed by the City Council of the City of Plano and found to be in the best interest of the City of Plano and its citizens, is hereby approved and adopted.

**Section II.** The Haggard Park Heritage Resource District Preservation Guidelines shall be utilized by property owners, Heritage Commission, City Council, city staff and other city personnel, departments, boards and commissions as a guiding document for matters relating to the proposed alterations to the exterior of a designated heritage resource located within the Haggard Park Heritage Resource District.

**Section III.** This resolution shall become effective immediately upon its passage.

**DULY PASSED AND APPROVED THIS 26TH DAY OF NOVEMBER, 2012.**

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Phil Dyer, MAYOR

ATTEST:

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Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

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Diane C. Wetherbee, CITY ATTORNEY

**CITY OF PLANO HERITAGE COMMISSION  
PRESERVATION GUIDELINES  
Haggard Park Heritage Resource District  
Adopted December 14, 1999  
Revised February 20, 2001, August 27, 2002**

**Purpose:** To establish guidelines for appropriate treatment of structures and new construction within a historic district to be used by the Heritage Commission in granting Certificates of Appropriateness and to assist property owners in planning appropriate rehabilitation, restoration, construction and repair.

**1. GENERAL**

- 1.1. All demolition, maintenance, new construction, public works, renovations, repairs, and site work in this district must comply with these preservation guidelines.
- 1.2. Any alterations to this property must comply with the regulations contained in Ordinance 86-3-14 (the Zoning Ordinance) of the City of Plano, as amended. In the event of a conflict, these preservation guidelines control.
- 1.3. A person may not alter a historic resource site, or any portion of the exterior of a structure on the site, or place, construct, maintain, expand, remove, or demolish any structure in the historic zone without first obtaining a Certificate of Appropriateness in accordance with Ordinance 98-2-26 (the Preservation Ordinance) of the City of Plano, as amended, and the provisions of this ordinance. A person who violates this provision is guilty of a separate offense for each day or portion of a day during which the violation is continued, from the first day the unlawful act was committed until either a Certificate of Appropriateness is obtained or the property is restored to the condition it was in immediately prior to the violation.
- 1.4. The Certificate of Appropriateness review procedure outlined in the Preservation Ordinance of the City of Plano, as amended, applies to this resource.
- 1.5. Preservation and restoration materials and methods used must comply with the Secretary of the Interior's Standards for the Treatment of Historic Properties (see attachment) and the Preservation Briefs published by the United States Department of the Interior (on file at the Plano Municipal Center).
- 1.6. The Heritage Commission may approve a Certificate of Appropriateness for work that does not strictly comply with these preservation guidelines upon a finding that:
  - 1.6.a. the proposed work is historically accurate and is consistent with the spirit and intent of these preservation guidelines; and
  - 1.6.b. the proposed work will not adversely affect the historic character of the property or the integrity of the resource.

## 2. DEFINITIONS

- 2.1. Unless defined below, the definitions contained in the Preservation Ordinance of the City of Plano, as amended, apply.
- 2.2. **APPROPRIATE** means typical of the historic architectural style, compatible with the character of the historic district, and consistent with these preservation guidelines.
- 2.3. **CERTIFICATE OF APPROPRIATENESS** means a certificate required by the Preservation Ordinance of the City of Plano, as amended, and these preservation guidelines.
- 2.4. **COLUMN** means the entire column, including the base and capital.
- 2.5. **COMMISSION** means the Heritage Commission of the City of Plano.
- 2.6. **CONTRIBUTING STRUCTURE** is any structure within a historic district that is typical of the district, is an integral part of the historic and architectural fabric of the district, and retains a significant portion of its architectural or design integrity. A structure built outside of the district's period of significance may be deemed contributing if it is compatible with existing architecture and contributes to the overall architectural fabric of the district, regardless of age. This may include new construction built under the C.A. process and deemed appropriate and contributing by the Heritage Commission.
- 2.7. **CORNERSIDE FAÇADE** means a façade facing a side street.
- 2.8. **CORNERSIDE FENCE** means a fence adjacent to a side street.
- 2.9. **CORNERSIDE YARD** means a side yard abutting a street.
- 2.10. **DIRECTOR** means the Director of the Planning Department at the City of Plano or the Director's representative.
- 2.11. **DISTRICT** means Heritage Resource No. 5, designated in the Zoning Ordinance as H-5.
- 2.12. **ERECT** means to attach, build, draw, fasten, fix, hang, maintain, paint, place, suspend, or otherwise construct.
- 2.13. **FENCE** means a structure or hedgerow that provides a physical barrier, including a fence gate.
- 2.14. **HERITAGE PRESERVATION OFFICER (HPO)** means the city staff member who serves as liaison to the Heritage Commission and is responsible for administering the city's heritage resource preservation ordinance.
- 2.15. **INTERIOR SIDE FAÇADE** means a façade not facing a street or alley.

- 2.16. **INTERIOR SIDE FENCE** means a fence not adjacent to a street or alley.
- 2.17. **INTERIOR SIDE YARD** means a side yard not abutting a street or alley.
- 2.18. **MAIN BUILDING** means the primary structure on the lot, the house.
- 2.19. **PROTECTED** means an architectural or landscaping feature that must be retained and maintain its historic appearance, as near as practical, in all aspects.
- 2.20. **PERIOD OF SIGNIFICANCE** is the time period established by the designation ordinance or application when the majority of the buildings were constructed and during which the district gained historical significance; may also reflect the primary evolution of the district over time. The Period of Significance for the Haggard Park Heritage District is 1888 – 1960.

### **3. BUILDING SITE AND LANDSCAPING**

- 3.1. New construction is prohibited in all front yards in the district (except where parking is allowed by the ordinance creating the district).
- 3.2. All contributing structures are protected.
- 3.3. New driveways, sidewalks, steps, and walkways must be constructed of brick, brush finish concrete, stone, or other appropriate material. Artificial grass, artificially colored concrete and outdoor carpet are not permitted.
- 3.4. Circular driveways and parking areas are not permitted in a front yard, except where parking currently exists. It is recommended, however, that the front yards be replaced and parking be moved to the side and rear in the future.
- 3.5. Carports or garages are permitted only in the rear yard, detached from the main structure.
- 3.6. Outdoor lighting must be appropriate and enhance the structure.
- 3.7. Landscaping must be appropriate, enhance the structure and surroundings, and not obscure significant views of a protected façade.
- 3.8. It is recommended that landscaping reflect the historic landscape design.
- 3.9. Existing trees are protected, except unhealthy or damaged trees may be removed.
- 3.10. Any new mechanical equipment must be erected in the side or rear yards and must be screened from the view of any adjacent street or alley.
- 3.11. Fences

- 3.11.a. Fences must comply with the Zoning Ordinance, and a Certificate of Appropriateness is required in accordance with the Preservation Ordinance.
- 3.11.b. Historically appropriate fences are permitted in the front yard and must be constructed of the following materials: wood, brick, iron, steel or a combination or materials as deemed appropriate. Metal fences must be of construction and design to resemble iron fences of the late 19th and early 20th centuries. They may not exceed 40 inches in height and should be of a picket style. Wood fences must be at least 50% open, and iron or steel fences should be at least 80% open.
- 3.11.c. Side fences and fences in rear yards may not exceed eight feet in height.
- 3.11.d. Interior side fences may be located in the rear 50% of the lot or extend from the rear lot line to the rear of the main structure, whichever distance from the rear lot line is greater.
- 3.11.e. Cornerside fences will enclose no more than 25% of the rear of the main structure. Cornerside fences enclosing more than 50% of the rear of the lot must either be at least 50% open or no more than four (4) feet tall (both preferred).
- 3.11.f. Side and rear fences may be constructed of wood, iron, masonry, historic wire, or steel only and must be appropriate to the age and character of the resource. Metal fences must be of construction and design to resemble iron fences of the late 19th and early 20th centuries. Cornerside fences may not be chain link.
- 3.11.g. Fences located completely or partially in the front 50% of a lot and any fence facing a street shall be painted, opaque stained or whitewashed. A protective sealant, regardless of color or finish, is recommended on all other fences.

#### **4. FACADES**

- 4.1. Protected façades on contributing structures.
  - 4.1.a. Front and side façades are protected. Rear façades are not protected but changes do require review.
  - 4.1.b. Reconstruction, renovation, repair or maintenance of all protected façades must be appropriate and must employ materials similar to the historic materials in texture, color, pattern, grain, and module size.
  - 4.1.c. Historic solid-to-void ratios of protected façades must be maintained.

- 4.1.d. Brick, cast stone, concrete or other masonry elements are not appropriate for protected façades where they do not already exist, except for foundation materials.
- 4.1.e. Brick added to protected façades where appropriate must match in color, texture, module size, bond pattern, and mortar color.
- 4.1.f. Brick, cast stone and concrete elements on protected façades not previously painted may not be painted unless the applicant establishes that:
  - 1) the brick cannot be matched with the color and texture of existing brick that of replacement brick;
  - 2) the brick is not original or compatible with the style and color of the period of the main building or district;
  - 3) the brick has been damaged or painting is the only method by which the brick can be salvaged.
- 4.2. Non-protected façades (rear): reconstruction, renovation, repair, or maintenance of non-protected façades must be compatible with protected features.
- 4.3. Wood siding, trim, and detailing must be restored wherever practical.
- 4.4. All exposed wood must be painted, stained, or otherwise preserved.
- 4.5. Historic materials should be repaired if possible. They may be replaced only when necessary and excessive deterioration has occurred.
- 4.6. Paint must be removed in accordance with the Secretary of the Interior's standards prior to refinishing. No sandblasting or other inappropriate mechanical abrasive or chemical cleaning processes which compromises the original materials are permitted.
- 4.7. Aluminum siding, stucco, and vinyl cladding are not permitted.
- 4.8. Historic color must be maintained or restored wherever practical. Color schemes for non-masonry elements should conform to any available documentation as to historic color. Otherwise, appropriate color may be determined by using such sources as *Victorian Exterior Decoration* by Roger Moss and Gail Winkler, *Paint in America: The Colors of Historic Buildings* by Roger Moss, or other appropriate sources. Fluorescent and metallic colors are not permitted on the exterior of any structure in the district.
- 4.9. All structures must have a dominant body color and no more than four accent colors. The colors of a structure must be complementary to each other and to the overall character of the district.
- 4.10. Exposing and restoring historic materials is recommended.

## **5. FENESTRATION AND OPENINGS**

- 5.1. Historic doors and windows must remain intact except when replacement is necessary due to irreparable damage or deterioration. When feasible, existing non-historic windows should be replaced with historically appropriate ones. Additionally, historically appropriate trim should be replaced around window openings where appropriate.
- 5.2. Replacement of doors and windows that have been altered and no longer match the historic appearance is recommended.
- 5.3. Replacement doors and windows must express muntin and mullion size, light configuration, and material to match the historic.
- 5.4. Exterior storm doors and windows are permitted where appropriate (generally ca. 1955 and later) and must match the existing doors and windows in width, height, proportion, glazing materials, and color. Painted or factory finished aluminum storm doors, storm windows or screens are permitted. Mill finished aluminum is not permitted.
- 5.5. Decorative ironwork and burglar bars are not permitted over doors or windows of protected façades. Interior mounted burglar bars are permitted where appropriate.
- 5.6. Glass and glazing must match historic materials as much as practical. Films and tinted or reflective glazing are not permitted on glass.
- 5.7. New door and window openings in protected façades are permitted only where there is evidence that historic openings have been filled or the safety of life is threatened.
- 5.8. The Secretary of the Interior's Standards for Rehabilitation should be referred to for acceptable techniques to improve the energy efficiency of historic fenestration.

## **6. ROOFS**

- 6.1. The historic slope, massing, configuration, and materials of the roof must be preserved and maintained.
- 6.2. The following roofing materials are allowed: composition shingles, wood and synthetic wood shingles, and standing seam metal. Built-up, metal corrugated, single-ply membrane, clay tile, and synthetic clay tile roofs are not permitted.
- 6.3. Historic eaves, coping, cornices, and roof trim must be retained, and should be repaired with material matching in size, finish, module and color.
- 6.4. Mechanical equipment, skylights, satellite dishes, antennas and solar panels must occur on a rear facing slope or be screened appropriately so that they are not visible to a person standing at ground level on the opposite side of any adjacent street or alley.

## **7. PORCHES AND BALCONIES**

- 7.1. Historic porches and balconies on protected façades are protected.
- 7.2. Porches and balconies on protected façades may not be enclosed (except where existing). It is recommended that existing enclosed porches on protected façades be restored to their historic appearance.
- 7.3. Historic columns, detailing, railings, and trim on porches and balconies are protected.
- 7.4. Porch floors must be brick, concrete, stone, or wood. Brick, concrete, or stone porch floors may not be covered with carpet or paint. Wood floors must be painted. A clear sealant is acceptable on porch floors.

## **8. EMBELLISHMENTS AND DETAILING**

The following architectural elements are considered important features and are protected: historic front porches, balconies, columns, detailing, trim, fenestration, exterior materials, architectural features, roof lines and porte cocheres.

## **9. ADDITIONS, RENOVATIONS AND OUTBUILDINGS**

- 9.1. Stand-alone new construction is permitted only behind the main building.
- 9.2. Vertical additions to contributing structures are permitted only on non-protected façades and must be set back so that they are not visible to a person standing at ground level on the opposite side of any adjacent street or alley.
- 9.3. Horizontal additions to the main building are permitted only on non-protected façades and must be located so that they are not visible to a person standing at ground level on the opposite side of any adjacent street or alley.
- 9.4. The color, details, form, materials, and general appearance of new construction, renovations and additions must be compatible with the existing historic structures.
- 9.5. New construction and additions must have appropriate color, detailing, fenestration, massing, materials, roof form, shape, and solids-to-voids ratios that are typical of the historic structure.
- 9.6. The height of new construction and additions must not exceed the height of similar historic structures in the district.
- 9.7. Aluminum siding, stucco, and vinyl cladding are not permitted on additions. Aluminum siding, vinyl cladding, “hardi-plank”, wood and brick (where appropriate)

are allowed on new outbuildings when in compliance with the Uniform Code for Building Conservation.

- 9.8. Chimneys visible from a street or alley must be brick or clad in brick. Imitation brick will be reviewed through the Certificate of Appropriateness process.
- 9.9. The setback of new construction and additions must conform to the setback of adjacent historic structures.
- 9.10. New construction and additions must be designed so that connections between new construction or additions and the historic structure are clearly discernible as suggested by the Secretary of the Interior in Preservation Brief No. 14 (on file at the Plano Municipal Center). A clear definition of the transition between new construction or additions and the historic structure must be established and maintained. Historic details in the coping and eaves of the historic structure must be preserved and maintained at the point where the historic structure abuts new construction or additions.
- 9.11. Outbuildings may be salvaged historic buildings or new construction.
- 9.12. Outbuildings located in the front 50% of a lot (generally garages or "car barns") should reflect the architecture of the main structure. Other outbuildings may be of a utilitarian nature representative of similar buildings historically located in this area during the main structure's period of significance. Outbuildings over 200 square feet or over 15 feet tall and architectural "follies" (carriage houses or garages, gazebos, arbors, etc.) should be designed and painted or opaque stained to reflect the architecture of the main structure and/or the period of significance of the district.
- 9.13. If the original finish (unpainted, painted, whitewashed, etc.) of an outbuilding can be determined, it should be preserved and/or recreated. Otherwise, an outbuilding located completely or partially in the front 50% of a lot shall be painted, opaque stained or whitewashed. Outbuildings located completely in the rear 50% of the lot (other than "follies" and large outbuildings addressed in subsection 9.12) may be painted, opaque stained, whitewashed or "weathered wood." Unpainted or stained buildings must be clad in a material historically used in this area on similar buildings and that is resistant to decay (cedar, cypress, etc.). A sealant, whether tinted or clear, is required for protection and maintenance.

## **10. NEW CONSTRUCTION OF PRIMARY STRUCTURES AND MOVE-IN STRUCTURES**

- 10.1. The style of new or move-in structures will be determined by the location of the lot and existing styles of historic structures on the blockface.

- 10.2. Minimum lot sizes must be 50x100. The front façade of new construction or a move-in structure located on a lot of this or similar size must be a minimum of 30' in width for 1 and 1.5 story structures, and 35' for two-story structures.
- 10.3. For lots larger than 80x100, the front façade must be a minimum of 40' in width for 1 and 2-story structures.
- 10.4. The width of a front façade of a new single-family residence must not be more than 20 percent greater than the average width of single family dwellings on the blockface, if located on similar sized lots.
- 10.5. The height of new construction and move-in structures should be compatible with the height of similar structures in the district.
- 10.6. Where the ordinance creating the district limits height to three stories, the third story should be directly under the roof of the structure (i.e., finished attic space, or half story).

## **11. SIGNS**

- 11.1. Temporary signs and real estate signs as defined in Ordinance 91-4-12 (the Sign Ordinance) of the City of Plano, as amended, and the Zoning Ordinance, may be erected without a Certificate of Appropriateness.
- 11.2. Signs may be erected if appropriate but require a Certificate of Appropriateness.
- 11.3. All signs must comply with the provisions of the Plano City Code, as amended.

**ATTACHMENT A**  
**SECRETARY OF THE INTERIOR'S STANDARDS**  
**FOR TREATMENT OF HISTORIC PROPERTIES, 1995**

**PRESERVATION** is defined as the act or process of applying measures necessary to sustain the existing form, integrity, and materials of an historic property. Work, including preliminary measures to protect and stabilize the property, generally focuses upon the ongoing maintenance and repair of historic materials and features rather than extensive replacement and new construction. New exterior additions are not within the scope of this treatment; however, the limited and sensitive upgrading of mechanical, electrical, and plumbing systems and other code-required work to make properties functional is appropriate within a preservation project.

When the property's distinctive materials, features, and spaces are essentially intact and thus convey the historic significance without extensive repair or replacement; when depiction at a particular period of time is not appropriate; and when a continuing or new use does not require additions or extensive alterations, *preservation* may be considered as a treatment.

1. A property will be used as it was historically, or be given a new use that maximizes the retention of distinctive materials, features, spaces, and spatial relationships. Where a treatment and use have not been identified, a property will be protected and, if necessary, stabilized until additional work may be undertaken.
2. The historic character of a property will be retained and preserved. The replacement of intact or repairable historic materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.
3. Each property will be recognized as a physical record of its time, place, and use. Work needed to stabilize, consolidate, and conserve existing historic materials and features will be physically and visually compatible, identifiable upon close inspection, and properly documented for future research.
4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.
5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.
6. The existing condition of historic features will be evaluated to determine the appropriate level of intervention needed. Where the severity of deterioration requires repair or limited replacement of a distinctive feature, the new materials will match the old in composition, design, color, and texture.
7. Chemical or physical treatments, if appropriate, will be undertaken using gentlest means possible. Treatments that cause damage to historic materials will not be used.
8. Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

**REHABILITATION** is defined as the act or process of making possible a compatible use for property through repair, alterations, and additions while preserving those portions or features which convey its historical, cultural, or architectural values.

When repair and replacement of deteriorated features are necessary; when alterations or additions to the property are planned for a new or continued use; and when its depiction at a particular period of time is not appropriate, *rehabilitation* may be considered as a treatment.

1. A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.
2. The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.
3. Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.
4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.
5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.
6. Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.
7. Chemical or physical treatments, if appropriate, will be undertaken using gentlest means possible. Treatments that cause damage to historic materials will not be used.
8. Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.
9. New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

10. New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

**RESTORATION** is defined as the act or process of accurately depicting the form, features, and character of a property as it appeared at a particular period of time by means of the removal of features from other periods in its history and reconstruction of missing features from the restoration period. The limited and sensitive upgrading of mechanical, electrical, and plumbing systems and other code-required work to make properties functional is appropriate within a restoration project.

When the property's design, architectural, or historical significance during a particular period of time outweighs the potential loss of extant materials, features, spaces, and finishes that characterize other historical periods; when there is substantial physical and documentary evidence for the work; and when contemporary alterations and additions are not planned, *restoration* may be considered as a treatment. Prior to undertaking work, a particular period of time, i.e., the restoration period, should be selected and justified, and a documentation plan for restoration developed.

1. A property will be used as it was historically or be given a new use which reflects the property's restoration period.
2. Materials and features from the restoration period will be retained and preserved. The removal of materials or alteration of features, spaces, and spatial relationships that characterize the period will not be undertaken.
3. Each property will be recognized as a physical record of its time, place, and use. Work needed to stabilize, consolidate and conserve materials and features from the restoration period will be physically and visually compatible, identifiable upon close inspection, and properly documented for future research.
4. Materials, features, spaces, and finishes that characterize other historical periods will be documented prior to their alteration or removal.
5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize the restoration period will be preserved.
6. Deteriorated features from the restoration period will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials.
7. Replacement of missing features from the restoration period will be substantiated by documentary and physical evidence. A false sense of history will not be created by adding conjectural features, features from other properties, or by combining features that never existed together historically.

8. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.
9. Archeological resources affected by a project will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.
10. Designs that were never executed historically will not be constructed (e.g., a front porch on a house that has never had one).

**RECONSTRUCTION** is defined as the act or process of depicting, by means of new construction, the form, features, and detailing of a non-surviving site, landscape, building, structure, or object for the purpose of replicating its appearance at a specific period of time and in its historic location.

When a contemporary depiction is required to understand and interpret a property's historic value (including the re-creation of missing components in a historic district or site); when no other property with the same associative value has survived; and when sufficient historical documentation exists to ensure an accurate reproduction, *reconstruction* may be considered as a treatment.

1. Reconstruction will be used to depict vanished or non-surviving portions of a property when documentary and physical evidence is available to permit accurate reconstruction with minimal conjecture, and such reconstruction is essential to the public understanding of the property.
2. Reconstruction of a landscape, building, structure, or object in its historic location will be preceded by a thorough archeological investigation to identify and evaluate those features and artifacts which are essential to an accurate reconstruction. If such resources must be disturbed, mitigation measures will be undertaken.
3. Reconstruction will include measures to preserve any remaining historic materials, features, and spatial relationships.
4. Reconstruction will be based on the accurate duplication of historic features and elements substantiated by documentary or physical evidence rather than on conjectural designs or the availability of different features from other historic properties. A reconstructed property will re-create the appearance of the non-surviving historic property in materials, design, color, and texture.
5. A reconstruction will be clearly identified as contemporary re-creation.
6. Designs that were never executed historically will not be constructed.



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		11/26/12		
Department:		Budget & Research		
Department Head		Karen Rhodes-Whitley		
Agenda Coordinator (include phone #): <b>Janette Weedon (7146)</b>				
<b>CAPTION</b>				
A Resolution of the City Council of the City of Plano, Texas, approving a contract with David McCall of Gay, McCall, Isaacks, Gordon & Roberts, P.C. to provide collection of delinquent taxes for the City of Plano; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.				
<b>FINANCIAL SUMMARY</b>				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: <b>2012-13</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
<b>FUND(S):     GENERAL FUND</b>				
<b>COMMENTS:</b> This item has no fiscal impact.				
STRATEGIC PLAN GOAL: Approving the resolution relates to the City's Goal of Financially Strong City with Service Excellence.				
<b>SUMMARY OF ITEM</b>				
Contract for the collection of delinquent taxes.				
List of Supporting Documents: Contract for the Collection of Delinquent Taxes - Exhibit A			Other Departments, Boards, Commissions or Agencies	

Law Offices  
**Gay, McCall, Isaacks, Gordon & Roberts**

A Professional Corporation  
Attorneys and Counselors  
777 East 15<sup>th</sup> Street  
Plano, Texas 75074  
972-424-8501 • Facsimile 972-424-5619

JOHN E. GAY  
DAVID MCCALL+  
LEWIS L. ISAACKS^+  
SYDNA H. GORDON  
WILLIAM J. ROBERTS+  
JENNIFER PETITIT

J. DOUGLAS BURNSIDE  
ROBERT T. DRY, III  
JENNIFER EDMONSON  
ERIN MINETT  
SHANNON KACKLEY

^BOARD CERTIFIED – CIVIL TRIAL LAW  
TEXAS BOARD OF LEGAL SPECIALIZATION  
+ATTORNEY – MEDIATOR

October 30, 2012

RECEIVED

NOV 02 2012

  
CITY MANAGERS OFFICE

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

RE: ***Contract for the Collection of Delinquent Taxes for the City of Plano***

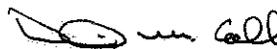
Dear Mr. Glasscock:

It has been the privilege of our firm to represent the City of Plano over the past several years in its collections of delinquent ad valorem taxes. Together with the collection of delinquent taxes for the City of Plano, our firm also represents the City of Allen, Allen Independent School District, Plano Independent School District, City of McKinney, McKinney Independent School District, City of Farmersville, Farmersville Independent School District, Wylie Independent School District, Prosper Independent School District as well as Collin County and the Collin County Community College with many other smaller cities within Collin County.

The existing contract has expired and we would very much like to continue the efforts on behalf of the City of Plano. Attached please find three executed originals of the Contract for the Collection of Delinquent taxes for the City of Plano. Upon execution, please return a conformed copy to our office in the enclosed envelope provided and/or please advise if the administration or its council have any questions and I will be happy to answer or appear before.

Your kind assistance in this matter is much appreciated.

Sincerely,



David McCall

DBM/smc

**A Resolution of the City Council of the City of Plano, Texas, approving a contract with David McCall of Gay, McCall, Isaacks, Gordon & Roberts, P.C. to provide collection of delinquent taxes for the City of Plano; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.**

**WHEREAS**, the City is in need of the services of an attorney to collect delinquent taxes, penalties and interest by suit or owing to the City of Plano; and

**WHEREAS**, the Council finds that David McCall is qualified to represent the City in the collection of delinquent tax accounts and has previously provided such services to the City.

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

**Section I.** The City Council approves of the contract, attached as Exhibit "A", with David McCall of Gay, McCall, Isaacks, Gordon & Roberts, P.C. for the collection of delinquent tax accounts, including filing suit when necessary.

**Section II.** The City Manager or his authorized designee is hereby authorized to execute the attached contract and all other documents in connection therewith on behalf of the City of Plano.

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

**DULY PASSED AND APPROVED** this the 26<sup>th</sup> day of November, 2012.

\_\_\_\_\_  
Phil Dyer, MAYOR

ATTEST:

\_\_\_\_\_  
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

\_\_\_\_\_  
Diane C. Wetherbee, CITY ATTORNEY

**CONTRACT FOR THE COLLECTION  
OF DELINQUENT TAXES**

THE STATE OF TEXAS     §  
                                      §  
COUNTY OF COLLIN     §

This Contract is made and entered into by and between the CITY OF PLANO , TEXAS, a political subdivision of the State of Texas, acting by and through its governing body, hereinafter called "First Party", and David McCall, of Gay, McCall, Isaacks, Gordon & Roberts, P.C., Plano, Texas, hereinafter called "Second Party".

I.

First Party agrees to employ and does hereby employ Second Party to enforce by suit or otherwise the collection of all delinquent taxes, penalty and interest owing to First Party which the First Party's Tax Assessor-Collector refers to Second Party, provided current year taxes becoming delinquent within the period of this contract shall become subject to its terms upon the following conditions:

- A. Taxes that become delinquent during the term of this contract that are not delinquent for any prior years become subject to the terms of this contract on the 1st day of July of the year in which they become delinquent; and
- B. Taxes on tangible personal property that become delinquent during the term of this contract that are not delinquent for any prior years become subject to the terms of this contract on the 1st day of April of the year in which they become delinquent; and
- C. First Party reserves the right to make the final decision as to whether or not to enforce by suit any delinquent tax account turned over to Second Party for collection.

II.

Second Party is to call to the attention of the collector or other officials, any errors, double assessments or other discrepancies coming under his observation during the progress of the work and

is to intervene on behalf of the First Party in all suits for taxes hereafter filed by any taxing unit on property located within its taxing jurisdiction.

### III.

Second Party agrees to make progress reports to the First Party upon request Second Party agrees to advise First Party of all cases where investigation reveals taxpayers to be financially unable to pay their delinquent taxes.

### IV.

First Party agrees to pay to Second Party as compensation for services required hereunder twenty (20%) percent of the total amount of all delinquent taxes, penalty and interest of the years covered by this contract which shall be paid to Second Party in the following manner:

PERSONAL PROPERTY: Twenty (20%) percent of the total amount of all delinquent taxes, penalty and interest which are actually collected and paid to First Party's Collector of Taxes; such compensation shall become the property of the Second Party at the time such delinquent taxes, penalty and interest are actually paid to First Party's Collector of Taxes.

REAL PROPERTY: Twenty (20%) percent of the total amount of all delinquent taxes, penalty and interest which are actually collected and paid to First Party's Collector of Taxes by the taxpayer or the result of a forced sale of such real estate; such compensation shall become the property of the Second Party at the time such delinquent taxes, penalty and interest are actually paid to First Party's Collector of Taxes whether voluntarily by the taxpayer or from the proceeds of a forced sale, whichever occurs first.

Other taxes, including current taxes, which are turned over to Second Party by the First Party's Collector of Taxes because of the necessity for filing claims in bankruptcy actions or for any other reason, become subject to the terms of this contract at the time they are turned over to the Second Party and Second Party is entitled to twenty (20%) percent of any amounts actually received by the First Party.

Said Collector of Taxes shall pay over said compensation to Second Party monthly by check. In the event suit is necessary to collect any of the delinquent taxes, penalty and interest covered by this contract, Second Party agrees to recover as attorney's fees on behalf of First Party, twenty (20%) percent of all such delinquent taxes, penalty and interest or the additional penalty authorized by Section 33.07 of the Texas Property Tax Code as applicable.

V.

First Party agrees to furnish to Second Party all data and information in its possession as to the name, identity and location of necessary parties and the legal description of the property necessary to the filing of any suit for taxes and to pay any expenses incurred in obtaining same. Second Party agrees to recover on behalf of First Party any such expenses so incurred in any suit for collection of such taxes to the extent provided by law.

VI.

This contract will commence on the 31<sup>ST</sup> day of December, 2012, and shall end on the 31<sup>ST</sup> day of December, 2015 ; after which time the agreement shall continue to be in effect, either party may terminate this agreement upon (ninety) 90 days written notice of their desire and intention to terminate said agreement after the 31st day of December, 2015; and further provided that Second Party shall have an additional six (6) months to reduce to judgment all tax suits filed prior to the date this agreement shall become terminated.

In consideration of the terms and compensation herein stated, Second Party hereby accepts said employment and undertakes the performance of this contract as above written.

This contract is executed on behalf of First Party by the presiding officer of its governing body, who is authorized to execute this instrument by order heretofore passed and duly recorded in its minutes.

WITNESS the signatures of all parties hereto in duplicate originals, on this 30<sup>th</sup> day of October, 2012, in Collin County, Texas.

CITY OF PLANO , TEXAS

BY: \_\_\_\_\_  
BRUCE D. GLASSCOCK  
CITY MANAGER

GAY, McCALL, ISAACKS, GORDON & ROBERTS, P.C.

BY:   
DAVID McCALL

THE STATE OF TEXAS   §  
                                  §  
COUNTY OF COLLIN   §

I, DAVID McCALL, a duly licensed attorney, do certify that I have no business connection with any CITY OF PLANO office or any officer within the CITY OF PLANO and that I am not related within the second degree of affinity or within the third degree of consanguinity to any member of the CITY OF PLANO board now holding office in the CITY OF PLANO .

*David McCall*  
DAVID McCALL

SUBSCRIBED AND SWORN TO before me by the said DAVID McCALL, on this 30<sup>th</sup> day of October, 2012 to certify which, witness my hand and seal of office.

*Elisa Heard*  
Notary Public, State of Texas





**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>				
<input type="checkbox"/> Consent <input checked="" type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		11/26/12		
Department:		City Manager		
Department Head		Frank F. Turner		
Agenda Coordinator (include phone #): <b>Sherry Jackson - Ext. 7122</b>				
<b>CAPTION</b>				
<p>A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of a Real Estate Contract by and between Argent Plano Realty, L.P. and the City of Plano, Texas for purchase of a 6.731 acre tract of land being more commonly known as Plano Tech Center – Site #8, located at Shiloh Road and 14<sup>th</sup> Street in the City of Plano, Collin County, Texas for future development as a passenger station for the Cotton Belt Rail station; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.</p>				
<b>FINANCIAL SUMMARY</b>				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: <b>2012-13</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget	0	1,000,000	0	<b>1,000,000</b>
Encumbered/Expended Amount	0	0	0	<b>0</b>
This Item	0	-1,000,000	0	<b>-1,000,000</b>
BALANCE	0	0	0	<b>0</b>
<b>FUND(S):    CAPITAL RESERVE</b>				
<p><b>COMMENTS:</b> Funds are included in the Capital Reserve fund balance. This item, in the amount of \$1,000,000 will leave a FY 12-13 projected beginning balance of \$43.7 million in the Capital Reserve Fund and will be reimbursed by the Regional Transportation Council (RTC) and the North Central Texas Council of Governments (NCTCOG).</p>				
<p><b>STRATEGIC PLAN GOAL:</b> Approving the resolution relates to the City's Goals of Financially Strong City with Service Excellence and Partnering for Community Benefit.</p>				
<b>SUMMARY OF ITEM</b>				
<p>Resolution Approving Real Estate Contract Related to 6.731 Acre Tract located at Shiloh Road and 14<sup>th</sup> Street for future development as a Cotton Belt Rail passenger station.</p>				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Resolution; EXHIBIT "A": Real Estate Contract				

**A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of a Real Estate Contract by and between Argent Plano Realty, L.P. and the City of Plano, Texas for purchase of a 6.731 acre tract of land being more commonly known as Plano Tech Center – Site #8, located at Shiloh Road and 14<sup>th</sup> Street in the City of Plano, Collin County, Texas for future development as a passenger station for the Cotton Belt Rail station; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.**

**WHEREAS**, City desires to purchase from Argent Plano Realty, L.P. a 6.731 acre tract of land in fee simple known as Plano Tech Center – Site #8, located at Shiloh Road and 14<sup>th</sup> Street in the City of Plano, Collin County, Texas ("Property") for development as a passenger station for the Cotton Belt Rail station; and

**WHEREAS**, the City Council has been presented a proposed Real Estate Contract by and between Argent Plano Realty, L.P. and the City of Plano, Texas to provide for the terms and conditions for the sale and purchase of the Property, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Contract"); and

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

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

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

**Section II.** The City Manager or his authorized designee is hereby authorized to execute the Contract 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 Contract.

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

**DULY PASSED AND APPROVED** this the 26<sup>th</sup> day of November, 2012.

\_\_\_\_\_  
Phil Dyer, MAYOR

ATTEST:

\_\_\_\_\_  
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

\_\_\_\_\_  
Diane C. Wetherbee, CITY ATTORNEY

## REAL ESTATE CONTRACT

This contract is entered into as of the Effective Date (as hereinafter defined) by and between Argent Plano Realty, L.P., a Texas limited partnership ("Seller"), and the **CITY OF PLANO, TEXAS**, a home rule municipal corporation ("City").

**WHEREAS**, City desires to purchase and Seller desires to sell to City a 6.731 acre (293,196 square foot) tract of land in fee simple known as Plano Tech Center – Site #8, Plano, Collin County, Texas and more particularly described in Exhibit "A" attached hereto and made a part hereof by reference ("Property").

**WHEREAS**, Seller and City have entered into this Real Estate Contract (the "Contract") to provide for the terms and conditions of the sale and purchase of the Property.

**NOW, THEREFORE**, in consideration of the premises and for further consideration of the terms, provisions, and condition hereinafter set forth, Seller and the City have agreed as follows:

**1. Agreement to Convey**

For the consideration and upon and subject to the terms, provisions, and conditions hereinafter set forth, Seller has agreed and does hereby agree to sell, grant and convey the Property to City and City has agreed and does hereby agree to purchase the Property from the Seller. The Property shall be conveyed to City together with all and singular the rights and appurtenances pertaining to such Property including, but not limited to, any right, title and interest of Seller in and to easements, adjacent streets, alleys and rights-of-way and together with all improvements, fixtures and buildings located, constructed, or placed thereon.

**2. Purchase Price and Escrow**

2.1. Purchase Price. The purchase price ("Purchase Price") to be paid for the Property shall be **ONE MILLION DOLLARS (\$1,000,000.00)** to be paid by City in a lump sum payment to Seller on the date of Closing as set out in Section 5 below.

2.2. Earnest Money

(a) Purchaser shall have five (5) business days after execution of this Contract by the parties to deliver a check in the amount of FIVE THOUSAND AND 00/100 DOLLARS (\$5,000.00) to the Title Company (hereinafter defined) as earnest money ("Earnest Money").

(b) In the event this Contract is closed, the Earnest Money shall be applied to the Purchase Price at Closing. In the event this Contract is not closed, then the Title Company shall disburse the Earnest Money in the manner provided for elsewhere herein.

**3. Title Commitment and Title Insurance**

Within five (5) days from the Effective Date, City, at its sole cost and expense, shall order a title commitment for the Property to be issued by Republic Title Company, Attn: Melvin Morgan, 2626 Howell Street, 10<sup>th</sup> Floor, Dallas, Texas 75204 (the "Title Company"). City shall have a period of fifteen (15) days from and after the date the Title Company issues the title commitment (the "Title Review Period") in which to notify Seller in writing specifying any defects, and Seller shall have thirty (30) days from the receipt of such notice to cure said defects or City may cancel this Contract. City, at its sole option, may waive any defects in writing. Any title encumbrances or exceptions, other than tenancy rights, liens affecting the Property and title exceptions arising after the date of this Contract, which are set forth in the title commitment and to which City does not object, or, if City has objected, which have been cured by Seller or waived by City, within the Title Review Period, shall be deemed to be Permitted Exceptions (herein so-called) to the status of Seller's title with respect to the Property. City may obtain title insurance at its sole cost and expense.

**4. Due Diligence Period**

City shall have sixty (60) days from the Effective Date of this Contract (the "Due Diligence Period") to conduct any or all of the following: engineering, planning, appraisal, environmental assessment, and any other studies deemed appropriate by City for the Property. Seller grants the City a right of entry to the property to conduct the studies. These studies must be satisfactory to City. If the studies are not satisfactory to City (in City's sole opinion) the City may terminate the Contract by written notice to Seller. The City Manager is authorized on behalf of the City to terminate this Contract if any study is not satisfactory. In the event of termination of the Contract pursuant to this Section 4 herein, the full amount of the Escrow Money shall be returned to the City.

Any entry made on the Property by City or its representatives shall be upon reasonable notice to Seller, at reasonable times and at the sole risk of City. City hereby indemnifies and holds harmless Seller from all losses, claims, liabilities, actions, and demands, arising out of City's inspection of the Property. City shall pay for all such work and inspections performed on or in connection with the Property and shall not permit the creation of any lien in favor of any contractor, materialman, mechanic, surveyor, architect, or laborer engaged by City. City's obligations under this Section shall survive the Closing or termination of this Contract.

**5. The Closing**

The closing of this Contract pertaining to the Property shall be consummated at a Closing to be held at the office of the Title Company at such time, date and place that the parties may agree upon, but in no event later than fifteen (15) days following the end of the Due Diligence Period (such date, the "Closing Date"). At the Closing, Seller agrees to deliver to City:

(a) An executed Special Warranty Deed (the "Deed") conveying good and indefeasible title in fee simple absolute to the Property and containing covenants of special warranty; said Deed being subject only to the Permitted Exceptions.

(b) All releases or other documents or instruments (all in recordable form) necessary to convey title to the Property as required by this Contract.

(c) Such other documents and instruments as may be necessary to evidence the authority of Seller to convey title to the Property.

At the Closing, City agrees to deliver to Seller the Purchase Price.

#### **6. Closing Costs and Proration of Taxes**

Closing costs shall be paid by City. All other expenses incurred by Seller and City with respect to the Closing, including, but not limited to, attorneys' fees incurred in connection with this Contract, shall be borne and paid exclusively by the party incurring same. Ad valorem taxes for the year of closing shall be prorated as of the Closing in accordance with the Texas Tax Code. All delinquent ad valorem taxes, if any, shall be paid by Seller.

#### **7. Representations and Warranties of Seller**

Seller makes the following representations and warranties to City regarding the Property:

(a) At Closing, there shall be no parties in possession of any portion of the Property as lessees, tenants at sufferance or trespassers, and no prescriptive rights will have been acquired in, or have commenced to run against the Property or any portion thereof.

(b) There is no litigation, including pending or threatened claims, or similar proceeding pending against the Property that would affect the Property or any portion thereof.

(c) At Closing, no person, firm, partnership, corporation or other entity shall have any right or option to purchase, lease, occupy or use the Property or any part thereof.

(d) At Closing, the consummation of the transactions contemplated herein will not violate or constitute a default under any provision of any contract, agreement, regulation, court order, judgment, decree, law or other document or instrument to which Seller is subject or bound and will not violate any other restrictions or prohibition of any kind or character to which Seller is subject.

(e) Seller is duly authorized and empowered to enter into this Contract and to consummate the transactions contemplated hereunder, and any person executing this Contract on behalf of Seller is duly authorized and empowered to do so.

**8. Representations and Warranties of City.**

City represents and warrants to Seller that this Contract has been duly and validly authorized, executed and delivered by City and, except as otherwise set forth in Section 10 hereof, no other action is required to the valid and binding execution, delivery, and performance of this Contract by City.

**9. Disclosures of Seller**

Except as otherwise disclosed as required by this Contract, Seller has no knowledge of the following:

- (a) Any environmental hazards or conditions affecting the Property that would violate applicable laws;
- (b) Any dumpsite, landfill, or underground tanks or containers now or previously located on the Property;
- (c) Any wetlands as defined by federal or state law or regulation, affecting the Property; or
- (d) Any threatened or endangered species or their habitat affecting the property.

City acknowledges and agrees that it will inspect the Property and be fully familiar with its physical condition during the Due Diligence Period and, subject to the terms and conditions of this Contract, will purchase the Property in an “as is” condition, “with all faults,” on the Closing Date.

**10. Conditions Precedent**

The following are conditions precedent to the City purchasing the Property from Seller:

- (a) The City must receive written confirmation from Dallas Area Rapid Transit (DART) and North Central Texas Council of Governments (NCTCOG) that the location of the Property is suitable for a rail station use; and
- (b) The City must receive written agreement from the Regional Transportation Commission (RTC) that they shall reimburse the City for the full amount of the purchase price of the Property; and

(c) The City must receive written approval from Oncor that the Cotton Belt rail line can be accessed through Oncor owned property.

If any of the above conditions precedent have not been satisfied (or otherwise waived in writing by City) on or prior to the Closing Date, the City may terminate this Contract by written notice to Seller given on or prior to the Closing. The City Manager is authorized on behalf of the City to terminate this Contract if any condition precedent is not met. In the event of termination of the Contract pursuant to this Section 10 herein, the full amount of the Escrow Money shall be returned to the City, and except for those obligations that survive the termination of this Contract pursuant to its terms, Seller and City will have no further obligations under this Contract.

#### **11. Acknowledgments, Covenants and Agreements of Parties**

Seller acknowledges covenants and agrees with City as follows:

(a) City and its agents and representatives shall have full access to the Property during the Due Diligence Period in Section 4 and any other times as mutually agreed by the parties.

(b) No new or additional improvements will be constructed, located or placed on the Property without the prior written consent of City.

(c) During the pendency of this Contract, Seller shall not, without the prior written consent of the City, create, impose or agree to any mortgages, liens, encumbrances, leases, tenancies, licenses, security interests, covenants, conditions, restrictions, rights-of-way, easements, judgments or other matters affecting title to the Property.

(e) This Contract constitutes a full and final settlement for all compensation due Seller for the Property by the City.

#### **12. Casualty Loss, Condemnation, Assessments**

12.1. Condemnation. In the event that prior to the date of Closing condemnation procedures are commenced by any governmental entity or authority other than City or other entity acting by, through or under City, against a portion or all of the Property or Seller receives any verbal or written notice of a threat or intent of condemnation of a portion or all of the Property by any governmental entity or authority other than City or other entity acting by, through or under City, Seller shall immediately notify City and City may, at its election, terminate this Contract by written notice to Seller within ten (10) business days after receipt of Seller's notice. Upon termination, neither party shall have any further rights or obligations hereunder. Should City elect not to exercise its option as provided hereunder, then the Contract shall remain in full force and effect and Seller shall assign or pay to City at Closing Seller's interest in and to all condemnation awards or proceeds from any such proceedings or actions in lieu thereof.

12.2. Casualty Loss. If any part of the Property is damaged or destroyed by fire or other casualty after the effective date of this Contract and before the Closing date, Seller shall restore the Property to its previous condition as soon as reasonably possible, but in any event by the Closing date. If Seller fails to do so due to factors beyond Seller's control, City may do the following:

- (a) Terminate this Contract;
- (b) Extend the time for performance and extend the Closing date; or
- (c) Accept the Property in its damaged condition with an assignment of the insurance proceeds and receive credit from Seller at Closing in the amount of the deductible under the insurance policy.

**13. Default**

(a) Seller's Default. In the event Seller should fail to consummate this Contract for any reason except City's default, City may, at its option, either enforce specific performance of this Contract or terminate this Contract as its sole and exclusive remedy hereunder. If Seller is unable to deliver title as required by this Contract, City shall have the right, but not the obligation, to take the Property with whatever title Seller can deliver. Nothing herein shall be construed to limit the City's right and power of eminent domain. In the event of termination of the Contract pursuant to this Section 13 (a) herein, the full amount of the Escrow Money shall be returned to the City.

(b) City's Default. In the event City shall fail to consummate this Contract for any reason except a reason set out in Section 4 or Section 10 herein or except for Seller's default, Seller may, at its option and as its sole and exclusive remedy, terminate this Contract by giving written notice thereof to City. In the event of termination of the Contract pursuant to this Section 4 herein, the full amount of the Escrow Money shall be returned to the City. In the event of termination of the Contract pursuant to this Section 13 (b) herein, the full amount of the Escrow Money shall be delivered to the Seller.

**14. Non-waiver**

No waiver by either party of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the party against which enforcement is sought. No delay or omission in the exercise of any right or remedy accruing to either party upon any breach of this Contract by the other party shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by either party of any breach of any term, covenant or condition herein stated shall not be deemed to be a waiver of any other or subsequent breach of the same or any other term, covenant or condition herein contained.

**15. Representations Survive Closing**

All covenants, representations, and warranties in this Contract survive Closing for a period of 180 days. If any representation in this Contract is untrue on the Closing date, the party making such representation will be in default.

**16. Miscellaneous Provisions**

(a) All median cuts and curb cuts providing access to the Property which exist at the time of execution of this Contract shall continue in full force and effect.

(b) This Contract embodies the complete and entire agreement between the parties hereto relative to the Property and supersedes all prior negotiations, agreements and understanding relating thereto and may not be varied except by written agreement of such parties.

(c) This Contract shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors, heirs, representatives, administrators and assigns.

(d) This Contract shall be construed under and in accordance with the laws of the State of Texas and is fully performable in Collin County, Texas. Venue for any dispute arising out of this agreement shall be Collin County, Texas.

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

(f) All notices from one party to the other must be in writing and are effective when received by Certified Mail, U.S. Postal Service to the addresses indicated under the signatures for each party to the Contract below. Changes in address for notice purposes can be provided in writing to the opposite party.

(g) This Contract may be executed simultaneously in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

(h) The headings used throughout this Contract have been used for administrative convenience only and do not constitute matter to be considered in interpreting this Contract.

(i) The "Effective Date" of this Contract shall be the last date of signature of any party set forth below.

(j) Seller and City each represent to the other that there have been no brokers or real estate commission incurred as a result of this transaction.

(k) Time is of the essence of this Contract.

*[Remainder of page intentionally left blank.]*

IN WITNESS WHEREOF, the parties have executed this Contract as of the dates shown beside their respective signatures.

**SELLER:**

**ARGENT PLANO REALTY, L.P., a Texas limited partnership**

By: Argent Plano GP, LLC, a Texas limited liability company, its general partner

Date: 11-14-12

By:  \_\_\_\_\_

Name: Jonathan Stites  
Title: Vice President  
Address: 3030 LBJ Freeway, Suite 1475  
Dallas, Texas 75234

**CITY:**

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

Date: \_\_\_\_\_

By: \_\_\_\_\_

BRUCE D. GLASSCOCK  
City Manager  
1520 Avenue K  
P. O. Box 860358  
Plano, TX 75086-0358

APPROVED AS TO FORM:

\_\_\_\_\_  
Diane C. Wetherbee, City Attorney

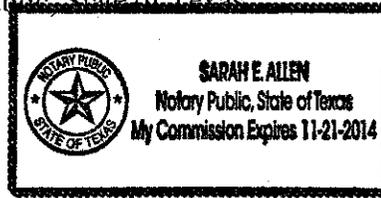
**ACKNOWLEDGMENTS**

STATE OF TEXAS §

COUNTY OF COLLIN §

This instrument was acknowledged before me on the 14<sup>th</sup> day of November, 2012 by Jonathan Stites (Authorized representative), Vice President (Title) of Argent Plano SP, INC., a Texas limited liability company, on behalf of said organization. LLC

Sarah E. Allen  
Notary Public, State of Texas



STATE OF TEXAS §

COUNTY OF COLLIN §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by **BRUCE D. GLASSCOCK**, City Manager of the **CITY OF PLANO, TEXAS**, a **home rule municipal corporation**, on behalf of said corporation.

\_\_\_\_\_  
Notary Public, State of Texas

## EXHIBIT "A"

### Description of the Property

BEING a tract of land situated in the D. Yeamans Survey, Abstract No. 1043, the J. T. McCollough Survey, Abstract No. 633, and the James Ledbetter Survey, Abstract No. 545, Collin County, Texas, and being part of a tract of land described in deed to Argent Plano Realty, L.P. as recorded in Clerk's File No. 99-0011425, Deed Records of Collin County, Texas, (D.R.C.C.T.), and being all of Lot 8, Block 1, of the Final Plat of Plano Tech Center, an addition to the City of Plano, Texas as recorded in Volume N, Page 578, Plat Records, Collin County, Texas (P.R.C.C.T.), and being more particularly described as follows:

BEGINNING at a 1/2-inch iron rod with a yellow plastic cap stamped "Half Assoc., Inc." (hereinafter referred to as "with cap") found at the northeast corner of said Lot 8, and being on the west line of a tract of land described in deed to T.P. & L. Company as recorded in Volume 874, Page 566, D.R.C.C.T., also being on the south line of a tract of land described in deed to Texas Utilities Electric Company, as recorded in Volume 3409, Page 171, D.R.C.C.T.;

THENCE South 02 degrees 11 minutes 24 seconds West, along the west line of said T.P. & L. Company tract, a distance of 484.59 feet to an "x" cut in concrete found for the southeast corner of said Lot 8, same being the northeast corner of Lot 3, Block 1 of said Plano Tech Center Addition;

THENCE departing said west line, and along the common line between said Lot 8, and said Lot 3, the following bearings and distances:

North 87 degrees 50 minutes 54 seconds West, a distance of 20.43 feet to an "x" cut in concrete found for the beginning of a non-tangent circular curve to the left with a radius of 88.00 feet, and whose chord bears South 72 degrees 33 minutes 00 seconds West, a distance of 69.65 feet;

Southwesterly, along said curve to the left, through a central angle of 46 degrees 37 minutes 28 seconds, an arc distance of 71.61 feet to an "x" cut in concrete found for the point of reverse curvature of a circular curve to the right with a radius of 88.00 feet, and whose chord bears South 70 degrees 42 minutes 50 seconds west, a distance of 64.44 feet;

Southwesterly, along said curve to the right, through a central angle of 42 degrees 57 minutes 18 seconds, an arc distance of 65.97 feet to an "x" cut in concrete found for the point of tangency;

North 87 degrees 48 minutes 36 seconds West, a distance of 368.10 feet to an "x" cut in concrete found for the southwest corner of said Lot 8, same being northwest corner of said Lot 3, said corner being on the east line of Lot 5, Block 1 of said Plano Tech Center Addition;

THENCE North 00 degrees 12 minutes 30 seconds East, along the common line with said Lot 5, passing at a distance of 219.57 feet the northeast corner of said Lot 5, same being the southeast corner of Lot 6, Block 1 of said Plano Tech Center Addition, and continuing along the common line with said Lot 6, in all a distance of 229.67 feet to an "x" cut in concrete found for corner;

THENCE North 01 degrees 11 minutes 53 seconds East, continuing along said common line, a distance of 345.69 feet to an "x" cut in concrete found for the southerly northwest corner of said Lot 8, same being the northeast corner of said Lot 6, said corner being the southerly southeast corner of Lot 7, Block 1 of said Plano Tech Center Addition;

THENCE North 39 degrees 26 minutes 15 seconds East, along the common line with said Lot 7, a distance of 37.48 feet to a 1/2-inch iron rod with cap found for the northerly northwest corner of said Lot 8, same being the northerly southeast corner of said Lot 7, said corner being the southwest corner of a said Texas Utilities Electric Company tract

THENCE South 79 degrees 32 minutes 43 seconds East, along the common line with said Texas Utilities Electric Company tract, a distance of 510.63 feet to the POINT OF BEGINNING AND CONTAINING 293,196 square feet or 6.731 acres of land, more or less.



## CITY OF PLANO COUNCIL AGENDA ITEM

<b>CITY SECRETARY'S USE ONLY</b>				
<input type="checkbox"/> Consent <input checked="" type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		11/26/12		
Department:		City Manager		
Department Head		Frank Turner		
Agenda Coordinator (include phone #): <b>Sherry Jackson - Ext. 7122</b>				
<b>CAPTION</b>				
<p>A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of a Memorandum of Understanding between the City of Plano, the Regional Transportation Council, and the North Central Texas Council of Governments for which the City will be reimbursed for the purchase of a 6.731 acre tract of land being more commonly known as Plano Tech Center – Site #8, located at Shiloh Road and 14th Street in the City of Plano, Collin County, Texas for the purpose of developing a passenger station in the City of Plano for the Cotton Belt Rail System; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.</p>				
<b>FINANCIAL SUMMARY</b>				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input checked="" type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: <b>2012-13</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget	0	0	0	<b>0</b>
Encumbered/Expended Amount	0	0	0	<b>0</b>
This Item	0	1,000,000	0	<b>1,000,000</b>
BALANCE	0	1,000,000	0	<b>1,000,000</b>
<b>FUND(S):    CAPITAL RESERVE</b>				
<p><b>COMMENTS:</b> Approval of this item will allow the City of Plano to be reimbursed \$1,000,000 for the initial purchase of a 6.731 acre tract of land for the purpose of developing a passenger station for the Cotton Belt Rail System. There is a companion agenda item in the amount of \$1,000,000 for the expenditure of funds from the Capital Reserve Fund to purchase the tract of land. The Capital Reserve Fund will be reimbursed by the Regional Transportation Council (RTC) and the North Central Texas Council of Governments (NCTCOG).</p> <p><b>STRATEGIC PLAN GOAL:</b> Approving the resolution relates to the City's Goals of Financially Strong City with Service Excellence and Partnering for Community Benefit.</p>				
<b>SUMMARY OF ITEM</b>				
<p>Resolution approving Memorandum of Understanding related to 6.731 acre tract for future development as a Cotton Belt Rail passenger station. City reimbursed \$1,000,000.</p>				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Exhibit "A" - Memorandum of Understanding				

**A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of a Memorandum of Understanding between the City of Plano, the Regional Transportation Council, and the North Central Texas Council of Governments for which the City will be reimbursed for the purchase of a 6.731 acre tract of land being more commonly known as Plano Tech Center – Site #8, located at Shiloh Road and 14th Street in the City of Plano, Collin County, Texas for the purpose of developing a passenger station in the City of Plano for the Cotton Belt Rail System; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.**

**WHEREAS**, the Regional Transportation Council (RTC), the independent transportation policy body of the North Central Texas Council of Governments (NCTCOG) acting as the Metropolitan Planning Organization for the region, is responsible for transportation project selection, programming and funding for regional transportation needs; and

**WHEREAS**, the City of Plano (the City) participates in addressing transportation needs within its jurisdiction; and

**WHEREAS**, Mobility 2035, the metropolitan transportation plan for the Dallas-Fort Worth metropolitan area, identifies the Tex Rail/Cotton Belt corridor (the Cotton Belt rail system) as a key regional link connecting southwest Fort Worth to Plano with connections throughout the corridor including D-FW International Airport; and

**WHEREAS**, the City, RTC and NCTCOG desire to enter into a Memorandum of Understanding (the “Agreement”), Exhibit “A” attached hereto, under which Plano will acquire a 6.731 acre tract of land being more commonly known as Plano Tech Center – Site #8, located at Shiloh Road and 14th Street in the City of Plano, Collin County, Texas for the purpose of developing a passenger station in the City of Plano for the Cotton Belt rail system and RTC/NCTCOG will reimburse the City for said purchase, (the “Agreement”).

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

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

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

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

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

**DULY PASSED AND APPROVED** this the 26<sup>th</sup> day of November, 2012.

\_\_\_\_\_  
Phil Dyer, MAYOR

ATTEST:

\_\_\_\_\_  
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

\_\_\_\_\_  
Diane C. Wetherbee, CITY ATTORNEY

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE CITY OF PLANO, REGIONAL TRANSPORTATION  
COUNCIL AND NORTH CENTRAL TEXAS COUNCIL  
OF GOVERNMENTS FOR ACQUISITION OF  
PROPERTY FOR THE COTTON BELT RAIL SYSTEM**

This Memorandum of Understanding is to outline the terms and conditions of an agreement between the Regional Transportation Council (RTC), North Central Texas Council of Governments (NCTCOG) and the City of Plano (City) regarding the acquisition of the real property described in Exhibit "A" attached hereto (the "Property") for the purpose of developing a passenger station in the City of Plano for the Cotton Belt Corridor rail system. Mobility 2035, the metropolitan transportation plan for the Dallas-Fort Worth metropolitan area, identifies the Tex Rail/Cotton Belt corridor as a key regional link connecting southwest Fort Worth to Plano with connections throughout the corridor including D-FW International Airport.

For good and valuable consideration, the City, RTC and NCTCOG agree as follows:

1. The City agrees to use its best efforts to purchase the Property on or before February 1, 2013 in the amount of One Million Dollars (\$1,000,000.00) to hold for the purpose of developing a passenger station at a later date to be determined by the parties for the Cotton Belt Corridor rail system. The City will advance the costs associated with the purchase of the Property from the current available revenues of the City to be reimbursed as provided herein. If the City fails to purchase the Property on or before February 1, 2013, RTC and NCTCOG may terminate this Memorandum of Understanding with no further obligation hereunder by the parties.
2. The RTC and NCTCOG agree to reimburse the City for the purchase of the Property in the amount of One Million Dollars (\$1,000,000.00) on or before September 31, 2013. If the RTC, NCTCOG or the Texas Department of Transportation (TXDOT), subject to Number 3 below, fails to reimburse the City for the purchase of the Property on or before September 31, 2013, the City may terminate this Agreement with no further obligation hereunder by the parties.
3. The RTC represents that it has approved the programming of Regional Toll Revenue funds in the amount of One Million Dollars (\$1,000,000.00) to reimburse the City for the purchase of the Property. RTC approval of funding for reimbursement to the City is subject to Texas Transportation Commission approval which is anticipated to occur by May 30, 2013. Upon approval by the Texas Transportation Commission, the City will enter into a funding agreement with TXDOT to be reimbursed for the purchase of the Property. Payment by TXDOT of One Million Dollars (\$1,000,000.00) to the City for reimbursement of the purchase of the Property shall satisfy the reimbursement by RTC and NCTCOG as required by number 2 above.
4. Subject to approval of the RTC and NCTCOG, the City may improve and use the Property for another purpose during the pendency of this Memorandum of Understanding, provided such use does not diminish the use of the Property for its original intended purpose and provided the use ceases upon notice from RTC pursuant to number 5 below to transfer the property for development for the rail system.
5. At the direction of the RTC, the City agrees to transfer a property interest in and to the Property, in a manner and means allowed by law, to the entity responsible for development of the Cotton Belt Corridor

rail system. Upon written notice by the RTC to the City to transfer the Property for the development of a passenger station for the Cotton Belt Corridor rail system, the City shall transfer the Property within sixty (60) days subject to City Council approval if required.

6. Upon agreement of the parties or at the expiration of ten (10) years from the date of this Memorandum of Understanding, whichever occurs first, the City may sell the Property, with RTC approval, with the proceeds, less expenses of the sale, paid to the NCTCOG. Alternatively, the City may reimburse the NCTCOG for the fair market value of the Property, with RTC approval, and use it thereafter for any purpose as determined in the sole discretion of the City.

This Memorandum of Understanding shall be effective, beginning with the date of the last signature hereto as evidenced below and end upon completion of the obligations herein or ten (10) years from the effective date subject to the requirements in number 6 above, whichever occurs first or by termination as otherwise provided herein. Each party signing below represents that it is a duly authorized representative of the entity for which it is signing and that it has full authority to enter into this Memorandum of Understanding on behalf of their respective entity. Further, the parties agree that this will be a valid and binding agreement between the City, the RTC and the NCTCOG.

Signatures:

Date: \_\_\_\_\_  
Bruce D. Glascock  
City Manager, City of Plano, Texas

  
Date: 11/20/12  
Mike Eastland, Executive Director  
North Central Texas Council of Governments

  
Date: 11/20/12  
Michael Morris, P.E.  
Director of Transportation  
Regional Transportation Council

## EXHIBIT "A"

### Description of the Property

BEING a tract of land situated in the D. Yeamans Survey, Abstract No. 1043, the J. T. McCollough Survey, Abstract No. 633, and the James Ledbetter Survey, Abstract No. 545, Collin County, Texas, and being part of a tract of land described in deed to Argent Plano Realty, L.P. as recorded in Clerk's File No. 99-0011425, Deed Records of Collin County, Texas, (D.R.C.C.T.), and being all of Lot 8, Block 1, of the Final Plat of Plano Tech Center, an addition to the City of Plano, Texas as recorded in Volume N, Page 578, Plat Records, Collin County, Texas (P.R.C.C.T.), and being more particularly described as follows:

BEGINNING at a 1/2-inch iron rod with a yellow plastic cap stamped "Halff Assoc., Inc." (hereinafter referred to as "with cap") found at the northeast corner of said Lot 8, and being on the west line of a tract of land described in deed to T.P. & L. Company as recorded in Volume 874, Page 566, D.R.C.C.T., also being on the south line of a tract of land described in deed to Texas Utilities Electric Company, as recorded in Volume 3409, Page 171, D.R.C.C.T.;

THENCE South 02 degrees 11 minutes 24 seconds West, along the west line of said T.P. & L. Company tract, a distance of 484.59 feet to an "x" cut in concrete found for the southeast corner of said Lot 8, same being the northeast corner of Lot 3, Block 1 of said Plano Tech Center Addition;

THENCE departing said west line, and along the common line between said Lot 8, and said Lot 3, the following bearings and distances:

North 87 degrees 50 minutes 54 seconds West, a distance of 20.43 feet to an "x" cut in concrete found for the beginning of a non-tangent circular curve to the left with a radius of 88.00 feet, and whose chord bears South 72 degrees 33 minutes 00 seconds West, a distance of 69.65 feet;

Southwesterly, along said curve to the left, through a central angle of 46 degrees 37 minutes 28 seconds, an arc distance of 71.61 feet to an "x" cut in concrete found for the point of reverse curvature of a circular curve to the right with a radius of 88.00 feet, and whose chord bears South 70 degrees 42 minutes 50 seconds west, a distance of 64.44 feet;

Southwesterly, along said curve to the right, through a central angle of 42 degrees 57 minutes 18 seconds, an arc distance of 65.97 feet to an "x" cut in concrete found for the point of tangency;

North 87 degrees 48 minutes 36 seconds West, a distance of 368.10 feet to an "x" cut in concrete found for the southwest corner of said Lot 8, same being northwest corner of said Lot 3, said corner being on the east line of Lot 5, Block 1 of said Plano Tech Center Addition;

THENCE North 00 degrees 12 minutes 30 seconds East, along the common line with said Lot 5, passing at a distance of 219.57 feet the northeast corner of said Lot 5, same being the southeast corner of Lot 6, Block 1 of said Plano Tech Center Addition, and continuing along the common line with said Lot 6, in all a distance of 229.67 feet to an "x" cut in concrete found for corner;

THENCE North 01 degrees 11 minutes 53 seconds East, continuing along said common line, a distance of 345.69 feet to an "x" cut in concrete found for the southerly northwest corner of said Lot 8, same being the northeast corner of said Lot 6, said corner being the southerly southeast corner of Lot 7, Block 1 of said Plano Tech Center Addition;

THENCE North 39 degrees 26 minutes 15 seconds East, along the common line with said Lot 7, a distance of 37.48 feet to a 1/2-inch iron rod with cap found for the northerly northwest corner of said Lot 8, same being the northerly southeast corner of said Lot 7, said corner being the southwest corner of a said Texas Utilities Electric Company tract

THENCE South 79 degrees 32 minutes 43 seconds East, along the common line with said Texas Utilities Electric Company tract, a distance of 510.63 feet to the POINT OF BEGINNING AND CONTAINING 293,196 square feet or 6.731 acres of land, more or less.



## CITY OF PLANO COUNCIL AGENDA ITEM

<b>CITY SECRETARY'S USE ONLY</b>				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		November 26, 2012		
Department:		Library Administration		
Department Head		Cathy Ziegler		
Agenda Coordinator (include phone #): <b>Jeanne Argomaniz x4327</b>				
<b>CAPTION</b>				
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 City of Frisco to allow the reciprocal lending of library materials to the cities' respective patrons; authorizing the City Manager or his designee to take such action and execute such documents as necessary to effectuate the agreement herein; and providing an effective date.				
<b>FINANCIAL SUMMARY</b>				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	<b>2012-2013</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>
		<b>TOTALS</b>		
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
<b>BALANCE</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>FUND(S):    GENERAL FUND</b>				
<b>COMMENTS:</b> This item has no financial impact.				
STRATEGIC PLAN GOAL: Providing an Interlocal Agreement to lend Library materials between the City of Plano and the City of Frisco relates to the City's goal of Partnering for Community Benefit.				
<b>SUMMARY OF ITEM</b>				
Plano Public Library System requests City Council of the City of Plano, Texas, approval of the terms and conditions of an interlocal agreement by and between City of Plano and City of Frisco to allow the reciprocal lending of library materials to the cities' respective patrons.				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Resolution and Exhibit A				

**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 City of Frisco to allow the reciprocal lending of library materials to the cities' respective patrons; authorizing the City Manager or his designee to take such action and execute such documents as necessary to effectuate the agreement herein; and providing an effective date.**

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

**WHEREAS**, The City Council has been presented a proposed Interlocal Cooperation Agreement by and between City of Frisco and City of Plano to allow the reciprocal lending of library materials to their respective patrons, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and

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

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

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

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

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

**DULY PASSED AND APPROVED** this the 26th day of November, 2012.

\_\_\_\_\_  
Phil Dyer, MAYOR

ATTEST:

\_\_\_\_\_  
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

\_\_\_\_\_  
Diane C. Wetherbee, CITY ATTORNEY

**INTERLOCAL COOPERATION AGREEMENT BETWEEN CITY OF PLANO AND  
CITY OF FRISCO FOR RECIPROCAL LENDING OF LIBRARY MATERIALS**

**THIS AGREEMENT** ("Agreement"), is made and entered into by and between the City of Plano, Texas, a home-rule municipal corporation located in Collin County, Texas (hereinafter referred to as "Plano") and the City of Frisco, Texas, a home-rule municipal corporation located in Collin and Denton County, Texas (hereinafter referred to as "Frisco").

**WHEREAS**, this Agreement is being entered into pursuant to the Interlocal Cooperation Act, V.T.C.A., Government Code, Section 791.001, et seq. (the "Act"); and

**WHEREAS**, Plano and Frisco are both local governments as defined by Section 791.003(a) of the Act engaged in the provision of governmental functions and services to their citizens; and

**WHEREAS**, the Frisco Public Library System and the Plano Public Library System desire to cooperate in the circulation of library materials for the mutual advantage of their patrons; and

**WHEREAS**, a program involving reciprocal lending of materials is believed by each of the parties to be in the best interest of its respective patrons; and

**WHEREAS**, Plano and Frisco have current revenues available to satisfy the fees and/or expenses incurred pursuant to this Agreement; and

**NOW THEREFORE**, for mutual consideration hereinafter stated, Plano and Frisco agree as follows.

**I. TERM**

The term of this Agreement is for a period of twelve (12) months beginning October 1, 2012, and ending September 30, 2013 to be renewed automatically unless cancelled by either party as provided in Section IV. TERMINATION herein.

**II. OBLIGATIONS OF THE PARTIES**

1. The terms of this Agreement are as follows:
  - (a) The term **RECIPROCAL LENDING** as used herein means and refers to the privileges which both parties mutually agree to extend to individuals who are residents or taxpayers (hereinafter, taxpayer) of the other party's municipality. Said **RECIPROCAL LENDING** privileges result in the issuance of a library card by either party to an individual taxpayer of the other party's municipality upon application by such person. The cards thus issued shall be subject to the general rules and regulations of the issuing party with respect to its borrowers, it being the intention of the parties that qualified patrons of each district during the term of the Agreement may have the same borrowing privileges afforded to the other municipality's taxpayers, wherever practical.

- (b) The term TRANSACTION as used herein means and refers to each and every separate library item which is loaned by one party to a patron of the other party's municipality at such patron's personal request in accordance with the RECIPROCAL LENDING privileges as defined in paragraph 1(a) of this Agreement.
2. The Frisco Public Library and the Plano Public Library shall mutually accord to individual taxpayers of each party RECIPROCAL LENDING privileges as defined in paragraph 1(a) with the following exceptions:
- (a) Reciprocal lending will not entitle the cardholder to free interlibrary loan services, interlibrary loan services will be available for a fee;
  - (b) Reciprocal cards will not entitle the cardholder to checkout electronic materials including e-books, e-audios, and downloadable items.
3. In order to provide RECIPROCAL LENDING privileges, each party shall cause a library card to be issued to an individual taxpayer of the other party's municipality upon application by such person, providing such person agrees to abide by and adhere to the rules and regulations of the issuing party.

### **III. FEES/ PAYMENTS DUE**

Each library system will bear its own cost of performing under this Agreement. All payments for expenses incurred as a result of the performance of this Agreement shall be made only from current revenues legally available to each respective party. Any renewal will be subject to the revenues available for that Agreement term.

### **IV. TERMINATION**

Either party to this Agreement may, without stating any cause or justification, terminate this Agreement by giving written notice to the other party sixty (60) days in advance of the termination date selected. In such case, a final report and reconciliation called for by this Agreement shall be rendered notwithstanding any termination under this paragraph.

Upon termination pursuant to Section IV. TERMINATION or by reason of the expiration of the Agreement without renewal, the cards to nonresident patrons issued pursuant to this Agreement shall expire.

### **V. RELEASE AND HOLD HARMLESS**

Each party agrees to waive all claims against, to release, and to hold harmless the other party and its respective officials, officers, agents, employees, in both their public and private capacities, from any and all liability, claims, suits, demands, losses, damages, attorneys fees, including all expenses of litigation or settlement, or causes of action which may arise by reason or injury to or death of any person or for loss of, damage to, or loss of use of any property arising out of or in connection with this Agreement. In the event that a claim is filed, each party shall be responsible for its proportionate share of liability.

### **VI. IMMUNITY**

In the execution of this Agreement, none of the parties waive, nor shall be deemed hereby to have waived any immunity or any legal or equitable defense otherwise available against claims arising in the exercise of governmental powers 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 does not create any rights in parties who are not signatories to this Agreement.

#### **VII. ENTIRE AGREEMENT**

This Agreement represents the entire and integrated agreement between City of Plano and the City of Frisco and supersedes all prior negotiations, representations and/or agreements, either written or oral. This Agreement may be amended only by written instrument signed by City of Plano and City of Frisco.

#### **VIII. NOTICES**

Unless notified otherwise in writing, all notices are required to be given to either party in writing and delivered in person or sent via certified mail to the other party at the following respective addresses:

Plano Representative:  
Cathy Ziegler, Director of Libraries  
Library Administration  
City of Plano  
2501 Coit Road  
Plano, TX 75075

Frisco Representative:  
Shelley Holley, Library Director  
Frisco Public Library  
City of Frisco  
6101 Frisco Square Blvd  
Frisco, TX 75035

#### **IX. 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.

#### **X. 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.

#### **XI. VENUE**

This Agreement and any of its terms or provisions, as well as the rights and duties of the parties hereto, shall be governed by the laws of the State of Texas. The parties agree that this Agreement shall be enforceable in Collin County, Texas, and if legal and necessary, exclusive venue shall lie in Collin County, Texas.

## XII. INTERPRETATION OF AGREEMENT

Although this Agreement is drafted by Plano, this is a negotiated document. Should any part of this Agreement be in dispute, the parties agree that the Agreement shall not be constructed more favorably for any of the parties.

## XIII. 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.

## XIV. SUCCESSORS AND ASSIGNS

The parties each bind themselves, their respective successors, executors, administrators, and assigns to the other party to this Agreement. Neither party will assign, sublet, subcontract or transfer any interest in this Agreement without the prior written consent of the other party. No assignment, delegation of duties or subcontract under this Agreement will be effective without the written consent of all parties.

**IN WITNESS WHEREOF**, each of the parties has executed this Agreement by its authorized representative on the day and year last signed below.

### CITY OF FRISCO

DATE 10/16/2012

BY: George Purefoy  
George Purefoy  
CITY MANAGER

APPROVED AS TO FORM:

Courtney Kuykendall  
Courtney Kuykendall, CITY ATTORNEY

**CITY OF PLANO, TEXAS**

DATE \_\_\_\_\_

BY: \_\_\_\_\_  
Bruce D. Glasscock  
CITY MANGER

APPROVED AS TO FORM:

\_\_\_\_\_  
Diane C. Wetherbee, CITY ATTORNEY

**ACKNOWLEDGMENTS**

STATE OF TEXAS           §  
  §  
COUNTY OF COLLIN       §

This instrument was acknowledged before me on the 17th day of October, 2012 by **GEORGE PUREFOY** for the **CITY OF FRISCO, TEXAS**, a home-rule municipal corporation on behalf of such municipal corporation.



*Sharon Perry*  
\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS           §  
  §  
COUNTY OF COLLIN       §

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

\_\_\_\_\_  
Notary Public, State of Texas



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular <input type="checkbox"/> Statutory
Council Meeting Date:	11/26/12
Department:	Animal Services
Department Head	Brian Collins
Agenda Coordinator (include phone #): <b>Doris Callaway, Ext. 7494</b>	

**CAPTION**

An Ordinance of the City of Plano, Texas creating Article XII of Chapter 4, Code of Ordinances, to allow non-profit search and rescue organizations to conduct search and rescue training at designated areas of City parks after obtaining a permit from the Animal Services Division; amending Section 4-1 (Definitions) of Article I, Section 4-51(d) (Public Nuisances) of Article III, and Section 15-4 (a)(6) of Article I, Chapter 15 to allow dogs participating in authorized search and rescue training to be off-leash without violating the at-large and nuisance ordinances; amending Section 4-153(d)(1) (Dangerous Animals) of Article IX to exempt dogs used for law enforcement purposes at the time of the attack, bite or mauling from the euthanasia provision per state law; and providing a penalty clause, a severability clause, a repealer clause, a publication clause and an effective date.

**FINANCIAL SUMMARY**

NOT APPLICABLE       OPERATING EXPENSE       REVENUE       CIP

FISCAL YEAR: <b>2012-13</b>	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	<b>0</b>
Encumbered/Expended Amount	0	0	0	<b>0</b>
This Item	0	0	0	<b>0</b>
BALANCE	0	0	0	<b>0</b>

FUND(S):      **N/A**

COMMENTS: This item has no fiscal impact.

STRATEGIC PLAN GOAL: An Ordinance to allow qualified Search and Rescue groups to provide off-leash training in City parks relates to the City's goal of a Safe Large City.

**SUMMARY OF ITEM**

This item allows permitted non-profit Search and Rescue Organizations to utilize approved areas of the City's parks to perform off-leash search and rescue training without violating the at-large and nuisance ordinances and amends the Dangerous Animal ordinances to comply with state law by providing an exemption to the ordering of euthanasia if the dog was being used for law enforcement purposes when it attacked, bit, or mauled a person.



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

List of Supporting Documents: Ordinance, Animal Services Memo and letter of support from Animal Shelter Advisory Committee.	Other Departments, Boards, Commissions or Agencies



## **MEMORANDUM**

---

**DATE:** November 8, 2012

**TO:** Brian Collins, Director of Environmental Health

**FROM:** Jamey Cantrell, Animal Services Manager

**SUBJECT:** Revisions to Chapter 4 – Animals of the City’s Code of Ordinances

At the October 19, 2010, Animal Shelter Advisory Committee meeting, a representative of a local Search and Rescue (SAR) group provided public comments and asked that City ordinance be revised to allow for off-leash training for these specialized canines. SAR training and benefits provided to the public were detailed and they stated that Plano was chosen due to an extensive park and trail system that is ideal for SAR training. The Committee agreed that these changes would be in the City’s best interests and Animal Services has since been working with the City’s Parks, Legal, and Risk Management Departments to finalize language that would allow such activity. The proposed changes further enhance the City’s reputation of a progressive, animal-loving community as research was able to find no other municipality in the country that has similar provisions for SAR training.

These changes require qualified non-profit SAR groups to obtain a permit from Animal Services that allows them to perform off-leash training only in areas designated for this use by Parks Department personnel. SAR groups must meet minimum training standards and insurance coverage provisions to be approved for a permit. SAR groups must also get approval from both Animal Services and Parks staff at least ten days prior to training to ensure use of the park by others is not impeded. All other park rules and city ordinances must be adhered to at all times.

A final change to the Dangerous Animal section of the ordinances was made to bring city regulations in line with state law. The provision eliminates the euthanasia disposition for animals that attack, bite, or maul an individual if at the time of the incident they are being used by a peace officer for law enforcement purposes. This situation has never arisen in Plano, but the change was made to prevent potential conflicts.



October 22, 2012

Dear Mayor Dyer and Members of the City Council,

At our meeting on October 19, 2010, the Plano Animal Shelter Advisory Committee was approached by a representative of Search One Rescue, a local non-profit Search and Rescue (SAR) organization. They requested that Plano's ordinances be revised so that they could legally perform off-leash training within the City, which is a vital component to their becoming certified SAR canines.

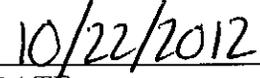
SAR dogs are used to locate individuals by trailing the faintest of scents. These remarkable animals have saved the lives of countless children, elderly, and others who lost their bearings and were unable to return to a safe place or were trapped by a natural or man-made disaster. They can also be trained to locate the remains of victims of violent crimes and in April of this year, the group that approached us played a vital part in locating the body of Johnathan Ramsey, the ten year old whose father and stepmother starved him and dumped his body in rural Ellis County.

Perhaps the most remarkable aspect of these SAR groups is that they are comprised almost entirely of people who spend countless hours creating a bond with the dog, training it to harness its natural abilities to the benefit of others, and responding to calls for help regardless of time or location without asking for any reimbursement. They volunteer this time so that they can save lives or at the very least give closure to a grieving family.

Plano's unique parks system, with its large wildlife preserves and secluded natural spaces, make ideal training landscapes since these animals must learn to deal with a variety of environmental challenges. SAR canines and their handlers team up to provide a public service that few dogs or people have the ability or expertise to offer and in fact, Plano benefits from their work as the Plano Police Department has utilized their special skills on several occasions.

It is for these reasons that we recommend that "Article XII. Search and Rescue Training in Public Places," and all associated changes, be approved by the Council at your earliest convenience.

  
Sunny Ruth, DVM, Chair  
Animal Shelter Advisory Committee

  
DATE

**An Ordinance of the City of Plano, Texas creating Article XII of Chapter 4, Code of Ordinances, to allow non-profit search and rescue organizations to conduct search and rescue training at designated areas of City parks after obtaining a permit from the Animal Services Division; amending Section 4-1 (Definitions) of Article I, Section 4-51(d) (Public Nuisances) of Article III, and Section 15-4 (a)(6) of Article I, Chapter 15 to allow dogs participating in authorized search and rescue training to be off-leash without violating the at-large and nuisance ordinances; amending Section 4-153(d)(1) (Dangerous Animals) of Article IX to exempt dogs used for law enforcement purposes at the time of the attack, bite or mauling from the euthanasia provision per state law; and providing a penalty clause, a severability clause, a repealer clause, a publication clause and an effective date.**

**WHEREAS**, staff recommends allowing qualified members of a non-profit search and rescue organization to conduct dog search and rescue training at designated areas of City parks without violating certain sections of the Code of Ordinances; and

**WHEREAS**, staff further recommends amendment of the Dangerous Animals ordinance to exempt dogs from being euthanized as a result of an attack, bite, or mauling if, at the time of the incident, the animal was used by a peace officer for law enforcement purposes, to be consistent with state law; and

**WHEREAS**, the City Council of the City of Plano, after consideration of the recommendations of staff and all matters attendant and related thereto, is of the opinion that the recommended additions and amendments should be approved and adopted.

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

**Section I.** Article XII of Chapter 4, Animal Regulations, is hereby created to read as follows:

**“ARTICLE XII. SEARCH AND RESCUE TRAINING IN PUBLIC PLACES**

**Sec. 4-206. Permit Required.**

- (a) After securing a permit from the Animal Services Division, search and rescue training may be conducted by qualified members of search and rescue organizations in designated areas of City parks between the hours of 5:00 a.m. and 11:00 p.m., unless different hours have been designated for the park facility.
- (b) Members of the search and rescue organization must possess at least a NASAR SARTECH III level of certification or a comparable level of certification before being eligible to conduct search and rescue training under this program.
- (c) A search and rescue organization seeking a Search and Rescue Training Permit shall submit a complete permit application to the Animal Services Manager and provide the following information:

- (1) Contact information for the search and rescue organization and the individuals authorized to conduct search and rescue training on behalf of the organization;
  - (2) Copy of the NASAR SARTECH III certification or its equivalent for each of the individuals conducting search and rescue training;
  - (3) Copy of the search and rescue organization's training materials;
  - (4) Copy of vaccination and registration records for each dog participating in search and rescue training; and
  - (5) Proof of general liability insurance coverage in the amount of \$100,000. The insurance carrier of this policy must be rated "A-" or better by A.M. Best's Key Rating Guide and licenses to do business in the State of Texas. In addition, the policy shall include the City of Plano, its officers, agents, employees, and representatives as additional insured parties and should contain a 30 day written notice of cancellation. A Certificate of Insurance for the required coverage must be submitted to the Animal Services Division at least two weeks prior to the event.
- (d) Prior to conducting any training, a permit holder must provide a written request to conduct search and rescue training to the Plano Animal Services Manager and a designated Plano Parks Department staff member at least ten (10) business days prior to the start of training. Each written request must state the time and date of each training session, the number of trainers involved in each training session and the number of dogs to be trained. A request may be denied based on availability of the training site.
- (e) It shall be unlawful for any person to conduct search and rescue training under this section without a permit from the Animal Services Division.
- (f) It shall be unlawful for any person who has received a permit for search and rescue training to fail to comply with the permit requirements and the provisions of this Article.

**Sec. 4-207. Revocation, denial and appeal.**

- (a) The Animal Services Manager may revoke or refuse to issue a permit if requirements under Section 4-206 (a)–(d) are not met.
- (b) Denial or revocation of a permit may be appealed to the Health Director. The appeal must be made in writing within ten (10) business days of receiving written notice of permit denial or revocation from the Animal Services Manager. If no appeal request is received within a ten (10) business day period, denial or revocation of the permit becomes final. Upon receiving an appeal, the Health Director will hold a hearing at a

time and place of the Director's designation within ten (10) business days of the appeal being received. Based upon available evidence, the Health Director will make a final ruling. The decision of the Health Director shall be final.

- (c) A search and rescue organization whose training permit has been revoked may re-apply for another permit after six (6) months from the date of revocation.”

**Section II.** The term “At large” in Section 4-1, Article I, Definitions and Enforcement, of Chapter 4, Animal Regulations, of the City of Plano Code of Ordinances is hereby amended to read as follows:

“*At large* means an animal that is:

1. Not confined to premises of the owner by substantial physical means of restraint of sufficient height, strength, and/or manner of construction so as to preclude the animal from leaving the premises of the owner or being able to come within six (6) feet of any public area; or
2. Not physically and continually restrained by a person by means of a tether of proper strength and of a length not more than six (6) feet.

This definition does not apply to:

1. An animal in any City-designated dog park so long as it is in compliance with all other requirements of this chapter.
2. An indigenous wild or feral animal;
3. An animal used by a peace officer for law enforcement purposes; or
4. A search and rescue dog participating in authorized search and rescue activities or search and rescue training.”

**Section III.** Section 4-1 of Article I, Definitions and Enforcement, of Chapter 4, Animal Regulations, of the City of Plano Code of Ordinances is hereby amended to add the following definitions:

“*NASAR* means the National Association for Search and Rescue, which is a non-profit corporation that provides training and certification resources for search and rescue, and emergency rescue efforts.

*SARTECH III* refers to basic level of certification of persons issued by the National Association for Search and Rescue.

*Search and rescue activity* refers to any activity by a trained search and rescue dog under the direction and control of a non-profit search and rescue organization or governmental entity to assist in the location of lost or missing persons or for other law enforcement or public safety purposes being performed at the request of a law enforcement agency.

*Search and rescue organization* refers to a group of volunteers operating as a non-profit organization that trains dogs to assist in the location of lost or missing persons or for other law enforcement or public safety purposes.

*Search and rescue training* means authorized training of a dog to provide search and rescue activities by a member of a permitted search and rescue organization in compliance with the requirements of their permit.”

**Section IV.** Section 4-51(d) of Article III, Public Nuisances, of Chapter 4, Animal Regulations, of the City of Plano Code of Ordinances is hereby amended to read as follows:

**“Sec. 4-51. Nuisances.**

- (d) It is an affirmative defense to prosecution under subsections (b) and (c) that:
- (1) The property was owned, leased, or controlled by the owner of the animal at the time it defecated;
  - (2) The owner of the property or person in control of the property had given prior consent for the animal to defecate on the property;
  - (3) The animal is being used by a peace officer for law enforcement purposes; or
  - (4) The animal is under the direction and control of a non-profit search and rescue organization participating in authorized search and rescue activity.”

**Section V.** Section 4-153(d)(1) of Article IX, Dangerous Animals, of Chapter 4, Animal Regulations, of the City of Plano Code of Ordinances is hereby amended to read as follows:

**“Sec. 4-153. Hearing.**

- (d) For the Health Director to deem the animal dangerous, he must find that the animal meets the definition of a dangerous animal as listed in section 4-100 of this chapter and that the destruction, removal, or registration of the animal is necessary to preserve the public health, safety, and welfare. If the animal is determined to be dangerous, the Health Director or his designee shall order that the owner comply with one (1) of the following:
- (1) Euthanasia of the dangerous animal:
    - a. Shall be ordered if the Health Director determines the animal caused the death or serious bodily injury of a person;
    - b. May be ordered if the Health Director determines the animal caused bodily injury to a person;

- c. May be ordered if the Health Director determines the animal was outside its enclosure or yard and caused death to another animal;
- d. May be ordered if the Health Director determines the animal was outside its enclosure or yard and caused serious bodily injury to another animal and has made at least one (1) unprovoked attack against an animal or person on a previous occasion.
- e. The owner of the animal may elect euthanasia.
- f. Euthanasia is not allowed by State law if the attack, bite, or mauling occurred while the dog was being used by a peace officer for law enforcement purposes. (*Health and Safety Code*, Section 822.003, as amended.)”

**Section VI.** Section 15-4(a)(6) of Article I, Chapter 15, Parks and Recreation, of the City of Plano Code of Ordinances is hereby amended to read as follows:

**“Sec. 15-4. Activities allowed with a permit or facility use agreement.**

6. *Animals.*

- (a) It shall be unlawful to ride, drive, lead, or let loose any animal, reptile or fowl of any kind, except in designated areas as indicated by City signage. These restrictions, however, shall not apply to dogs and cats when restrained by a leash not more than six (6) feet long. Such leash shall at all times serve as a connection between the dog or cat and the person that accompanies the dog or cat.
- (b) It shall be unlawful for any person to tie or restrain an animal by attaching its leash to fencing, trees, benches, bleachers, poles or other park facility infrastructure.
- (c) The leash requirements shall not apply to dogs being used by a peace officer for law enforcement purposes, or dogs participating in authorized search and rescue training and activity as allowed by ordinance.
- (d) A person commits an offense if the person accompanying the animal fails to immediately remove and dispose of any excreta the animal produces.
- (e) A person commits an offense if the person accompanying the animal fails to visibly have in his possession materials that can be used to immediately remove and dispose of any excreta the animal produces.
- (f) With the exception of service animals trained to assist individuals with a disability and animals participating in a special event sponsored by the City and approved by the Director, no animals are permitted inside park facility buildings, swimming

facilities or playground areas. Service animals that are trained to assist individuals with a disability are permitted in all park facilities."

**Section VII.** Any violation of the provisions or terms of this ordinance by any person, firm or corporation shall be a misdemeanor offense and shall be subject to a fine in accordance with Section 1-4(b) of the City Code of Ordinances for each offense. Every day a violation continues shall constitute a separate offense.

**Section VIII.** It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable, and if any phrase, clause, sentence, or section of this Ordinance shall be declared unconstitutional or invalid by any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any other remaining phrase, clause, sentence, paragraph or section of this Ordinance.

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

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

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

**DULY PASSED AND APPROVED** this the 26<sup>th</sup> day of November, 2012.

\_\_\_\_\_  
Phil Dyer, MAYOR

ATTEST:

\_\_\_\_\_  
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

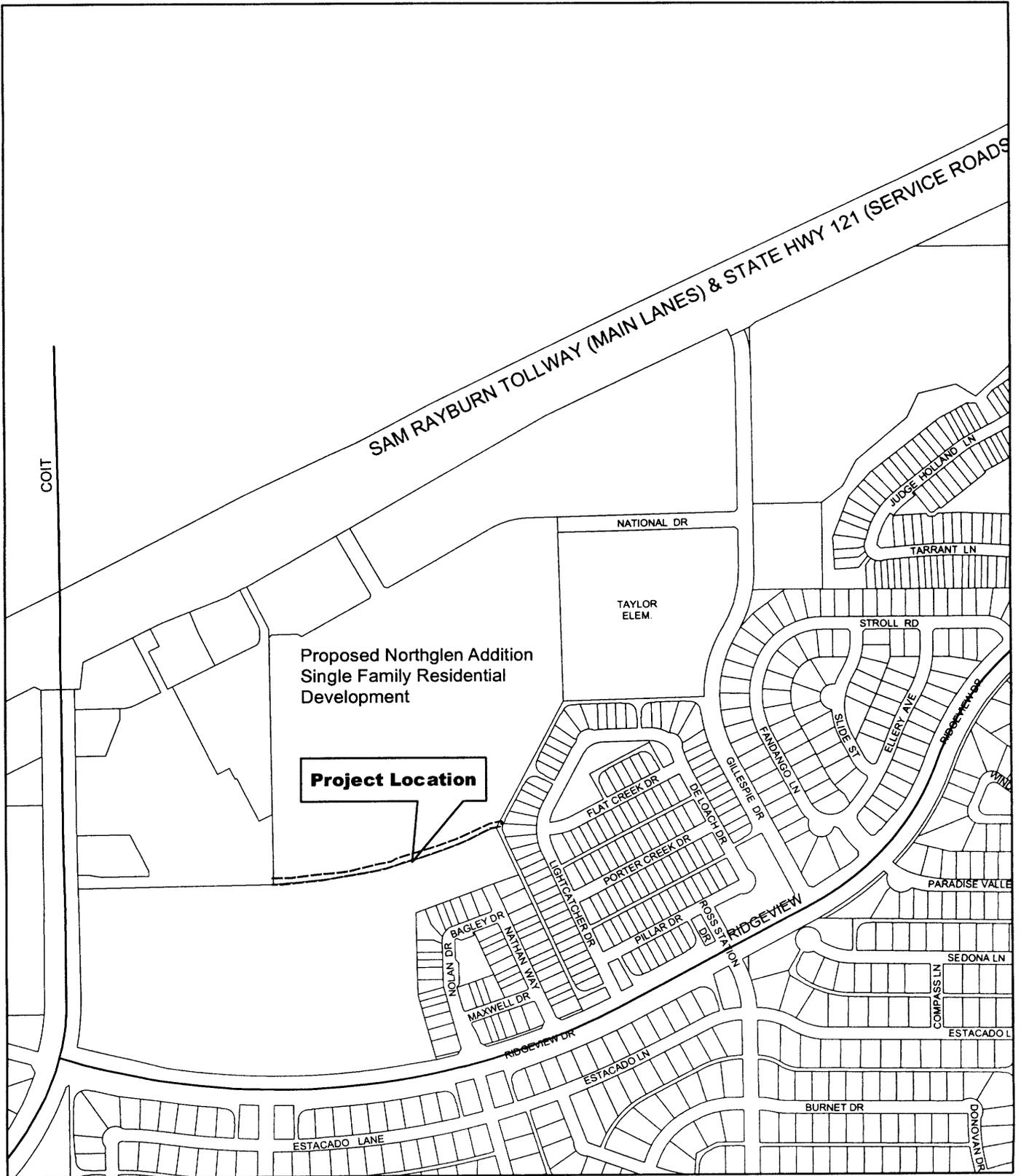
\_\_\_\_\_  
Diane C. Wetherbee, CITY ATTORNEY



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>					
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory					
Council Meeting Date:		11/26/12			
Department:	Public Works				
Department Head	Gerald Cosgrove				
Agenda Coordinator (include phone #): <b>Kathleen Schonne X-7198</b> <b>Proj. #6189</b>					
<b>CAPTION</b>					
<p>An Ordinance of the City of Plano, Texas, abandoning all right, title and interest of the City, in and to that certain 15' Water Easement recorded in Volume 640, Page 7072, of the Land Records of Collin County, Texas and being situated in the McKinney and Williams Survey, Abstract No. 650, which is located within the city limits of Plano, Collin County, Texas; quitclaiming all right, title and interest of the City in such easement to the abutting property owner, Hallmark Land Holdings, to the extent of its interest; authorizing the City Manager or his authorized designee, to execute any documents deemed necessary; and providing an effective date.</p>					
<b>FINANCIAL SUMMARY</b>					
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	<b>2012-2013</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget		0	0	0	0
Encumbered/Expended Amount		0	0	0	0
This Item		0	0	0	0
BALANCE		0	0	0	0
<b>FUND(s):</b> N/A					
<b>COMMENTS:</b> This item has no fiscal impact.					
<b>STRATEGIC PLAN GOAL:</b> Abandoning all right, title and interest of the City to the easement relates to the City's Goal of Financially Strong City with Service Excellence.					
<b>SUMMARY OF ITEM</b>					
<p>The waterline in this easement will be abandoned as approved in the construction plans for the Northglen Addition. It has been replaced by another waterline. As a result, the city will not need an easement within the future rear lots.</p>					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		
Ordinance			N/A		
Location Map					

# Easement Abandonment



**Location Map**

**An Ordinance of the City of Plano, Texas, abandoning all right, title and interest of the City, in and to that certain 15' Water Easement recorded in Volume 640, Page 7072, of the Land Records of Collin County, Texas and being situated in the McKinney and Williams Survey, Abstract No. 650, which is located within the city limits of Plano, Collin County, Texas; quitclaiming all right, title and interest of the City in such easement to the abutting property owner, Hallmark Land Holdings, to the extent of its interest; authorizing the City Manager or his authorized designee, to execute any documents deemed necessary; and providing an effective date.**

**WHEREAS**, the City Council of the City of Plano has been requested to abandon all right, title and interest of the City in and to that certain 15' Water Easement recorded in Volume 640, Page 7072, of the Land Records of Collin County, Texas (hereinafter called "Easement") being situated in the McKinney and Williams Survey, Abstract No. 650, which is located within the city limits of Plano, Collin County, Texas, and which is more particularly described in Exhibit "A-1" attached hereto and incorporated herein by reference; and

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

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

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

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

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

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

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

**DULY PASSED AND APPROVED** this the 26<sup>th</sup> day of November, 2012.

\_\_\_\_\_  
Phil Dyer, MAYOR

ATTEST:

\_\_\_\_\_  
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

\_\_\_\_\_  
Diane C. Wetherbee, CITY ATTORNEY

## EXHIBIT "B"

### PETITION FOR ABANDONMENT

[For Easement Abandonment]

We, the undersigned, (hereinafter "Owners"), being all of the owners of real property abutting **15' WATER EASEMENT C.C.C.F.#2004-0045813 L.R.C.C.T** (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:  
We will be removing this waterline as approved in the construction plans for Northglen Addition.

2. The following public interest will be served as a result of the abandonment:  
Because this waterline will no longer exist, the city will not need an easement within the future rear lots.

~~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 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:  
N/A
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]

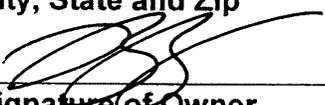
10. The undersigned officers and/or agents of the Owners hereby represent and affirm that they have the necessary authority to execute this Petition for Abandonment on behalf of the Owners.

Hallmark Land Holdings  
Typed Name of Owner

15455 Dallas Parkway Ste 1000  
Address

Addison, Texas 75001  
City, State and Zip

Dated: 10/30/12

  
Signature of Owner

Contact Person for Property Owners:

Name: Beau Brooks

Phone No: 214 750 6528

---

**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.

  
\_\_\_\_\_  
Public Works Department  
City of Plano, Texas

**EXHIBIT A-1**  
**15' WATER EASEMENT ABANDONMENT**

**LEGAL DESCRIPTION**

BEING a parcel of land located in the City of Plano, Collin County, Texas, a part of the McKinney and Williams Survey, Abstract Number 650, and being a part of that called 27.460 acre tract of land described as Tract 1 in a special warranty deed from Hagggar-Jezzeen Partners to Hallmark Land Holdings, Inc. as recorded in Collin County Clerk's File Number 20120420000462060, Land Records of Collin County, Texas, and being a part of a 15' water easement from Hagggar-Jezzen Partners to the City of Plano as described in Collin County Clerk's File Number 2004-0045813, Land Records of Collin County, Texas, and being further described as follows:

BEGINNING at a monument set at the southwest corner of said 27.460 acre tract, said point also being the southeast corner of Lot 1, Block A, Signature Plaza Addition, an addition to the City of Plano as recorded in Cabinet Q, Page 158, Map Records of Collin County, Texas, said point also being in the north line of Lot 1R, Block 1, Coit/Ridgeview Apartments Addition, an addition to the City of Plano as recorded in Volume 2008, Page 282, Map Records of Collin County, Texas;

THENCE North 00 degrees 45 minutes 04 seconds West, 15.00 feet along the west line of said 27.460 acre tract and the east line of said Lot 1, Block A to a point for corner;

THENCE Northeasterly, 912.34 feet along a curve to the left having a central angle of 26 degrees 20 minutes 03 seconds, a radius of 1985.00 feet, a tangent of 464.37 feet, and whose chord bears North 75 degrees 23 minutes 58 seconds East, 904.33 feet to a point for corner in east line of said 27.460 acre tract, said point being in the west line Ridgeview Villas Addition, an addition to the City of Plano as recorded in Cabinet R, Page 174, Map Records of Collin County, Texas;

THENCE along the east line of said 27.460 acre tract and the east line of said Ridgeview Villas Addition as follows:

South 28 degrees 03 minutes 05 seconds West, 25.83 feet to a one-half inch iron rod found for corner;

South 24 degrees 48 minutes 45 seconds East, 0.38 feet to a one-half inch iron rod found at the southeast corner of said 27.460 acre tract, said point also being the northeast corner of said Lot 1R, Block 1;

THENCE Southwesterly, 898.03 feet along the south line of said 27.460 acre tract and the north line of said Lot 1R, Block 1 following a curve to the right having a central angle of 25 degrees 43 minutes 35 seconds, a radius of 2000.00 feet, a tangent of 456.71 feet, and whose chord bears South 75 degrees 42 minutes 30 seconds West, 890.50 feet to the POINT OF BEGINNING and containing 13,573 square feet or 0.312 acres of land.

SCALE:

DATE  
10-03-12

DRAWN  
MWH

PROJECT  
GRH002-ESMT-  
RELEASE WE1.DWG

16301 QUORUM DRIVE, SUITE 200B  
ADDISON, TEXAS 75001

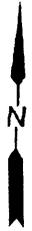


# EXHIBIT C-1 15' WATER EASEMENT ABANDONMENT

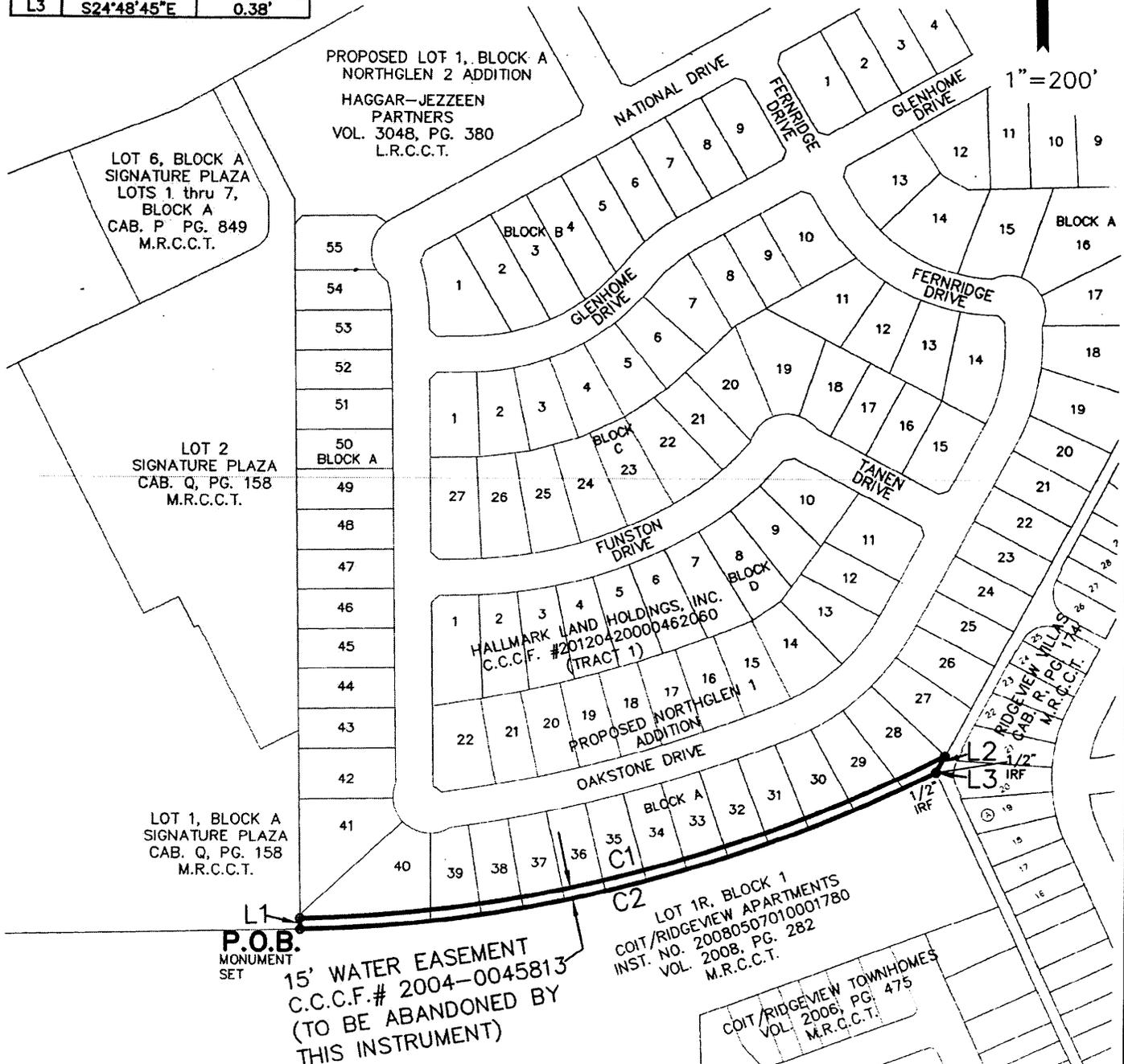
LINE TABLE		
LINE	BEARING	DISTANCE
L1	N00°45'04"W	15.00'
L2	S28°03'05"W	25.83'
L3	S24°48'45"E	0.38'

## LEGEND

IRF      IRON ROD FOUND  
POB      POINT OF BEGINNING



1" = 200'



**15' WATER EASEMENT**  
C.C.C.F.# 2004-0045813  
(TO BE ABANDONED BY  
THIS INSTRUMENT)

CURVE TABLE						
NO.	DELTA	RADIUS	LENGTH	TANGENT	CHORD BEARING	CHORD
C1	26°20'03"	1985.00'	912.34'	464.37'	N75°23'58"E	904.33'
C2	25°43'35"	2000.00'	898.03'	456.71'	S75°42'30"W	890.50'



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		11/26/12		
Department:		Economic Development		
Department Head		Sally Bane		
Agenda Coordinator (include phone #): <b>Linda Thomason x8201</b>				
<b>CAPTION</b>				
Public Hearing and an Ordinance of the City of Plano, Texas, designating a certain area within the City of Plano, Texas, as Reinvestment Zone No. 132 for tax abatement consisting of a 13.939 acre tract of land located in the Samuel Brown Survey, Abstract No. 108, Collin County and described in Exhibit "A", attached hereto, in the City of Plano, Texas, establishing the boundaries of such zone; ordaining other matters related thereto; and providing an effective date.				
<b>FINANCIAL SUMMARY</b>				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	<b>2012-13</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>
		<b>TOTALS</b>		
Budget		0	0	0
Encumbered/Expended Amount		0	0	0
This Item		0	0	0
BALANCE		0	0	0
FUND(S): <b>N/A</b>				
<b>COMMENTS:</b> This item has no fiscal impact. Notice of public hearing published on November 15, 2012 to create Reinvestment Zone 132. The real property improvements amount is \$54,000,000. Strategic Plan Goal: Providing economic development incentives relates to the City's goal of Strong Local Economy.				
<b>SUMMARY OF ITEM</b>				
This relates to Capital One, National Association, request for tax abatement on reinvestment Zone 132 and the creation of the zone on Dominion Parkway.				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Ordinance				
Metes and Bounds				

**An Ordinance of the City of Plano, Texas, designating a certain area within the City of Plano, Texas, as Reinvestment Zone No. 132 for tax abatement consisting of a 13.939 acre tract of land located in the Samuel Brown Survey, Abstract No. 108, Collin County and described in Exhibit "A", attached hereto, in the City of Plano, Texas, establishing the boundaries of such zone; ordaining other matters related thereto; and providing an effective date.**

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

**WHEREAS**, a public hearing before the City Council was set for 7:00 p.m. on the 26th day of November, 2012, such date being at least seven (7) days after the date of publication of the notice of such public hearing; and

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

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

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

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

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

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

- a) Improvements - Improvements shall include, for the purpose of establishing eligibility under the Act, any activity at the location, including, but not limited to, new construction.
- b) Taxable Real Property - Taxable real property shall be as defined in the Texas Property Tax Code and shall not include personal property as defined in said code, nor shall it include land.
- c) 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. 132, City of Plano, Texas.

**Section V.** The zone shall be effective as of January 1, 2014.

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

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

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

- a) Ten (10) consecutive tax years beginning with and including the January 1, 2014 assessment date for the Real Property Improvements.
- b) Share of taxes abated – fifty percent (50%) of taxes on the total value of appraised Real Property Improvements for the years 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022 and 2023.

**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; and
- 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; and

- 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 26th day of November, 2012.

\_\_\_\_\_  
Phil Dyer, MAYOR

ATTEST:

\_\_\_\_\_  
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

\_\_\_\_\_  
Diane C. Wetherbee, CITY ATTORNEY

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

BEING a tract of land situated in the Samuel Brown Survey, Abstract No. 108, City of Plano, Collin County, Texas, and being part of that tract of land described in Special Warranty Deed to Capital One National Association as recorded in Document Number 20081008001203900, of the Official Public Records of Collin County, Texas (O.P.R.C.C.T.), and being part of Lot 4, Block 1 of the Revised Conveyance Plat of CAPITAL ONE ADDITION LOT 4, BLOCK 1, an addition to the City of Plano, Collin County, Texas as recorded in Volume 2012, Pages 42-43, O.P.R.C.C.T., and being more particularly described as follows:

BEGINNING at a 1/2-inch iron rod with a yellow plastic cap stamped "Half" (hereafter referred to as "with cap") found at an interior corner on the north line of said Lot 4, same being the southwest corner of Lot 2, Block A of the Conveyance Plat of NETWORK ASSOCIATES, LOT 2, BLOCK A, an addition to the City of Plano, Collin County, Texas as recorded in Volume 2006, Page 535, O.P.R.C.C.T.;

THENCE North 64 degrees 39 minutes 06 seconds East, along the common line between the northwest line of said Lot 4 and the southeast line of said Lot 2, passing at a call distance of 196.54 feet the southeast corner of said Lot 2, same being the southwest corner of Lot 1, Block A of the Final Plat of NETWORK ASSOCIATES, INC., BLOCK A, LOT 1, an addition to the City of Plano, Collin County, Texas as recorded in Volume O, Pages 322-323, Map Records of Collin County, Texas, and continuing along the common line between said Lot 4 and along the southeast line of said NETWORK ASSOCIATES, INC Addition, in all a total distance of 430.07 feet to a 1/2-inch iron rod with cap found for corner, said point being the northwest corner of Lot 3R, Block 1 of the Replat of CAPITAL ONE ADDITION LOT 3R, BLOCK 1, an addition to the City of Plano, Collin County, Texas as recorded in Volume 2012, Pages 164-165, O.P.R.C.C.T.;

THENCE South 42 degrees 47 minutes 48 seconds East, departing said common line, and along the common line between said Lot 4 and said Lot 3R, a distance of 55.13 feet to a 1/2-inch iron rod with cap found for corner;

THENCE South 17 degrees 12 minutes 12 seconds West, continuing along said common line, a distance of 546.04 feet to a point for corner;

THENCE South 42 degrees 50 minutes 57 seconds East, continuing along said common line, a distance of 71.01 feet to a 1/2-inch iron rod with cap set for corner;

THENCE South 17 degrees 12 minutes 12 seconds West, continuing along said common line, passing at a distance of 312.27 feet the most westerly corner of said Lot 3R, said corner being on the northeasterly right-of-way line of Dominion Parkway, being a northerly corner of a 12.02 foot jog in said right-of-way line, and continuing in all a total distance of 324.29 feet to a City of Plano monument found for corner on said east line of Dominion Parkway (92 feet wide at this point) and the southwesterly line of said Lot 4, said point being the beginning of a non-tangent

curve to the left with a radius of 1,446.00 feet and a chord bearing North 80 degrees 43 minutes 00 seconds West, a distance of 252.31 feet;

THENCE Northwesterly, along the common line between the southeasterly line of said Lot 4, and the northeasterly right-of-way line of said Dominion Parkway, and along said curve, through a central angle of 10 degrees 00 minutes 37 seconds, an arc distance of 252.63 feet to a 1/2-inch iron rod with cap set for corner;

THENCE North 85 degrees 43 minutes 18 seconds West, continuing along said common line, a distance of 223.92 feet to a point for the beginning of a non-tangent curve to the right with a radius of 1,004.00 feet and a chord that bears North 76 degrees 56 minutes 00 seconds West, a distance of 306.78 feet;

THENCE Northwesterly, continuing along said common line, and along said curve, through a central angle of 17 degrees 34 minutes 35 seconds, an arc distance of 307.99 feet to a point for corner;

THENCE departing said common line, and over and across said Lot 4, the following bearings and distances:

North 16 degrees 47 minutes 24 seconds East, a distance of 420.55 feet to a point for the beginning of a non-tangent circular curve to the left with a radius of 567.37 feet and a chord that bears North 84 degrees 59 minutes 11 seconds West, a distance of 31.57 feet;

Northwesterly, along said curve, through a central angle of 03 degrees 11 minutes 17 seconds, an arc distance of 31.57 feet to the point of reverse curvature of a circular curve to the right with a radius of 62.00 feet and a chord that bears North 79 degrees 53 minutes 41 seconds West, a distance of 14.44 feet;

Northwesterly, along said curve, through a central angle of 13 minutes 22 minutes 16 seconds, an arc distance of 14.47 feet to the point of tangency;

North 73 degrees 12 minutes 33 seconds West, a distance of 15.64 feet to the beginning of a non-tangent curve to the right with a radius of 32.00 feet and a chord that bears North 28 degrees 11 minutes 44 seconds West, a distance of 45.25 feet;

Northwesterly, along said curve, through a central angle of 90 degrees 00 minutes 00 seconds, an arc distance of 50.27 feet to a point for corner;

North 16 degrees 48 minutes 16 seconds East, a distance of 183.77 feet to the beginning of a non-tangent curve to the right with a radius of 32.00 feet and a chord that bears North 63 degrees 01 minute 14 seconds East, a distance of 45.25 feet;

Northeasterly, along said curve, through a central angle of 90 degrees 00 minutes 00 seconds, an arc distance of 50.27 feet to the point of reverse curvature of a non-tangent

curve to the left with a radius of 251.15 feet and a chord that bears South 89 degrees 52 minutes 27 seconds East, a distance of 154.53 feet;

Southeasterly, along said curve, through a central angle of 35 degrees 50 minutes 09 seconds, an arc distance of 157.08 feet to the point of reverse curvature of a non-tangent curve to the right with a radius of 234.23 feet and a chord that bears North 88 degrees 19 minutes 13 seconds East, a distance of 106.21 feet;

Northeasterly, along said curve, through a central angle of 26 degrees 12 minutes 34 seconds, an arc distance of 107.15 feet to a point for corner;

North 40 degrees 29 minutes 33 seconds East, a distance of 74.93 feet to a point for corner on the common northeast line of said Lot 4 and southwest line of said Lot 2;

THENCE South 49 degrees 30 minutes 24 seconds East, along said common line, a distance of 147.09 feet to the POINT OF BEGINNING AND CONTAINING 607,189 square feet or 13.939 acres of land, more or less.



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		11/26/12		
Department:		Economic Development		
Department Head		Sally Bane		
Agenda Coordinator (include phone #): <b>Linda Thomason x8301</b>				
<b>CAPTION</b>				
A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an agreement by and between the City of Plano, Texas, and Capital One, National Association, a national association, providing for real property tax abatement; and authorizing its execution by the City Manager or his authorized designee; and providing an effective date.				
<b>FINANCIAL SUMMARY</b>				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	<b>2012-13</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>
		<b>TOTALS</b>		
Budget		0	0	0
Encumbered/Expended Amount		0	0	0
This Item		0	0	0
BALANCE		0	0	0
FUND(S): <b>N/A</b>				
<b>COMMENTS:</b> This item has no fiscal impact. Strategic Plan Goal: Providing economic development incentives relates to the City's goal of Strong Local Economy.				
<b>SUMMARY OF ITEM</b>				
This relates to Capital One, National Association, for tax abatement on Reinvestment Zone 132 and the creation of the zone on Dominion Parkway.				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Resolution Tax Abatement Agreement				

**A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an agreement by and between the City of Plano, Texas, and Capital One, National Association, a national association, providing for real property tax abatement; and authorizing its execution by the City Manager or his authorized designee; and providing an effective date.**

**WHEREAS**, the City Council has been presented a proposed Tax Abatement Agreement by and between the City of Plano, Texas and Capital One, National Association, a national association, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and

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

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

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

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

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

**DULY PASSED AND APPROVED** this the 26th day of November, 2012.

\_\_\_\_\_  
Phil Dyer, MAYOR

ATTEST:

\_\_\_\_\_  
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

\_\_\_\_\_  
Diane C. Wetherbee, CITY ATTORNEY



## **IMPROVEMENTS**

2. (a) By December 31, 2013, the Owner shall make or cause to be made improvements to the Real Property consisting of a new building(s) and/or building improvements that are at least 360,000 gross square feet of office space with an assessed taxable value of not less than Fifty-Four Million Dollars (\$54,000,000) for new improvements added to the Real Property in the calendar years of 2012 and 2013, as determined by the Collin County Central Appraisal District. The real property abatement for the new improvements shall begin in the January 1, 2014 tax year pursuant to Section 9(a) herein unless an extension as a result of an Event of Force Majeure has been approved by the City in writing. The term "Event of Force Majeure" means any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the party), fires, explosions or floods, strikes, slowdowns, shortages or unavailability of materials or labor, or work stoppages any of which event(s) directly impact the Owner at the Real Property. The term shall not include a downturn in the economy.

(b) Upon the occurrence of an Event of Force Majeure, the affected party shall notify the City in writing not less than sixty (60) days of the commencement of the Event of Force Majeure with supporting documentation, the anticipated duration and the actions that the party will take to alleviate the Event of Force Majeure. The City Manager shall consider such request and may grant an extension of time to complete the obligations; such extension shall not be unreasonably withheld. If the Event of Force Majeure results in a delay of meeting the required improvement value, the party requesting the extension agrees that in the following year the minimum required taxable value of the improvements shall be met.

## **DEFAULT**

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

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

(b) Owner fails to construct the improvements required in Section 2(a); or

(c) At any time during the Agreement, the assessed taxable value of the Real Property improvements is less than the minimum amount set forth in Section 2(a) as a result of the Owner's protest; or

(d) (i) Owner fails to provide the annual certification as required in Section 7; or

(ii) Owner fails to comply with the Assignment provision in Section 8;

or

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

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

5. Upon the occurrence of an event of default under Section 3(a), (b) or (e) above and that remains uncured, all taxes, including previously abated taxes which would have been paid to the City by the Owner without the benefit of this Agreement, shall become due and owing to the City from the Owner, 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 and Texas Government Code Chapter 2264.

Upon the occurrence of an event of default under Section 3(c) or (d) above and that remains uncured, at the City's sole option, it may require all or a portion of all previously abated taxes which would have been paid to the City by the Owner without the benefit of this Agreement to become due and owing to the City from the Owner, together with interest charged from the date of this Agreement at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 33.01, but without the addition of penalty other than that mandated by V.T.C.A., § 33.01 or 33.07. City shall exercise such option within ninety (90) days of notice of default.

#### **EFFECT OF TERMINATION/SURVIVAL OF OBLIGATIONS**

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

#### **ANNUAL CERTIFICATION**

7. Beginning November 1, 2014, and on or before the 1st day of November of each calendar year thereafter during the Term (as defined below) of this Agreement, the Owner, or their successors or assigns, must provide annual certification (substantially in the form attached as **EXHIBIT "B"** hereto) to the City certifying compliance with each applicable term of the Agreement.

## **ASSIGNMENT**

8. In the event of a merger, sale, or assignment to an affiliate of Owner's property, Owner may terminate this Agreement with thirty (30) days prior notice to the City. If Owner wishes to assign its rights and duties under this Agreement, it must comply with the following provisions. A failure to comply is an event of default and all remedies may apply including but not limited to a suspension of the abatement for the year(s) for which non-compliance occurred.

(a) City Consent Required. Except as permitted by (b) below, this Agreement may not be assigned without the express written consent of the City. Subject to 8 (b) below, the assignment agreement must be furnished in a form acceptable to the City and be provided at least sixty (60) days prior to the effective assignment date for the City Council review and approval.

(b) Exceptions to City Consent. Owner may assign this Agreement without obtaining the City's consent:

- (i) To a wholly owned affiliate of Owner; or
- (ii) Any person or entity that directly or indirectly acquires, through merger, sale of stock, purchase or otherwise, all or more than ninety percent (90%) of the assets of the Owner; or
- (iii) Upon the sale of the Real Property by Owner.

(c) Subject to (d) below, prior to the effective date of the assignment or sale under Section 8(a) or (b) above, the assigning party agrees to have the assignee or successor execute an agreement with the City to be bound to all the terms and conditions of this Agreement, without exception, and the assignee or successor shall be responsible for any default(s) of the assignor or seller that occurred prior to or after the effective date of the assignment.

(d) If the assignment agreement cannot be furnished at least sixty (60) days prior to the effective assignment date, pursuant to Section 8 (a) above, due to a disclosure prohibition pursuant to law, notice of new ownership shall be provided to the City within thirty (30) days of the earlier of the disclosure prohibition end date or the acquisition of the assets by the new owner with an executed agreement signed by the new owner that they agree to be bound to all the terms and conditions of this Agreement without exception and the new owner shall be responsible for any defaults of the prior Owner that occurred prior to or after the effective date of the acquisition which is subject to City Council approval if required herein pursuant to (a) and/or (b) above.

## **ABATEMENT PROVISIONS**

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

(a) The tax abatement as to Real Property improvements, as provided for herein, shall be for a period of ten (10) tax years, from January 1, 2014 through December 31, 2023.

(b) In accordance with all applicable federal, state, and local laws and regulations, the abatement shall be based on amounts equal to fifty percent (50%) of the taxable value of the Real Property improvements for the tax years set forth above.

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

### **NOTICE**

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

For City by notice to:

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

With copy to:

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

For Owner by notice before and after relocation to:

Capital One, National Association  
Attention: Real Estate Administration  
14601 Sweitzer Lane, 17304-0135  
Laurel, Maryland 20707

With copy to:

Capital One, National Association  
Attention: Chief Counsel - Transactions  
1680 Capital One Drive  
McLean, VA 22102

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**

11. During the term of the Agreement, the Owner further agrees that the City, its agents and employees, shall have reasonable right (with no less than five (5) business days prior written notice to Owner and accompanied by Owner's representative) to access the Real Property during regular business hours to inspect the Real Property improvements in order to insure that the Real Property improvements are in accordance with this Agreement and all applicable federal, state, and local laws and regulations.

12. It is understood and agreed between the parties that the Owner, in performing its respective obligations hereunder, is acting independently, and the City assumes no responsibilities or liabilities in connection therewith to third parties and Owner agrees to indemnify and hold harmless City from any claims, suits and causes of actions, including attorneys' fees, of any nature whatsoever arising out of its default of its obligations hereunder, and Owner shall in no event be liable for consequential damages arising hereunder.

13. Based upon the certification provided by Owner, the City represents that the Real Property is not owned by any member of the City Council of the City of Plano or by a member of the Planning and Zoning Commission.

14. This Agreement was authorized by Resolution of the City Council at its Council meeting on the 26th day of November, 2012, authorizing the City Manager to execute the Agreement on behalf of the City.

15. This Agreement was entered into by the Owner pursuant to its duly authorized representatives.

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

17. 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.

18. This Agreement is performable in Collin County, Texas and venue for any dispute arising out of this Agreement shall be in Collin County, Texas.

This Agreement shall be effective upon the last date on which all parties have executed this Agreement.

ATTEST:

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

\_\_\_\_\_  
Diane Zucco, CITY SECRETARY

\_\_\_\_\_  
Bruce D. Glasscock, CITY MANAGER  
Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Diane C. Wetherbee, CITY ATTORNEY

ATTEST:

OWNER

Capital One, National Association, a  
national association

\_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

BEING a tract of land situated in the Samuel Brown Survey, Abstract No. 108, City of Plano, Collin County, Texas, and being part of that tract of land described in Special Warranty Deed to Capital One National Association as recorded in Document Number 20081008001203900, of the Official Public Records of Collin County, Texas (O.P.R.C.C.T.), and being part of Lot 4, Block 1 of the Revised Conveyance Plat of CAPITAL ONE ADDITION LOT 4, BLOCK 1, an addition to the City of Plano, Collin County, Texas as recorded in Volume 2012, Pages 42-43, O.P.R.C.C.T., and being more particularly described as follows:

BEGINNING at a 1/2-inch iron rod with a yellow plastic cap stamped "Half" (hereafter referred to as "with cap") found at an interior corner on the north line of said Lot 4, same being the southwest corner of Lot 2, Block A of the Conveyance Plat of NETWORK ASSOCIATES, LOT 2, BLOCK A, an addition to the City of Plano, Collin County, Texas as recorded in Volume 2006, Page 535, O.P.R.C.C.T.;

THENCE North 64 degrees 39 minutes 06 seconds East, along the common line between the northwest line of said Lot 4 and the southeast line of said Lot 2, passing at a call distance of 196.54 feet the southeast corner of said Lot 2, same being the southwest corner of Lot 1, Block A of the Final Plat of NETWORK ASSOCIATES, INC., BLOCK A, LOT 1, an addition to the City of Plano, Collin County, Texas as recorded in Volume O, Pages 322-323, Map Records of Collin County, Texas, and continuing along the common line between said Lot 4 and along the southeast line of said NETWORK ASSOCIATES, INC Addition, in all a total distance of 430.07 feet to a 1/2-inch iron rod with cap found for corner, said point being the northwest corner of Lot 3R, Block 1 of the Replat of CAPITAL ONE ADDITION LOT 3R, BLOCK 1, an addition to the City of Plano, Collin County, Texas as recorded in Volume 2012, Pages 164-165, O.P.R.C.C.T.;

THENCE South 42 degrees 47 minutes 48 seconds East, departing said common line, and along the common line between said Lot 4 and said Lot 3R, a distance of 55.13 feet to a 1/2-inch iron rod with cap found for corner;

THENCE South 17 degrees 12 minutes 12 seconds West, continuing along said common line, a distance of 546.04 feet to a point for corner;

THENCE South 42 degrees 50 minutes 57 seconds East, continuing along said common line, a distance of 71.01 feet to a 1/2-inch iron rod with cap set for corner;

THENCE South 17 degrees 12 minutes 12 seconds West, continuing along said common line, passing at a distance of 312.27 feet the most westerly corner of said Lot 3R, said corner being on the northeasterly right-of-way line of Dominion Parkway, being a northerly corner of a 12.02 foot jog in said right-of-way line, and continuing in all a total distance of 324.29 feet to a City of Plano monument found for corner on said east line of Dominion Parkway (92 feet wide at this point) and the southwesterly line of said Lot 4, said point being the beginning of a non-tangent curve to the left with a radius of 1,446.00 feet and a chord bearing North 80 degrees 43 minutes 00 seconds West, a distance of 252.31 feet;

THENCE Northwesterly, along the common line between the southeasterly line of said Lot 4, and the northeasterly right-of-way line of said Dominion Parkway, and along said curve, through a central angle of 10 degrees 00 minutes 37 seconds, an arc distance of 252.63 feet to a 1/2-inch iron rod with cap set for corner;

THENCE North 85 degrees 43 minutes 18 seconds West, continuing along said common line, a distance of 223.92 feet to a point for the beginning of a non-tangent curve to the right with a radius of 1,004.00 feet and a chord that bears North 76 degrees 56 minutes 00 seconds West, a distance of 306.78 feet;

THENCE Northwesterly, continuing along said common line, and along said curve, through a central angle of 17 degrees 34 minutes 35 seconds, an arc distance of 307.99 feet to a point for corner;

THENCE departing said common line, and over and across said Lot 4, the following bearings and distances:

North 16 degrees 47 minutes 24 seconds East, a distance of 420.55 feet to a point for the beginning of a non-tangent circular curve to the left with a radius of 567.37 feet and a chord that bears North 84 degrees 59 minutes 11 seconds West, a distance of 31.57 feet;

Northwesterly, along said curve, through a central angle of 03 degrees 11 minutes 17 seconds, an arc distance of 31.57 feet to the point of reverse curvature of a circular curve to the right with a radius of 62.00 feet and a chord that bears North 79 degrees 53 minutes 41 seconds West, a distance of 14.44 feet;

Northwesterly, along said curve, through a central angle of 13 minutes 22 minutes 16 seconds, an arc distance of 14.47 feet to the point of tangency;

North 73 degrees 12 minutes 33 seconds West, a distance of 15.64 feet to the beginning of a non-tangent curve to the right with a radius of 32.00 feet and a chord that bears North 28 degrees 11 minutes 44 seconds West, a distance of 45.25 feet;

Northwesterly, along said curve, through a central angle of 90 degrees 00 minutes 00 seconds, an arc distance of 50.27 feet to a point for corner;

North 16 degrees 48 minutes 16 seconds East, a distance of 183.77 feet to the beginning of a non-tangent curve to the right with a radius of 32.00 feet and a chord that bears North 63 degrees 01 minute 14 seconds East, a distance of 45.25 feet;

Northeasterly, along said curve, through a central angle of 90 degrees 00 minutes 00 seconds, an arc distance of 50.27 feet to the point of reverse curvature of a non-tangent curve to the left with a radius of 251.15 feet and a chord that bears South 89 degrees 52 minutes 27 seconds East, a distance of 154.53 feet;

Southeasterly, along said curve, through a central angle of 35 degrees 50 minutes 09 seconds, an arc distance of 157.08 feet to the point of reverse curvature of a non-tangent curve to the right with a radius of 234.23 feet and a chord that bears North 88 degrees 19 minutes 13 seconds East, a distance of 106.21 feet;

Northeasterly, along said curve, through a central angle of 26 degrees 12 minutes 34 seconds, an arc distance of 107.15 feet to a point for corner;

North 40 degrees 29 minutes 33 seconds East, a distance of 74.93 feet to a point for corner on the common northeast line of said Lot 4 and southwest line of said Lot 2;

THENCE South 49 degrees 30 minutes 24 seconds East, along said common line, a distance of 147.09 feet to the POINT OF BEGINNING AND CONTAINING 607,189 square feet or 13.939 acres of land, more or less.

**EXHIBIT “B”  
CERTIFICATION FORM**

[DATE]

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

RE: Certification Form – Reinvestment Zone No. 132  
Tax Abatement Agreement (the “Agreement”) between Capital One, N.A. (“Owner”) and  
the City of Plano.

This letter certifies that the Owner is in compliance with each applicable term as set forth in the Agreement. The term of the tax abatement pursuant to the Agreement is January 1, 2014 through December 31, 2023. This form is due on November 1, 2014 and on November 1 of each year thereafter that the Agreement is in force.

Capital One, National Association, a  
national association

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		11/26/12		
Department:		Budget & Research		
Department Head		Karen Rhodes		
Agenda Coordinator (include phone #): <b>Janette Weedon x7146</b>				
<b>CAPTION</b>				
A Public Hearing to provide the citizens and residents with the opportunity to review and provide comment on the projects for the proposed 2013 Bond Referendum.				
<b>FINANCIAL SUMMARY</b>				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: <b>2012-13</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget	0	0	0	<b>0</b>
Encumbered/Expended Amount	0	0	0	<b>0</b>
This Item	0	0	0	<b>0</b>
<b>BALANCE</b>	0	0	0	<b>0</b>
FUND(s): <b>N/A</b>				
COMMENTS: This item has no fiscal impact.				
<b>SUMMARY OF ITEM</b>				
The public hearing provides the citizens and residents of the City of Plano with the opportunity to review and provide comment on the projects for the proposed 2013 Bond Referendum.				
List of Supporting Documents: Proposed 2013 Bond Referendum Project List Project Descriptions		Other Departments, Boards, Commissions or Agencies		

**PRELIMINARY 2013 BOND REFERENDUM PROJECTS  
AS OF NOVEMBER 26, 2012**

Project	2013-14	2014-15	2015-16	2016-17	Total
<b><u>Facilities</u></b>					
Space Assessment	1,000,000	-	-	-	1,000,000
O&M	-	-	-	-	-
<b>Total Facility Authority Needed</b>	<b>1,000,000</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>1,000,000</b>
<b>Total O&amp;M</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b><u>Community &amp; Economic Redevelopment</u></b>					
Community & Economic Redevelopment	20,000,000	-	-	-	20,000,000
O&M	-	-	-	-	-
<b>Total Community &amp; Economic Redevelopment Authority Needed</b>	<b>20,000,000</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>20,000,000</b>
<b>Total O&amp;M</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b><u>Park Improvements</u></b>					
Recreational Trails	-	-	6,000,000	6,000,000	12,000,000
O&M	-	-	-	150,000	150,000
Oak Point Park and Nature Preserve	-	8,000,000	-	-	8,000,000
O&M	-	-	200,000	200,000	400,000
Park Improvements	1,000,000	2,000,000	2,000,000	2,000,000	7,000,000
O&M	-	-	250,000	250,000	500,000
Carpenter Park Renovation	600,000	5,400,000	-	-	6,000,000
O&M	-	-	-	-	-
Moore Park Improvements	-	-	600,000	5,400,000	6,000,000
O&M	-	-	-	300,000	300,000
Land Acquisitions	-	-	1,000,000	1,000,000	2,000,000
O&M	-	-	-	25,000	25,000
Maintenance Facility Improvements	-	300,000	2,200,000	-	2,500,000
O&M	-	-	-	25,000	25,000
Linear Park & Open Space	-	20,000,000	-	-	20,000,000
O&M	-	-	-	-	-
<b>Total Park Authority Needed</b>	<b>1,600,000</b>	<b>35,700,000</b>	<b>11,800,000</b>	<b>14,400,000</b>	<b>63,500,000</b>
<b>Total O&amp;M</b>	<b>-</b>	<b>-</b>	<b>450,000</b>	<b>950,000</b>	<b>1,400,000</b>
<b><u>Recreation Center</u></b>					
Jack Carter Pool Renovations	700,000	6,800,000	-	-	7,500,000
O&M	-	-	106,955	106,955	213,910
High Point Tennis Center Renovation	-	300,000	2,200,000	-	2,500,000
O&M	-	-	10,000	10,000	20,000
Liberty Recreation Center Expansion & Renovation	-	-	300,000	2,200,000	2,500,000
O&M	-	-	-	170,000	170,000
<b>Total Recreation Center Authority Needed</b>	<b>700,000</b>	<b>7,100,000</b>	<b>2,500,000</b>	<b>2,200,000</b>	<b>12,500,000</b>
<b>Total O&amp;M</b>	<b>-</b>	<b>-</b>	<b>116,955</b>	<b>286,955</b>	<b>403,910</b>

**PRELIMINARY 2013 BOND REFERENDUM PROJECTS  
AS OF NOVEMBER 26, 2012**

Project	2013-14	2014-15	2015-16	2016-17	Total
<b><u>Street Improvements</u></b>					
* 18th Street - G Ave to West of K Ave	-	200,000	1,013,000	-	1,213,000
* 18th Street - Jupiter to Dale Drive	-	120,000	1,000,000	-	1,120,000
* Alley Recon - Prairie Creek & Cloisters	241,000	-	-	-	241,000
* Alley Reconstruction	340,000	340,000	340,000	340,000	1,360,000
* Barrier Free Ramps & Sidewalks	100,000	100,000	100,000	100,000	400,000
Brand Road - S of 544 to City Limits	-	-	-	60,000	60,000
* Brennan, Knollwood & Casa Grande	150,000	1,200,000	-	-	1,350,000
* Bridge Inspection/Repair	1,060,000	-	-	-	1,060,000
Chaparral Bridge (south half) @ Cottonwood Creek	-	-	200,000	1,000,000	1,200,000
* Computerized Signal System	250,000	250,000	250,000	250,000	1,000,000
* Dallas North Estates	170,000	1,783,000	-	-	1,953,000
* Dallas North Estates 2	-	91,000	759,000	-	850,000
* Dallas North Estates 3	500,000	-	-	-	500,000
* Dallas North Estates 5	200,000	1,822,000	-	-	2,022,000
DNT Ramp Changes	2,500,000	-	-	-	2,500,000
* East Side Entryway	240,000	-	-	-	240,000
* F Ave. and 14th St. Reconstruction	30,000	433,000	-	-	463,000
Intersection Imp. - Jupiter @ PBGT	353,000	-	-	-	353,000
Intersection Improvements	850,000	850,000	850,000	850,000	3,400,000
* Landscaping Street Enhancements	220,000	241,000	-	-	461,000
Legacy Drive Corridor Improvements	1,382,000	-	-	-	1,382,000
Los Rios - Jupiter to Parker, Phase 2	-	-	-	120,000	120,000
Los Rios/North Star - City Limits - 14th Street	-	-	200,000	1,800,000	2,000,000
* Marsh - Park to Parker	96,000	872,000	-	-	968,000
* Meadows Addition, Phase II	-	120,000	2,210,000	-	2,330,000
* Miscellaneous Right of Way	10,000	10,000	10,000	10,000	40,000
* New Concrete Alleys	100,000	100,000	100,000	100,000	400,000
* Oversize Participation	100,000	100,000	100,000	100,000	400,000
* Park - Shiloh to East City Limit	-	-	-	1,988,000	1,988,000
Parker Road Corridor Improvements	2,315,000	-	-	-	2,315,000
Preston Road Corridor Improvements	993,000	-	-	-	993,000
Preston/Plano Parkway Intersection	-	1,650,000	500,000	-	2,150,000
* Redevelopment Street Improvements	1,000,000	1,000,000	1,000,000	1,000,000	4,000,000
Ridgeview - S.H. 121 to Coit	-	-	700,000	1,800,000	2,500,000
* Roadway Median Landscaping	55,000	55,000	55,000	55,000	220,000
* Robin Road & Royal Oaks Drive	1,302,000	-	-	-	1,302,000
* Screening Wall Reconstruction	550,000	550,000	550,000	550,000	2,200,000
Shiloh - 14th Street to Park Boulevard	-	300,000	2,947,000	-	3,247,000
Spring Creek at Coit Intersection Imp.	-	838,000	700,000	-	1,538,000
* Spring Creek North & South Service Roads	247,000	2,301,000	-	-	2,548,000
Spring Creek Pkwy - Park to Parker	-	-	500,000	5,000,000	5,500,000
* Street Lighting	10,000	10,000	10,000	10,000	40,000
* Street Reconstruction	1,000,000	1,000,000	1,000,000	6,000,000	9,000,000
* Traffic Signalization	500,000	500,000	500,000	500,000	2,000,000
* Westwood - 15th Street to Janwood	1,290,000	-	-	-	1,290,000
Windhaven - City Limit to Spring Creek	2,447,000	500,000	-	-	2,947,000
<b>Total Street Improvements</b>	<b>20,601,000</b>	<b>17,336,000</b>	<b>15,594,000</b>	<b>21,633,000</b>	<b>75,164,000</b>
<i>Revenue from Collin County</i>	<i>3,703,000</i>	<i>1,150,000</i>	<i>5,397,000</i>	<i>10,630,000</i>	<i>20,880,000</i>
<i>Revenue from RTR</i>	<i>3,308,000</i>	<i>-</i>	<i>-</i>	<i>-</i>	<i>3,308,000</i>
<i>Revenue from Denton County</i>	<i>96,000</i>	<i>872,000</i>	<i>-</i>	<i>-</i>	<i>968,000</i>
<i>Federal</i>	<i>2,447,000</i>	<i>2,988,000</i>	<i>1,200,000</i>	<i>-</i>	<i>6,635,000</i>
<i>Project Total</i>	<i>9,554,000</i>	<i>5,010,000</i>	<i>6,597,000</i>	<i>10,630,000</i>	<i>31,791,000</i>
<i>Reimbursement %</i>	<i>6,552,000</i>	<i>3,837,000</i>	<i>2,698,000</i>	<i>5,315,000</i>	<i>18,402,000</i>
<b>Total Street Improvements Authority Needed</b>	<b>14,049,000</b>	<b>13,499,000</b>	<b>12,896,000</b>	<b>16,318,000</b>	<b>56,762,000</b>

**PRELIMINARY 2013 BOND REFERENDUM PROJECTS  
AS OF NOVEMBER 26, 2012**

Project	2013-14	2014-15	2015-16	2016-17	Total
<b>TOTAL PROJECTED AUTHORITY NEEDED</b>	<u>37,349,000</u>	<u>56,299,000</u>	<u>27,196,000</u>	<u>32,918,000</u>	<u>153,762,000</u>
<b><u>Revocation</u></b>					
<i>Creative &amp; Performing Arts Facility</i>	<i>(14,192,000)</i>	-	-	-	<i>(14,192,000)</i>
<b>NET NEW AUTHORITY NEEDED</b>	<u>23,157,000</u>	<u>56,299,000</u>	<u>27,196,000</u>	<u>32,918,000</u>	<u>139,570,000</u>
<b>TOTAL PROJECTED O&amp;M</b>	<u>-</u>	<u>-</u>	<u>566,955</u>	<u>1,236,955</u>	<u>1,803,910</u>

\* Street projects with NO outside funding

Street projects with outside funding

## 2013 BOND REFERENDUM PROJECT DESCRIPTIONS

### **FACILITY PROJECTS**

#### ***Space Assessment***

Assessment of Citywide space needs.

### **COMMUNITY & ECONOMIC REDEVELOPMENT**

#### ***Community & Economic Redevelopment***

Community & Economic Redevelopment.

### **PARK IMPROVEMENTS PROJECTS**

#### ***Recreational Trails***

Continued development of recreational trails in accordance with the Parks and Recreation Element of the Comprehensive Plan and for the development of run facilities for 5k, 10k and Half Marathon events.

#### ***Oak Point Park and Nature Preserve***

Continued development to include special event facilities, music festival improvements, parking, additional concrete recreational trails, additional pavilions, shade structures and playgrounds.

#### ***Park Improvements***

Continued development and renovation of parks to include sidewalks, irrigation systems, playgrounds, playground shade structures, fences, drainage improvements, restrooms, irrigation systems, picnic areas, outdoor low impact turf exercise areas, parking additions and other typical park improvements.

#### ***Carpenter Park Renovation***

Complete renovation of the 28 year old athletic complex to include updating of fields to meet current allocation demands, replacement of the lighting system including light poles, new irrigation system, additional parking, new restroom concession stands, drainage improvements and playground replacement.

#### ***Moore Park Improvements***

Phase 1 improvements to include parking, restrooms, shade structures, 4 unlighted cricket/soccer fields, disc golf course, irrigation, grading and drainage improvements.

#### ***Land Acquisitions***

Continued acquisition of land to complete the park system in accordance with the Parks and Recreation Element of the Comprehensive Plan.

#### ***Maintenance Facility Improvements***

Construction of a maintenance facility at Enfield Park to reduce overcrowding at the Jack Carter Park maintenance facility.

***Linear Park & Open Space***

Linear park of trails and open space.

**RECREATION CENTER PROJECTS**

***Jack Carter Pool Renovations***

Complete renovation to include a new 50 meter pool, new pump/filter building, new locker rooms and the additional of recreational pools with recreational amenities.

***High Point Tennis Center Renovation***

Complete Renovation to included replacement of the pro-shop, sidewalks, fences, landscaping, irrigation and playground with additional parking improvements and the addition of shade structures.

***Liberty Recreation Center Expansion & Renovation***

Expansion and renovation to included expanded fitness areas with over 55 exercise amenities, classroom improvements, and outdoor pool amenities.

**STREET IMPROVEMENT PROJECTS**

***18th Street - G Ave to West of K Ave***

Reconstruction of existing roadway with finished sidewalks and landscaped roadways.

***18th Street - Jupiter to Dale Drive***

Complete reconstruction of the existing street, sidewalks and drive approaches in conjunction with storm drainage improvements.

***Alley Recon - Prairie Creek & Cloisters***

Removal and replacement of pavement in the following alleys:

- North side of Knollwood, south of Meadowbrook;
- North of Mollimar from Independence to Dorchester;
- South side of Park Boulevard from Dorchester to Stratford;
- Between Guinevere and Noble Oaks;
- South of Clinton, serving lots fronting on Mariposa
- South of Bengal and west of Roundrock.

***Alley Reconstruction***

Reconstruction of deteriorated concrete alleys.

***Barrier Free Ramps & Sidewalks***

Construct ramps in residential neighborhoods and major thoroughfares to meet ADA standards. This project will include additional sidewalks along US 75 around Parker Rd.

***Brand Road - S of 544 to City Limits***

Widen existing four lanes of Brand Road to a six-lane divided thoroughfare from south of F.M. 544 to the City limits.

### ***Brennan, Knollwood & Casa Grande***

Reconstruction of existing street, sidewalks and drive approaches at the following locations:

- Brennan Drive from Greenway west to alley - 730 LF
- Knollwood Drive from Prairie Creek west to cul de sac - 850 LF
- Knollwood Court from Dorchester east to cul de sac - 510 LF
- Casa Grande from Blue Mesa to Isle Royale - 457 LF

### ***Bridge Inspection/Repair***

Evaluation of TxDOT bridge inspection reports and field visits to determine improvements.

### ***Chaparral Bridge (south half) @ Cottonwood Creek***

Construction of a four-lane bridge on Chaparral Road over Cottonwood Creek.

### ***Computerized Signal System***

Control all signalized intersections via a traffic control center. All current and future signals will be connected to the control center. This project includes the installation of video cameras at critical intersections to monitor the traffic first hand. This will be an on-going project with upgrades and improvements made when appropriate. Establishment of wireless (microwave) communication links between the Traffic Management Center and the existing and proposed camera locations are also included.

### ***Dallas North Estates***

Complete reconstruction of streets, sidewalks and drive approaches in the Dallas North subdivision. Specific locations include:

- Amherst Drive - Fernwood to Brentwood
- Brentwood Drive - 15th Street to Janwood
- Crestridge Drive - 15th Street to Janwood
- Drexel Drive - Amherst to Janwood.

### ***Dallas North Estates 2***

Complete reconstruction of existing street pavement and sidewalks on the following streets:

- Fernwood - Westwood to Edgefield
- Glenwick - Westwood to Edgefield
- Aldridge - Westwood to Edgefield

### ***Dallas North Estates 3***

Complete reconstruction of existing street pavement and sidewalks on the following streets:

- Edgefield - Janwood to Springbrook
- Linden - Edgefield to Ridgefield
- Meadowcrest - Springbrook to Ridgefield

### ***Dallas North Estates 5***

Complete reconstruction of existing street pavement and sidewalks on the following streets:

- Ridgefield/Quill - Springbrook to Meadowcrest
- Potomac - Springbrook to Ridgefield
- Oakhill - Springbrook to Ridgefield
- Northridge - Springbrook to Ridgefield

### ***DNT Ramp Changes***

Construction of ramp changes on the Dallas North Toll road.

### ***East Side Entryway***

Construction of entryway features east of U.S.75 to create more aesthetically appearing roadways. Specific projects include:

- RT Corner Treatments (50% City matching)
- Parker Road Enhancements
- Entry Features (to be decided)

### ***F Ave. and 14th St. Reconstruction***

Replacement of paving on F Avenue from 13th/14th Connector to 14th Street and on 14th Street from E Avenue to F Avenue.

### ***Intersection Imp. - Jupiter @ PBGT***

Improvements to the Jupiter Road and President George Bush Toll way intersection to provide a double right turn lane for southbound traffic on to westbound PGBT and an acceleration lane on the PGBT westbound service road.

### ***Intersection Improvements***

Intersection improvements at five locations throughout the City, specifically:

- Legacy Drive at Hedgcoxe Road
- Spring Creek Parkway at Coit Road
- Coit Road at Plano Parkway
- Alma Drive at Plano Parkway
- Spring Creek Parkway at Alma Drive

### ***Landscaping Street Enhancements***

Construction of additional entryways, landscaping and other enhancements on various roadways throughout the City.

### ***Legacy Drive Corridor Improvements***

Various improvements at intersections along Legacy at US 75, Alma, Custer, K Avenue and Independence.

### ***Los Rios - Jupiter to Parker, Phase 2***

Construction of the remaining half of a four-lane divided thoroughfare for Los Rios, north of Parker.

### ***Los Rios/North Star - City Limits - 14th Street***

Widen existing four lanes of Los Rios from 14th Street to Plano Parkway and North Star from Plano Parkway to South City Limits to a six-lane divided thoroughfare.

***Marsh - Park to Parker***

Widen Marsh Lane to a six-lane divided thoroughfare between Park to Parker.

***Meadows Addition, Phase II***

Complete reconstruction of street, drainage, sidewalks and drive approaches in the Meadows #1 area - Rigsbee Drive - 14th Street to 150 feet north of 18th Street.

***Miscellaneous Right of Way***

Acquisition of miscellaneous right-of-way required prior to construction of roadways.

***New Concrete Alleys***

Construct concrete alleys to replace dirt alley locations.

***Oversize Participation***

Participation with developers for various oversize paving and drainage improvements.

***Park - Shiloh to East City Limit***

Widen Park Boulevard from the existing four lanes to a six-lane divided thoroughfare from Shiloh to the east City limit.

***Parker Road Corridor Improvements***

Various intersection improvements at Coit, Independence and Alma.

***Preston Road Corridor Improvements***

Various intersection improvements along Preston Road at Tennyson, Headquarters, Hedgcoxe, Spring Creek and Parker.

***Preston/Plano Parkway Intersection***

Construction of at-grade intersection improvements.

***Redevelopment Street Improvements***

As areas of the City begin redeveloping, it will be necessary for the City to make various street improvements to facilitate the development. These funds will be used to build new streets and reconstruct existing substandard streets.

***Ridgeview - S.H. 121 to Coit***

Construction of a four-lane divided thoroughfare on Ridgeview Drive from S.H. 121 to Coit Road.

***Roadway Median Landscaping***

Landscaping of thoroughfare medians throughout the City when water restrictions permit.

***Robin Road & Royal Oaks Drive***

Complete reconstruction of existing street pavement and sidewalks on the following streets: Robin Road - Linda Lane to Independence Parkway; and Royal Oaks Drive - Charter Oak Drive to Peachtree Lane.

***Screening Wall Reconstruction***

Complete reconstruction of concrete screening walls along major thoroughfares.

***Shiloh - 14th Street to Park Boulevard***

Construction of the two eastern lanes to complete a four-lane divided thoroughfare.

***Spring Creek at Coit Intersection Imp.***

Construction of at-grade intersection improvements at Spring Creek Parkway and Coit Road.

***Spring Creek North & South Service Roads***

Complete reconstruction of existing street pavement and sidewalk from Blue Ridge Trail to Alma Drive.

***Spring Creek Pkwy - Park to Parker***

Construction of the eastern two lanes to complete a four-lane divided thoroughfare.

***Street Lighting***

Installation of conduit and concrete bases for street lighting along major thoroughfare.

***Street Reconstruction***

Complete reconstruction of concrete streets.

***Traffic Signalization***

Construction of new traffic signals at locations to be determined and upgrades of older traffic signal assemblies in medians with larger pole and 44-foot mast arm at various locations.

***Westwood - 15th Street to Janwood***

Complete reconstruction of street and sidewalks with storm drainage improvements.

***Windhaven - City Limit to Spring Creek***

Widen Windhaven Parkway from the City limit to Spring Creek Parkway.



## CITY OF PLANO COUNCIL AGENDA ITEM

<b>CITY SECRETARY'S USE ONLY</b>				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		11/26/12		
Department:		HEALTH		
Department Head		BRIAN COLLINS		
Agenda Coordinator (include phone #): <b>Doris Callaway, Ext. 7494</b>				
<b>CAPTION</b>				
Receipt of Public Comment and Consideration of an Ordinance of the City of Plano, Texas, repealing Ordinance Nos. 2008-11-16 and 2010-3-14 codified as Chapter 9, Food Code of the Code of Ordinances of the City of Plano and replacing them with a new Chapter 9, Food Code; providing a penalty clause, a repealer clause, a severability clause, a publication clause and an effective date.				
<b>FINANCIAL SUMMARY</b>				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: <b>2012-13</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget	0	0	0	<b>0</b>
Encumbered/Expended Amount	0	0	0	<b>0</b>
This Item	0	0	0	<b>0</b>
<b>BALANCE</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>FUND(s):     N/A</b>				
<b>COMMENTS:</b> This item has no fiscal impact. <b>STRATEGIC PLAN GOAL:</b> Updates to Chapter 9, Food Code of the Code of Ordinances of the City of Plano relate to the City's Goal of a Safe Large City.				
<b>SUMMARY OF ITEM</b>				
Repealing of Chapter 9, Food Code, of the Code of Ordinance of the City and replacing with a new Chapter 9, Food Code, of the Code of Ordinances of the City of Plano.				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Health Memo				



City of Plano  
P.O. Box 860358  
Plano, Texas 75086-0358  
972-941-7143  
972-941-7142 FAX

## **MEMORANDUM**

*Health Department*

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**DATE:** November 9, 2012

**TO:** Brian Collins, Director of Health

**FROM:** Geoffrey Heinicke, Health Manager

**SUBJECT:** Chapter 9, Food Code Amendments of the City's Code of Ordinances

Chapter 9 (Food Code) has been amended. Amendments include a section which will allow for permits on farmers' markets within the City. This section includes food safety guidelines and regulations for operating a farmers' market, as allowed by state law. Specifically, food items with lower risk of harboring disease-causing bacteria (e.g. fruits, vegetables, and baked breads) may be sold while food items requiring temperature control for food safety (e.g. meats, cheeses, eggs) may not be offered at a farmers' market. This section also contains a provision that a person in charge, who is a certified food manager be on site during operation of a farmers' market. This individual will be a food safety partner responsible for ensuring food safety guidelines are followed at the market.

Additional amendments to Chapter 9 include: Article VIII – Mobile Food Establishments has been amended to include requirements for submittal of schematics/construction plans and menu of food items offered; a deadline change for submitting applications for temporary and seasonal food permits; definitions corrected and definitions added; and, grammatical corrections.

**An Ordinance of the City of Plano, Texas, repealing Ordinance Nos. 2008-11-16 and 2010-3-14 codified as Chapter 9, Food Code of the Code of Ordinances of the City of Plano and replacing them with a new Chapter 9, Food Code; providing a penalty clause, a repealer clause, a severability clause, a publication clause and an effective date.**

**WHEREAS**, on March 22, 2010, the City Council of the City of Plano duly passed Ordinance No. 2010-3-14, codified as Chapter 9, Food Code, of the Code of Ordinances of the City of Plano; and

**WHEREAS**, on November 10, 2008 the City Council of the City of Plano duly passed Ordinance No. 2008-11-16 codified as Chapter 9, Food Code, of the Code of Ordinances of the City of Plano; and

**WHEREAS**, upon review of existing ordinances as well as current state and federal laws and regulations governing food and food establishments, staff recommends to amend certain provisions in the existing ordinance to be consistent with current state and federal laws and regulations; and

**WHEREAS**, the City Council of the City of Plano, Texas determines it is necessary to provide regulations for food and food establishments and to enact amendments to conform with current state laws and regulations within the City of Plano; and

**WHEREAS**, the City Council of the City of Plano, after consideration of the recommendations of staff and all matters attendant and related thereto, is of the opinion that the recommended changes are in the best interest of the City and its citizens and will promote the health, safety and welfare of the citizens of Plano and the general public.

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

**Section I.** Ordinance Nos. 2008-11-16 and 2010-3-14, codified as Chapter 9, Food Code, of the Code of Ordinances of the City of Plano, are hereby repealed and replaced with this new Chapter 9, Food Code, to read in its entirety as set forth below:

## **“ARTICLE I. - GENERAL PROVISIONS**

### **Sec. 9-1. Purpose.**

The function of this chapter is to protect the public health by establishing uniform requirements for food service operations.

The regulatory authority may also enforce state, federal statute or regulation applicable to a food establishment operating within the city.

### **Sec. 9-2. Definitions.**

[The following words, terms, and phrases, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:]

- (1) Adulterated food. A food shall be deemed to be adulterated as specified in V.T.C.A., Health and Safety Code Chapter 431, §431.081.
- (2) Agricultural product. An agricultural, apicultural, horticultural, or fish product, either in its natural or processed state that has been produced, processed, or otherwise had value added for use as human food.
- (3) Approved. Acceptable to the regulatory authority based on a determination of conformity with principles, practices, and generally recognized standards that protect public health.
- (4) Base of operation. An operating base to which a mobile food establishment vehicle returns as needed for such things as discharging liquid or solid wastes, refilling water tanks and ice bins, and boarding food.
- (5) Bed and breakfast limited facility. An establishment with rooms for rent that serves only breakfast to over-night guests. The establishment is not a retail food establishment and the owner or manager shall successfully complete an accredited food manager's certification course.
- (6) Bed and breakfast food establishment. A lodging establishment that provides food service in addition to breakfast to its overnight guests; or that provides food service to persons in addition to its overnight guests. The establishment must meet the rules and regulations applicable to retail food establishments.
- (7) Beverage. A liquid for drinking, including water.
- (8) Child care center. Any facility licensed by the regulatory authority to receive thirteen (13) or more children for child care which prepares food for on-site consumption.
- (9) Cleaned in place. The circulation or flowing by mechanical means through a piping system of a detergent solution, water rinse, and sanitizing solution onto or over equipment surfaces that require cleaning, such as the method used, in part, to clean and sanitize a frozen dessert machine. The term does not include the cleaning of equipment such as band saws, slicers or mixers that are subject to in-place manual cleaning without the use of a CIP system.
- (10) Code of Federal Regulation (CFR). The compilation of the general and permanent rules published in the Federal Register by the executive departments and agencies of the federal government.
- (11) Commissary. Means a catering establishment, restaurant, or any other place in which food, containers, or supplies are kept, handled, prepared, packaged or stored.
- (12) Common dining area. A central location in a group residence where people gather to eat at mealtime. The term does not apply to a kitchenette or dining area located within a resident's private living quarters.
- (13) Confirmed disease outbreak. A foodborne illness outbreak in which laboratory analysis of appropriate specimens identifies a causative agent and epidemiological analysis implicates the food as the source of the illness.

- (14) Consumer. A person who is a member of the public, takes possession of food, is not functioning in the capacity of an operator of a food establishment or food processing plant, and does not offer the food for resale.
- (15) Corrosion-resistant material. A material that maintains acceptable surface cleanability characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and sanitizing solutions, and other conditions of the use environment.
- (16) Cottage food production operation. An individual operating out of the individual's residence, who:
  - (1) produces a baked good, a canned jam or jelly, or a dried herb or herb mix for sale at the person's residence; and
  - (2) has an annual gross income of \$50,000 or less from the sale of food described above; and
  - (3) sells foods produced directly to consumers; and
  - (4) complies with the labeling requirements as defined by the Executive Commissioner of the Department of State Health Services.
- (17) Critical control point. A point or procedure in a specific food system where loss of control may result in an unacceptable health risk.
- (18) Critical item. A provision of these rules that, if in noncompliance, is more likely than other violations to contribute to food contamination, illness, injury, or environmental health hazard.
- (19) Critical limit. The maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a critical control point to minimize the risk that the identified food safety hazard may occur.
- (20) Demonstration. The preparation of food for example, education, or marketing purposes at an event including, but not limited to, a farmers' market, fair, restaurant food show or other similar event that is not served, sold, or otherwise offered for human consumption.
- (21) Dry storage area. A room or area designated for the storage of packaged or containerized bulk food that is not potentially hazardous and dry goods such as single-service items.
- (22) Easily cleanable. A characteristic of a surface that allows effective removal of soil by normal cleaning methods; is dependent on the material, design, construction, and installation of the surface; and varies with the likelihood of the surface's role in introducing pathogenic or toxigenic agents or other contaminants into food based on the surface's approved placement, purpose and use.
- (23) Employee. The permit holder, person in charge, person having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement, or other person working in a food establishment.
- (24) Equipment. An article that is used in the operation of a food establishment such as a freezer, grinder, hood, ice maker, meat block, mixer, oven, reach-in refrigerator, scale, sink, slicer, stove, steam table, temperature measuring device for ambient air, vending machine, warewashing machine, and similar items other than utensils, used in the operation of a food establishment.

- (25) Farmers' market. An area at which two (2) or more farmers' market vendors offer produce for retail sale.
- (26) Farmers' market vendor. Any person who offers or sells produce at a farmers' market.
- (27) Fish. Fish means fresh or saltwater finfish, crustaceans and other forms of aquatic life (including alligator, frog, aquatic turtle, jellyfish, sea cucumber, and sea urchin and the roe of such animals), other than birds or mammals, and all mollusks, if such animal life is intended for human consumption. Fish includes an edible human food product derived in whole or in part from fish, including fish that have been processed in any manner.
- (28) Food. A raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.
- (29) Foodborne disease outbreak. The occurrence of two (2) or more cases of a similar illness resulting from the ingestion of a common food.
- (30) Food-contact surface. A surface of equipment or a utensil with which food normally comes into contact; or a surface of equipment or a utensil from which food may drain, drip, or splash into a food, or onto a surface normally in contact with food.
- (31) Food employee. An individual working with unpackaged food, food equipment or utensils, or food-contact surfaces.
- (32) Food establishment. An operation that stores, prepares, packages, serves, or otherwise provides food for human consumption including, but not limited to: a restaurant; retail food store; food bank, pre-packaged non-PHF, produce stand, satellite or catered feeding location; catering operation; market; mobile food establishment, pushcart, remote catered operations, farmers' market; and that relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders; restaurant take-out orders; or where consumption is on or off the premises; and regardless of whether there is a charge for the food. The term does not include: a kitchen in a private home if only food that is not potentially hazardous is prepared for sale or service at a function, such as a religious or charitable organization's bake sale; bed and breakfast limited facility as defined in these rules; or a private home that receives catered or home-delivered food.
- (33) Food processing plant. A commercial operation that manufacturers, packages, labels or stores food for human consumption and does not provide food directly to a consumer. The term does not include a food establishment as previously defined.
- (34) Foraged foods. Food acquired by hunting, fishing, or the gathering of plant matter on land not primarily used for agricultural purposes.
- (35) Game animal. An animal, the products of which are food that is not classified as cattle, sheep, swine, goat, horse, mule, or other equine, poultry, or fish as defined under paragraph 27 of this section. Game animal includes mammals such as reindeer, elk, deer, antelope, water buffalo, bison, rabbit, squirrel, opossum, raccoon, nutria, or muskrat, and nonaquatic reptiles such as land snakes and does not include ratites such as ostrich, emu, and rhea.

- (36) Gleaned foods. Foods gathered from agricultural land after a primary harvest has been completed, or other salvaged or unutilized food.
- (37) Hazard. A biological, chemical, or physical property that may cause an unacceptable consumer health risk.
- (38) Hazard analysis critical control point (HACCP). A systematic approach to the hazard identification, evaluation, and control of food safety hazards.
- (39) HACCP plan. A written document that delineates the formal procedures for following the HACCP principles developed by The National Advisory Committee on Microbiological Criteria for Foods.
- (40) Hermetically sealed container. A container that is designed and intended to be secure against the entry of microorganisms and, in the case of low acid canned foods, to maintain the commercial sterility of its contents after processing.
- (41) Highly susceptible population. A group of persons who are more likely than other populations to experience foodborne disease because they are immunocompromised or older adults; and in a facility that provides health care or assisted living services, such as a hospital or nursing home; adult day care or senior center; or preschool age children in a facility that provides custodial care, such as a child care center.
- (42) Imminent health hazard. A significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on the number of potential injuries and the nature, severity, and duration of the anticipated injury.
- (43) Kitchenware. All multi-use utensils other than tableware.
- (44) Law. Federal, state, and local statutes, ordinances, and regulations.
- (45) Linens. Fabric items such as cloth hampers, cloth napkins, table cloths, wiping cloths, and work garments including cloth gloves.
- (46) Mobile food establishment. A self-propelled vehicle mounted food establishment designed to be readily moveable. This includes vehicles which prepare food on site within the vehicle. The vehicle is equipped with food preparation equipment and must meet regulations applicable to a fixed food establishment.
- (47) Molluscan shellfish. Any edible species of fresh or frozen oysters, clams, mussels, and scallops or edible portions thereof, except when the scallop product consists only of the shucked adductor muscle.
- (48) Packaged. Bottled, canned, cartoned, securely bagged, or securely wrapped, whether packaged in a food establishment or a food processing plant. The term does not include a wrapper, carry-out box, or other nondurable container used to containerize food with the purpose of facilitating food protection during service and receipt of the food by the consumer.

- (49) Permit. The document issued by the regulatory authority that authorizes a person to operate a food establishment.
- (50) Permit holder. A person who:
- (a) is legally responsible for the operation of a food establishment such as the owner, the owner's agent, or other person; and
  - (b) possesses a valid permit to operate a food establishment.
- (51) Person. An association, a corporation, individual, partnership, other legal entity, government, or governmental subdivision or agency.
- (52) Person in charge. The individual present in a food establishment who is responsible for the operation at the time of inspection.
- (53) Personal care items. Items or substances that may be poisonous, toxic, or a source of contamination and are used to maintain or enhance a person's health, hygiene, or appearance. The term includes such items as medicines; first-aid supplies; and other items such as cosmetics and toiletries such as toothpaste and mouthwash.
- (54) Personal items. Articles belonging to employees.
- (55) Poisonous or toxic materials. Substances that are not intended for ingestion including cleaners and sanitizers, which include cleaning and sanitizing agents and agents such as caustics, acids, drying agents, polishes and other chemicals; pesticides and rodenticides; and substances necessary for the operation and maintenance of the establishment such as nonfood grade lubricants and personal care items that may be deleterious to health.
- (56) Potable. Suitable or safe for drinking.
- (57) Potable water. Water that is fit for drinking.
- (58) Potentially hazardous food/time and temperature control for safety food (PHF/TCS). A food that requires time and temperature control for safety (TCS) to limit pathogenic microorganism growth or toxin production which consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, or other ingredients including synthetic ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms. The term includes fresh shell eggs, which are raw or heat-treated; a food of plant origin that is heat-treated or that consists of raw seed sprouts; cut melons; cut leafy greens, cut tomatoes or mixtures of cut tomatoes that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation, and garlic-in-oil mixtures that are not modified in a way that results in mixtures that do not support pathogenic microorganism growth or toxin formation. This term does not include: an air-cooled hard-boiled egg with shell intact, or a shell egg that is not hard-boiled, but that has been treated to destroy all viable Salmonellae; a food, in an unopened commercially hermetically sealed container, that is shelf stable; a food for which a product assessment including laboratory evidence

demonstrates that time and temperature control for safety is not required and that may contain a preservative, other barrier to the growth of microorganisms, or a combination of barriers that inhibit the growth of microorganisms; or a food that does not support the growth of microorganisms as specified even though the food may contain an infectious or toxigenic microorganism or chemical or physical contaminant at a level sufficient to cause illness.

- (59) Poultry. Any domesticated bird (chickens, turkeys, ducks, geese, or guineas), whether live or dead and any migratory waterfowl, game bird, such as pheasant, partridge, quail, grouse, or guinea, or pigeon or squab, whether live or dead. Poultry does not include ratites.
- (60) Premises. The physical facility, its contents, and the contiguous land or property under the control of the permit holder; or the physical facility, its contents, and the contiguous land or property and its facilities and contents that are under the control of the permit holder that may impact food establishment personnel, facilities, or operations, if a food establishment is only one (1) component of a larger operation such as a health care facility, hotel, motel, school, recreational camp, or prison.
- (61) Private event. An event at which food and/or beverage is offered to participants, and:
  - (a) that is held on publicly or privately owned premises or a location operated by an organization, group, club, association or institution that is not available for use by the general public and where entry to the event is governed by regulations or invitation of that organization, group, club, association or institution; or,
  - (b) which requires a special event permit as defined in Chapter 11 of this Code of Ordinances and where food and/or beverage are offered, sampled, sold or given only to event volunteers and/or event staff; or,
  - (c) which does not require a special event permit as defined in Chapter 11 of this Code of Ordinances and where food and/or beverage are offered, sampled, sold or given only to event volunteers and/or event staff.
- (62) Produce. Means farm produced crops intended for human consumption, including but not limited to whole vegetables, plants, nuts in the shell, honey and fruit.
- (63) Public event. An event at which food and/or beverage is offered to participants, and:
  - (a) that is advertised to the general public by any means, whether admission is free or an admission fee is charged; or,
  - (b) which requires a special event permit as defined in Chapter 11 of this Code of Ordinances and food and/or beverage are offered, sampled, sold or given to anyone including but not limited to event attendees/spectators and registered participants, volunteers, and/or event staff.
- (64) Pushcart. A mobile food unit capable of being propelled by a person, and limited to serving only prepackaged, food that is not PHF/TCS or prepackaged ice cream. A pushcart is classified as a mobile food establishment.

- (65) Ready-to-eat food. Food that is in a form that is edible without additional preparation to achieve food safety; is raw or partially cooked animal food and the consumer is advised. The term includes raw, washed, cut fruits and vegetables; whole, raw fruits and vegetables; all potentially hazardous food that is cooked to the temperature and time required for the specified food. The term also includes plant food for which further washing, cooking, or other processing is not required for food safety, and from which rinds, peels, husks, or shell, if naturally present are removed; substances derived from plants such as spices, seasonings, and sugar; bakery item such as bread, cakes, pies, fillings or icing for which further cooking is not required for food safety; the following products that are produced with USDA guidelines and that have received a lethality treatment for pathogens: dry, fermented sausages, such as dry salami or pepperoni; salt-cured meat and poultry products, such as prosciutto ham, country cured ham, and Parma ham; and dried meat and poultry products, such as jerky or beef sticks.
- (66) Refuse. Solid waste not carried by water through the sewage system.
- (67) Regulatory authority. The director of health of the City of Plano, or his designated representative.
- (68) Safe material. An article manufactured from or composed of materials that may not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any food; an additive that is used as specified in V.T.C.A., Health and Safety Code Chapter 431; or other materials that are not additives and that are used in conformity with applicable regulations of the Food and Drug Administration.
- (69) Sampling. The preparation of food for example, education, or marketing purposes at an event including, but not limited to, a farmers' market, fair, restaurant food show or other similar event that is served, sold, or otherwise offered for human consumption.
- (70) Sanitization. The application of cumulative heat or chemicals on cleaned food contact surfaces that, when evaluated for efficacy, yield a reduction of five (5) logs, which is equal to a 99.999 percent reduction of representative disease microorganisms of public health importance.
- (71) Sealed. Free of cracks or other openings that allow the entry or passage of moisture.
- (72) Seasonal food establishment. A food establishment that operates at a fixed location for a period greater than fourteen (14) consecutive days, but less than forty-five (45) consecutive days in conjunction with a single event or celebration.
- (73) Sewage. Liquid waste containing animal or vegetable matter in suspension or solution and may include liquids containing chemicals in solution.
- (74) Single-service articles. Cups, containers, lids, closures, plates, knives, forks, spoons, stirrers, paddles, straws, napkins, wrapping materials, toothpicks, and similar articles intended for one-time, one-person use and then discarded.
- (75) Single-use articles. Tableware, carry-out utensils, and other items such as bags, containers, placemats, stirrers, straws, toothpicks, and wrappers that are designed and constructed for one-time, one-person use after which they are intended for discard.

- (76) Slacking. The process of moderating the temperature of a food such as allowing a food to gradually increase from a temperature of minus ten (-10) degrees Fahrenheit (minus twenty-three (-23) degrees Celsius) to twenty-five (25) degrees Fahrenheit (minus four (-4) degrees Celsius) in preparation for deep-fat frying or to facilitate even heat penetration during the cooking of previously block-frozen food such as spinach.
- (77) Smooth. A food contact surface free of pits and inclusions, a non-food contact surface of equipment having a surface equal to that of commercial grade hot-rolled steel free of visible scale; and a floor, wall or ceiling having an even or level surface with no roughness or projections that render it difficult to clean.
- (78) Sound condition. Free from defect, decay or damage; healthy.
- (79) Sufficient size. As much as is needed; adequate to contain all materials.
- (80) Temporary food establishment. A food establishment that operates for a period of no more than fourteen (14) consecutive days in conjunction with a single event or celebration.
- (81) Temporary event. Temporary events are defined as, but not limited to traveling fairs, carnivals, multicultural celebrations, special interest fundraisers, restaurant food shows, grand openings, customer appreciation days, athletic competition, and other transitory gatherings.
- (82) TFER. The 2006 Texas Food Establishment Rules as promulgated by the Texas Department of State Health Services, and codified under Texas Administrative Code 25 TAC §§ 229.161-178.
- (83) TCS. Time and temperature controlled for safety.
- (84) Utensil. Any implement used in the storage, preparation, transportation, or service of food.
- (85) Vending machine. A self-service device that, upon insertion of a coin, paper currency, token, card, or key, or by optional manual operation, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation.
- (86) Vending machine location. The room, enclosure, space or area where one (1) or more vending machines are installed and operated and includes the storage and servicing areas on the premises that are used to service and maintain the vending machines.
- (87) Warewashing. The cleaning and sanitizing of food-contact surfaces of equipment and utensils.
- (88) Wholesome. In good, sound condition; free from contamination or adulteration, healthy.

**Secs. 9-3--9-20. Reserved.**

## **ARTICLE II. - FOOD CARE**

### **Sec. 9-21. Food supplies.**

(a) General. Food shall be safe, unadulterated and honestly presented. Food shall be obtained from sources that comply with all laws relating to food labeling. The use of food in hermetically sealed containers that was not prepared in a food-processing establishment is prohibited.

- (1) Food establishment or manufacturers' dating information on food may not be concealed or altered.
- (2) Food prepared in a private home may not be used or offered for human consumption.
- (3) Potentially hazardous foods/time and temperature control for safety (PHF/TCS) can only be sold from a permitted food establishment.

(b) Special requirements.

- (1) Fluid milk and fluid milk products used, served, or commercially sold shall be pasteurized and shall meet the Grade A quality standards as established by law. Dry milk and dry milk products shall be made from pasteurized milk and milk products.
- (2) Fresh and frozen shucked shellfish (oysters, clams, or mussels) shall be packed in non-returnable packages identified with the name and address of the original shellstock processor, shucker-packer, or repacker, and the interstate certification number issued according to law. Shellstock and shucked shellfish shall be kept in the container in which they are received until they are used. Each container of unshucked shellstock (oysters, clams, or mussels) shall be identified by an attached tag that states the name and address of the original shellstock processor, the kind and quantity of shellstock, and an interstate certification number issued by the state or foreign shellfish control agency.
  - (a) Shellstock tags shall remain attached to the container in which they are received until the container is empty and shall be maintained at facility for ninety (90) calendar days from the date the container is emptied by using an approved record keeping system that keeps the tags or labels in chronological order correlated to the date when, or dates during which, the shellstock are sold or served.
  - (b) If shellstock are removed from their tagged or labeled container preserve, source identification by using a record keeping system and ensuring that shellstock from one tagged or labeled container is not commingled with shellstock from another container with different shellfish certification numbers, different harvest dates or different growing areas as identified on the tag or label.
- (3) Only clean whole eggs, with shell intact and without cracks or checks or pasteurized liquid, frozen, or dry eggs or pasteurized dry egg products shall be used, except that hard boiled, peeled eggs, commercially prepared and packaged, may be used. Shell eggs that have not been specifically treated to destroy all viable Salmonella shall be labeled to include safe handling instructions as specified in law, including 21 CFR §101.17(h) (Code of Federal Regulations).

- (4) Prepackaged juice shall be obtained from a processor with a HACCP system as specified in 21 CFR §120, be obtained pasteurized or otherwise treated to attain a 5-log reduction of the most resistant microorganism of public health significance as specified in 21 CFR §120.24 or bear a warning label as specified in 21 CFR §101.17(g).
- (5) Donation of foods. Foods which are considered distressed, such as foods which have been subjected to fire, flooding, excessive heat, smoke, radiation or other environmental contamination or prolonged storage shall not be directly donated for consumption by the consumer. Foods may be sold or donated to a licensed food salvage establishment under the provisions of the Texas Food Establishment Rules (TFER §229.164 (v)(1) thru (6)).
  - (a) Foods which have been previously served to a consumer may not be donated.
  - (b) Meat and poultry that is not a ready-to-eat food and is in a packaged form when it is offered for sale or otherwise offered for consumption, shall be labeled to include safe handling instructions as specified in law, including 9 CFR §317.2(1) and 9 CFR §381.125(b).
  - (c) A potentially hazardous food/time and temperature control for safety (PFH/TCS) may be donated if:
    - (1) The food has been kept at one hundred forty (140) degrees Fahrenheit during hot holding and service and subsequently refrigerated to meet the time and temperature requirements under section 9-23(b)(3).
    - (2) The donor can substantiate that the food recipient has the facilities to meet transportation, storage and reheating requirements.
    - (3) The temperature of the food is at or below forty (40) degrees Fahrenheit at the time of donation and is protected from contamination.

(c) Game animals. Game animals must be from a source approved by the regulatory authority and must be commercially processed. No game animal may be received for sale or service if it is listed in 50 CFR §17, (TFER §229.164)(b)(7)(B)(i-iv). Approved sources include:

- (1) As allowed by law, commercially raised indigenous game animals;
  - (2) Indigenous game animals harvested under the authority of the Texas Parks and Wildlife Department, which are wholesome at the time of delivery to a commercial processor.
- (d) Fish.
- (1) Fish that are received for sale or service shall be commercially and legally caught or harvested; or approved for sale or service.
  - (2) Molluscan shellfish that are recreationally caught may not be received for sale or service. Molluscan shellfish shall be obtained from sources according to law and the requirements specified in the U.S. Department of Health and Human Services, Public Health Service, Food

and Drug Administration, National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish. Molluscan shellfish received in the interstate commerce shall be from sources that are listed in the Interstate Certified Shellfish Shippers List.

(e) Wild mushrooms. Mushroom species picked in the wild shall be obtained from sources where each mushroom is individually inspected and found to be safe by an approved mushroom identification expert. (TFER §229.164(b)(6)(A)).

(f) Bottled water. Bottled drinking water used or sold in a food establishment shall be obtained from approved sources in accordance with 21 CFR §129 (Processing and Bottling of Bottled Drinking Water).

### **Sec. 9-22. Food protection.**

(a) General. At all times including while being stored, prepared, displayed, served or transported, food shall be protected from potential contamination. Potential contamination to food includes but is not limited to: dust, insects, rodents, unclean equipment and utensils, unnecessary handling by the use of sanitary disposable gloves, coughs and sneezes, flooding, drainage, and overhead drippage from condensation.

(b) Emergency occurrences. In the event of an occurrence, such as a fire, flood, extended power outage of thirty (30) to forty-five (45) minutes, or similar event which might result in the contamination of food, or which might prevent potentially hazardous foods/time and temperature control for safety (PHF/TCS) from being held at required temperatures, the person in charge shall immediately contact the regulatory authority. Upon receiving notice of this occurrence, the regulatory authority shall take whatever action that it deems necessary to protect the public health.

(c) Specialized processing methods. A food establishment shall obtain a variance as specified in TFER §229.171(a)(1) and (2) (relating to compliance and enforcement) before smoking or curing food; using food additives or adding components such as vinegar as a method of food preservation rather than as a method of flavor enhancement or to render a food non-potentially hazardous; using a reduced oxygen method of packaging food, except as specified in paragraph (2) of this subsection where a barrier to *Clostridium botulinum* in addition to refrigeration exists; or preparing food by another method that is determined by the regulatory authority to require a variance. A food establishment that packages food using a reduced oxygen packaging method shall have a HACCP Plan that contains information in accordance with the Texas Food Establishment Rules.

(d) Protection from unapproved additives.

(1) A food shall be protected from contamination that may result from the addition of:

(a) Unsafe or unapproved food or color additives; and

(b) Unsafe or unapproved levels of approved and color additives.

- (2) A food employee may not apply sulfating agents to fresh fruits and vegetables intended for raw consumption or to a food considered to be a good source of vitamin B1 or serve or sell food specified in paragraph (1) above that is treated with sulfating agents before receipt by the food establishment, except that grapes need not meet this subparagraph.
- (e) Treating juice. Juice packaged in a food establishment shall be:
  - (1) Treated under a HACCP plan as specified in TFER §229.171(d)(2)(B)-(D) to attain a 5-log reduction, which is equal to a 99.999 percent reduction, of the most resistant microorganism of public health significance; or
  - (2) Labeled, if not treated to yield a 5-log reduction of the most resistant microorganism of public health significance:
    - (a) As specified under TFER §164(r)(1)(A)-(B); and
    - (b) As specified in 21 CFR §101.17(g) with the phrase, "WARNING: This product has not been pasteurized and, therefore, may contain harmful bacteria that can cause serious illness in children, the elderly, and persons with a weakened immune system."

**Sec. 9-23. Food storage.**

- (a) General.
  - (1) Food, whether raw or prepared, if removed from the container or package in which it was obtained shall be stored in a clean covered container intended for food storage except during necessary periods of preparation or service. Container covers shall be impervious and non-absorbent except that linens or napkins may be used for lining or covering bread or roll containers. Solid cuts of meat shall be protected by being covered in storage, except that quarters or sides of meat may be hung uncovered on clean sanitized hooks if no food product is stored beneath the meat.
  - (2) Containers of food shall be stored a minimum of six (6) inches above the floor in the manner that protects the food from splash and other contamination, and that permits easy cleaning of the storage area except that:
    - (a) Metal pressurized beverage containers, and cased food packaged in cans, glass or other waterproof containers need not be elevated when the food container is not exposed to floor moisture; and
    - (b) Containers may be stored on dollies or racks, provided such equipment is easily moveable.
  - (3) Food and containers of food shall not be stored under exposed or unprotected sewer lines or water lines, except for automatic fire protection sprinkler heads that may be required by law. The storage of food in toilet rooms or vestibules is prohibited.

- (4) Food shall be protected from cross contamination by separating raw animal food during storage, preparation, holding and display from:
  - (a) Raw, ready-to-eat food including other raw animal food such as fish, sushi or molluscan shellfish, or other raw ready-to-eat food such as vegetables, and
  - (b) Cooked ready-to-eat food.
- (5) Except when combined as ingredients, separating types of raw animal foods from each other during storage, preparation, holding and display from:
  - (a) Using separate equipment for each type; or
  - (b) Arranging each type of food in equipment so that cross contamination of one type with another is prevented; and
  - (c) Preparing each type of food at different times or in separate areas.
- (6) Packaged food may not be stored in direct contact with ice or water if the food is subject to entry of water because of the nature of its packaging, wrapping, or container or its position in the ice or water. Unpackaged food may not be stored in direct contact with undrained ice with the exception of whole, raw fruits and vegetables; cut, raw vegetables and tofu may be immersed in ice or water. Raw chicken and raw fish that are received immersed in ice in shipping container may remain in that condition while awaiting preparation, display, service or sale.
- (7) Unless its identity is unmistakable, bulk food such as cooking oil, syrup, salt, sugar or flour not stored in the product container or package in which it was obtained, shall be stored in a container identifying the food by common name.
- (8) Proper separation and identification of employee's or personal food and items must be stored in a manner that will prevent contamination of items intended for public consumption.
  - (b) Refrigerated storage.
    - (1) Conveniently located refrigeration facilities or effectively insulated facilities shall be provided to assure the maintenance of all potentially hazardous food/time and temperature control for safety (PHF/TCS) at required temperatures during storage.
    - (2) Each mechanically refrigerated facility storing potentially hazardous food/time and temperature control for safety (PHF/TCS) shall be provided with a numerically scaled indicating thermometer, accurate to +/- 3 degrees Fahrenheit, located to measure the air temperature in the warmest part of the facility and located to be easily readable. Recording thermometers, accurate to +/- 3 degrees Fahrenheit, may be used in lieu of indicating thermometers.
    - (3) Potentially hazardous food/time and temperature control for safety (PHF/TCS) requiring refrigeration after preparation shall be rapidly cooled to an internal temperature of forty (40)

degrees Fahrenheit (five (5) degrees Celsius) or below. Potentially hazardous foods/time and temperature control for safety (PHF/TCS) of large volume or prepared in large quantities shall be rapidly cooled utilizing such methods as shallow pans, agitation, quick chilling or water circulation external to the food container so that the cooling period shall not exceed four (4) hours. Potentially hazardous food/time and temperature control for safety (PHF/TCS) to be displayed for sale or service or transported shall be pre-chilled and held at a temperature of forty (40) degrees Fahrenheit, (five (5) degrees Celsius) or below.

- (4) Potentially hazardous foods/time and temperature control for safety (PHF/TCS) shall be at a temperature of forty (40) degrees Fahrenheit (five (5) degrees Celsius) when received.
  - (5) Raw shell eggs, molluscan shellfish and milk shall be received in refrigerated equipment that maintains an ambient air temperature of forty-five (45) degrees Fahrenheit (seven (7) degrees Celsius) or less.
  - (6) Frozen foods shall be kept frozen and shall be stored at a temperature of zero (0) degrees Fahrenheit (-eighteen (-18) degrees Celsius) or below.
  - (7) A food that is labeled frozen and shipped frozen by a food processing plant shall be received frozen.
  - (8) Ice intended for human consumption shall not be used as a medium for cooling stored food, food containers or food utensils, except that such ice may be used for cooling tubes conveying beverages or beverage ingredients to a dispenser head. Ice used for cooling stored food and food containers shall not be used for human consumption.
- (c) Date marking.
- (1) Ready-to-eat, potentially hazardous food/time and temperature control for safety foods (PHF/TCS) prepared on premises and held in a refrigerated state for more than twenty-four (24) hours in a food establishment shall be clearly marked using calendar dates, days of the week, color coded marks, or other effective means to indicate the date or day by which the food shall be consumed on the premises, sold, or discarded, based on the temperature and time combinations specified as follows: for a maximum of six (6) days following the date of initial preparation if held at or below forty (40) degrees Fahrenheit (five (5) degrees Celsius).
  - (2) Commercially processed ready-to-eat food prepared and packaged by a food processing plant shall be clearly marked using calendar dates, days of the week, color-coded marks, or other effective means, at the time the original container is opened in a food establishment and if the food is held for more than twenty-four (24) hours, to indicate the date or day by which the food shall be consumed on the premises, sold, or discarded, based on the temperature and time combinations specified in this chapter. The day the original container is opened in the food establishment shall be counted as day one (1); and the day or date marked by the food establishment shall not exceed a manufacturers' use-by date.
  - (3) A refrigerated, ready-to-eat potentially hazardous food/time and temperature control for safety (PHF/TCS) that is frequently rewrapped, such as lunchmeat or a roast, or for which date

marking is impractical, such as soft serve mix or milk in a dispensing machine, may be marked as specified in this chapter or by an alternative method acceptable to the regulatory authority.

- (4) Alternative date marking systems must receive prior approval from the regulatory authority.
- (5) Subsection (2) of this paragraph does not apply to the following cheeses that are maintained under refrigeration as specified in this chapter:
  - (a) Hard cheeses manufactured as specified in 21 CFR §133.150, and with moisture content not exceeding thirty-nine (39) percent, such as cheddar, gruyere, parmesan, reggiano, and romano;
  - (b) Semi-soft cheeses manufactured as specified in 21 CFR §133.187, and with a moisture content of more than thirty-nine (39) percent but less than fifty (50) percent, such as blue, edam, gorgonzola, gouda, and Monterey jack; or
  - (c) Pasteurized process cheeses manufactured as specified in 21 CFR §133.169, and labeled as containing an acidifying agent.
- (6) Subsection (2) of this paragraph does not apply to the following when the face has been cut, but the remaining portion is whole and intact:
  - (a) Fermented sausages produced in a federally inspected food processing plant that are not labeled "Keep Refrigerated" and which retain the original casing on the product;
  - (b) Shelf stable, dry, fermented sausages; and
  - (c) Shelf stable salt-cured products such as prosciutto and Parma (ham) produced in a federally inspected food processing plant that are not labeled "Keep Refrigerated."
- (7) Subsection (2) of this paragraph does not apply to cultured dairy products as defined in 21 CFR §131, Milk and Cream, such as yogurt, sour cream, and buttermilk, that are maintained under refrigeration as specified in this chapter.
- (8) Subsection (2) of this paragraph does not apply to preserved fish products, such as pickled herring, and dried or salted cod, and other acidified fish products defined in 21 CFR §114, Acidified Foods.
- (9) A refrigerated, ready-to-eat, potentially hazardous food/time and temperature control for safety (PHF/TCS) ingredient or a portion of a refrigerated, ready-to-eat, potentially hazardous food/time and temperature control for safety (PHF/TCS) that is subsequently combined with additional ingredients or portions of food shall retain the date marking of the earliest prepared or first-prepared ingredient.
- (d) Hot storage.
- (1) Conveniently located hot food storage facilities shall be provided to assure the maintenance of food at the required temperature during storage. Each hot food facility storing potentially

hazardous food/time and temperature control for safety (PHF/TCS) shall be provided with a numerically scaled indicating thermometer, accurate to +/- three (3) degrees Fahrenheit, located to measure the air temperature in the coolest part of the facility and located to be easily readable. Recording thermometers, accurate to +/- three (3) degrees Fahrenheit, may be used in lieu of indicating thermometers. Where it is impractical to install thermometers on equipment such as bain-maries, steam tables, steam kettles, heat lamps, cal-rod units, or insulated food transport carriers, a product thermometer must be available and used to check internal food temperature.

- (2) The internal temperature of potentially hazardous foods/time and temperature control for safety (PHF/TCS) requiring hot storage shall be one hundred forty (140) degrees Fahrenheit (sixty (60) degrees Celsius) or above except during necessary periods of preparation. Potentially hazardous food/time and temperature control for safety (PHF/TCS) to be transported shall be held at a temperature of one hundred forty (140) degrees Fahrenheit (sixty (60) degrees Celsius) or above unless maintained in accordance with subsection (b)(2) of this subsection.

#### **Sec. 9-24. Food preparation.**

(a) Food handling. Food shall be prepared with the least possible manual contact, with suitable utensils, and on surfaces that prior to use have been cleaned, rinsed and sanitized to prevent cross contamination.

(b) Food employees may not use a utensil more than once to taste food that is to be sold or served.

(c) Food employees shall prepare ready-to-eat foods using suitable utensils, such as tissue, spatulas, tongs, single use gloves or dispensing equipment.

- (1) Food employees shall wash their hands as specified under Section 9-32.

- (2) Gloves, use limitation. Hands must be washed prior to use of gloves. If used, single-use gloves shall be used for only one (1) task such as working with ready-to-eat food or with raw animal food, used for no other purpose, and discarded when damaged or soiled, or when interruptions occur in the operation. Slash resistant gloves that are used to protect the hands during operations requiring cutting shall be used in direct contact only with food that is subsequently cooked as specified by these rules, such as frozen food or a primal cut of meat. Slash-resistant gloves may be used with ready-to-eat food that will not be subsequently cooked if the slash-resistant gloves are covered with a smooth, durable, and non-absorbent glove or a single-use glove. Cloth gloves may not be used in direct contact with food unless the food is subsequently cooked as required in these rules such as frozen food or a primal cut of meat.

(d) Raw fruits and raw vegetables shall be thoroughly washed with potable water before being cooked or served.

(1) Fruits and vegetables may be washed by using chemical as specified under (TFER §229.168(f)(2)).

(e) Cooking potentially hazardous foods/time and temperature control for safety (PHF/TCS). Potentially hazardous foods/time and temperature control for safety (PHF/TCS) requiring cooking shall be cooked to heat all parts of the food to a temperature of at least one hundred forty (140) degrees Fahrenheit, (sixty (60) degrees Celsius) except that:

- (1) Poultry, poultry stuffing, stuffed meat, stuffed fish, stuffed pasta, stuffed ratites, stuffing containing meat, wild game animals and exotic animals, shall be cooked to heat all parts of the food to at least one hundred sixty-five (165) degrees Fahrenheit, (seventy-four (74) degrees Celsius) with no interruption of the cooking process.
- (2) Pork and any food containing pork shall be cooked to heat all parts of the food to at least one hundred fifty (150) degrees Fahrenheit, (sixty-six (66) degrees Celsius).
- (3) Rare roast beef shall be cooked to an internal temperature of at least one hundred thirty (130) degrees Fahrenheit (fifty-four (54) degrees Celsius), and rare beef steak shall be cooked to a temperature of one hundred thirty (130) degrees Fahrenheit (fifty-four (54) degrees Celsius), unless otherwise ordered by the immediate consumer.
- (4) Whole beef roasts, corned beef roasts, pork roasts, and cured pork roasts such as ham, shall be cooked in an oven that is preheated to the temperature specified for the roast's weight in the following chart and that is held at that temperature; and Figure 1:25 TAC §229.164(k)(1)(B)(i).

Oven type	Oven Temperature Based on Roast Weight	
	Less than 10 lbs. (4.5 kg)	10 lbs. (4.5 kg) or More
Still Dry	350° F (177° C) or more	250° F (121° C) or more
Convection	250° F (121° C) or more	250° F (121° C) or more
High Humidity <sup>1</sup>	250° F (121° C) or more	250° F (121° C) or more
<sup>1</sup> Relative humidity greater than ninety (90) percent for at least one (1) hour as measures in the cooking chamber or exit of the oven; or in a moisture-impermeable bag that provides one hundred (100) percent.		

Holding time that corresponds to that temperature. Figure 1:25 TAC §229.164(k)(1)(B)(ii)

### Cooking Whole Beef or Corned Beef Roasts

Temperature (°F) (°C+)	Time <sup>1</sup> in Minutes	Temperature (°F) (°C+)	Time <sup>1</sup> in Seconds
130 (54.4)	112	147 (63.9)	134
131 (55.0)	89	149 (65.0)	85
133 (56.1)	56	151 (66.1)	54
136 (57.8)	28	155 (68.3)	22
138 (58.9)	18	157 (69.4)	14
140 (60.0)	12	158 (70.0)	0
142 (61.1)	8		
144 (62.2)	5		
145 (62.8)	4		

<sup>1</sup> Holding time may include postover heat rise.

- (5) Reconstructed and/or ground beef products shall be cooked to an internal temperature of at least one hundred fifty-five (155) degrees Fahrenheit (sixty-eight (68) degrees Celsius) for a minimum of fifteen (15) seconds, unless otherwise ordered by the immediate consumer.

Alternatives to the 155 Degree Fahrenheit/15 second requirement.

Minimum Temperature °F (°C)	Minimum Time
145 (63)	3 Minutes
150 (66)	1 Minute
158 (70)	< 1 Second (Instantaneous)

- (6) Plant food cooking for hot holding. Fruits and vegetables that are cooked for hot holding shall be cooked to a temperature of one hundred thirty-five (135) degrees Fahrenheit (fifty-seven (57) degrees Celsius).
- (7) Consumers shall be informed by brochures, deli case menu advisories, label statements, table tents, placards, or other effective written means of the potential hazards of raw animal food such as raw marinated fish; raw molluscan shellfish; steak tartar; partially cooked food such as lightly cooked fish, rare meat and soft cooked eggs that to ensure its safety, the food should be cooked to proper temperatures.
- (8) Food establishments which serve or sell an animal food such as beef, eggs, fish, lamb, pork, poultry, or shellfish which is served or sold raw, undercooked, or without otherwise being processed to eliminate pathogens, either in ready-to-eat form or as an ingredient in another ready-to-eat food the permit holder shall inform consumers of the significantly increased risk of consuming such foods by way of a disclosure and reminder, using brochures, deli case or menu advisories, label statements, table tents, placards or other effective written means.

- (1) Disclosure shall include a description of the animal-derived foods, such as "oysters on the half shell (raw oysters)", "raw-egg Caesar salad" and "hamburgers (can be cooked to order)" or
  - (a) Identification of the animal derived foods by asterisking them to a footnote that states that the items are served raw or under cooked or contain (or may contain) raw or under cooked ingredients.
- (2) Reminder shall include asterisking the animal-derived food requiring disclosure to a footnote that states regarding the safety of these items, written information is available upon request;
  - (a) Consuming raw or undercooked meats, poultry, seafood, shellfish or eggs may increase your risk of foodborne illness or;
  - (b) Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness, especially if you have certain medical conditions.

(f) Parasite destruction. Before service or sale in ready-to-eat form, raw, raw-marinated, partially cooked or marinated-partially cooked fish other than molluscan shellfish shall be frozen throughout to a temperature of minus four (-4) degrees Fahrenheit (minus twenty (-20) degrees Celsius) or below for one hundred sixty-eight (168) hours (seven (7) days) in a freezer or (minus thirty-one (-31) degrees Fahrenheit, (minus thirty-five (-35) degrees Celsius) or below for fifteen (15) hours in a blast freezer. Records must be maintained for ninety (90) calendar days beyond the time of service or sale of the fish. If the fish are tuna of the species *Thunnus alalunga*, *Thunnus albacares* (Yellowfin tuna), *Thunnus atlanticu*, *Thunnus maccoyii* (Bluefin tuna, Southern), *Thunnus obesus* (Bigeye tuna) or *Thunnus thynnus* (Bluefin, Northern), the fish may be served or sold in raw, raw-marinated or partially cooked ready-to-eat form without freezing.

- (1) If the fish are frozen by a supplier, a written agreement or statement from the supplier stipulating that the fish supplied are frozen to a temperature and for a time specified may substitute for the records specified above.

(g) Dry milk and dry milk products. Reconstituted dry milk products may be used in instant desserts and whipped products or for cooking and baking purposes.

(h) Liquid, frozen, milk, dry eggs and egg products.

- (1) Frozen milk products, such as ice cream, liquid, frozen, dry eggs and egg products shall be obtained pasteurized. Pasteurized liquid, frozen or dry eggs shall be substituted for raw eggs in preparation of: Caesar salad, hollandaise sauce or béarnaise sauce, mayonnaise, meringue, eggnog, ice cream and egg fortified beverages.
- (2) Cheese shall be obtained pasteurized unless alternative procedures to pasteurization are specified in 21 CFR §133.
- (3) Shell eggs that are broken, combined in a container, and not cooked immediately are prohibited.

(i) Reheating. Potentially hazardous foods/time and temperature control for safety (PHF/TCS) that have been cooked and then refrigerated, shall be reheated rapidly to one hundred sixty-five (165) degrees Fahrenheit (seventy-five (75) degrees Celsius) or higher throughout before being served or before being placed in a hot food storage facility. Steam tables, bain-maries, warmers, and similar hot food holding facilities are prohibited for the rapid reheating of potentially hazardous foods/time and temperature control for safety (PHF/TCS).

- (1) Preparation for immediate service. Cooked and refrigerated food that is prepared for immediate service in response to an individual consumer order, such as roast beef sandwich au jus, may be served at any temperature.
- (2) Ready-to-eat food taken from a commercially processed, hermitically sealed container, or from an intact package from a food processing plant that is inspected by the food regulatory authority that has jurisdiction over the plant, shall be heated to a temperature of at least one hundred thirty-five (135) degrees Fahrenheit (fifty-seven (57) degrees Celsius) for hot holding.

(j) Cooling. Potentially hazardous foods/time and temperature control for safety (PHF/TCS) that have been cooked and are required to be cooled shall be rapidly cooled to forty (40) degrees Fahrenheit (five (5) degrees Celsius) or below within four (4) hours of preparation. Potentially hazardous foods/time and temperature control for safety (PHF/TCS) shall be rapidly cooled utilizing such methods as shallow pans, agitation, quick chilling or water circulation external to the food container.

- (1) Raw shell eggs shall be received as specified in this chapter and immediately placed in refrigerated equipment that maintains an ambient air temperature of forty (40) degrees Fahrenheit (five (5) degrees Celsius) or less.

(k) Product thermometers. Metal stem-type numerically scaled indicating thermometers, accurate to +/- two (2) degrees Fahrenheit, shall be provided and used to assure the attainment and maintenance of proper internal cooking, holding, or refrigeration temperatures of all potentially hazardous foods/time and temperature control for safety (PHF/TCS).

(l) Thawing potentially hazardous foods/time and temperature control for safety (PHF/TCS). Potentially hazardous foods/time and temperature control for safety (PHF/TCS) shall be thawed:

- (1) Under refrigeration that maintains the food temperature at forty (40) degrees Fahrenheit (five (5) degrees Celsius); or less as specified in this chapter.
- (2) Completely submerged under running water:
  - (a) At a water temperature of seventy (70) degrees Fahrenheit (twenty-one (21) degrees Celsius) or below; and
  - (b) With sufficient water velocity to agitate and float off loose particles in an overflow; and
  - (c) And for a period of time that does not allow thawed portions of ready-to-eat food to rise above forty (40) degrees Fahrenheit (five (5) degrees Celsius) of this chapter; and

(d) Or for a period of time that does not allow thawed portions of a raw animal food requiring cooking as specified in this chapter to above forty (40) degrees Fahrenheit (five (5) degrees Celsius), for more than four (4) hours including the time the food is exposed to the running water and the time needed for preparation for cooking; or the time it takes under refrigeration to lower the food temperature to forty (40) degrees Fahrenheit (five (5) degrees Celsius).

(3) In a microwave oven only when the food will be immediately transferred to conventional cooking facilities as part of the continuous cooking process or when the entire, uninterrupted cooking process takes place in the microwave oven; or

(4) As part of the conventional cooking process. If the food that is frozen is cooked as specified in this chapter, or using any procedure if a portion of frozen ready-to-eat food is thawed and prepared for immediate service in response to an individual consumer's order.

(m) Slacking. Frozen potentially hazardous food/time and temperature control for safety (PHF/TCS) that is slacked to moderate the temperature shall be held under refrigeration that maintains the food temperature at forty (40) degrees Fahrenheit (five (5) degrees Celsius) or less or at any temperature if the food remains frozen.

(n) Microwave cooking. Raw animal foods cooked or reheated in the microwave oven shall be:

(1) Rotated or stirred throughout or midway during cooking to compensate for uneven distribution of heat;

(2) Covered to retain surface moisture;

(3) Heated to a temperature of at least one hundred sixty-five (165) degrees Fahrenheit (seventy-four (74) degrees Celsius) in all parts of the food; and

(4) Allowed to stand covered for two (2) minutes after cooking to obtain temperature equilibrium.

(o) Highly susceptible populations. Food establishments that serve highly susceptible populations must comply with all rules in accordance with TFER §229.164(u)(1-8), and FDA Code 3-801.11. (Food and Drug Administration)

(p) Outdoor grilling. Outdoor grilling by all permitted food establishments on a permanent basis must comply with food establishment standards in article II through article VII, including sections 9-24 through sections 9-78 of the ordinance. Outdoor grilling at temporary events must be approved and permitted by the City of Plano Health Department in accordance with temporary guidelines in Section 9-92(b)(4) of the ordinance. Outdoor grilling for personal and residential use is permitted and outside the scope of this regulation.

### **Sec. 9-25. Food display and service.**

(a) Potentially hazardous foods/time and temperature control for safety (PHF/TCS). Potentially hazardous foods/time and temperature control for safety (PHF/TCS) shall be kept at an internal temperature of forty (40) degrees Fahrenheit (five (5) degrees Celsius) or below or at an internal

temperature of one hundred forty (140) degrees Fahrenheit (sixty (60) degrees Celsius) or above during storage, preparation, display, service and transport, except that rare roast beef shall be held for service at a temperature of at least one hundred thirty (130) degrees Fahrenheit (fifty-four (54) degrees Celsius).

(b) Time as a public health control. If time only, rather than time in conjunction with temperature, is used as the public health control for a working supply of potentially hazardous foods/time and temperature control for safety (PHF/TCS) before cooking, or for ready-to-eat potentially hazardous foods/time and temperature control for safety (PHF/TCS) that is displayed or held for service for immediate consumption:

- (1) The food shall be marked, labeled, tagged or otherwise unmistakably identified to indicate the time which is four (4) hours past the point when the food was removed from temperature control;
- (2) The food shall be cooked and served, served if a ready-to-eat food or discarded within four (4) hours of the time at which the food was removed from temperature control;
- (3) The food in unmarked containers or packages or marked to exceed a four-hour time limit shall be discarded; and
- (4) Written procedures shall be maintained in the food establishment and made available to the regulatory authority upon request, to ensure compliance.

(c) Milk and cream dispensing.

- (1) Milk and milk products for drinking purposes shall be provided to the consumer in an unopened, commercially filled package not exceeding one (1) pint in capacity, or drawn from a commercially filled container stored in a mechanically refrigerated bulk milk dispenser. Where it is necessary to provide individual servings under special institutional circumstances, milk and milk products may be poured from a commercially filled container provided such a procedure is authorized by the regulatory authority. Where a bulk dispenser for milk and milk products is not available and portions of less than one-half-pint are required for mixed drinks, cereal, or dessert service, milk and milk products may be poured from a commercially filled container.
- (2) The bulk milk container dispensing tube shall be cut on the diagonal leaving no more than one (1) inch protruding from the chilled dispensing head.
- (3) Cream or half and half shall be provided in an individual service container, protected pour-type pitcher, or drawn from a refrigerated dispenser designed for such service.

(d) Nondairy products dispensing. Nondairy cream shall be provided in an individual service container, protected pour-type pitcher, or drawn from a refrigerated dispenser designed for such service.

(e) Condiment dispensing.

(1) Condiments, seasonings and dressings for self-service use shall be provided in individual packages, from dispensers, or from containers protected in accordance with paragraph (h) of this subsection.

(2) Condiments provided for table or counter service shall be individually portioned, except that ketchup and other sauces may be served in the original container or pour type dispenser. Sugar for consumer usage shall be provided in individual packages or in pouring-type dispensers.

(f) Ice dispensing. Ice for consumer use shall be dispensed only by employees with scoops, tongs, or other ice-self-dispensing utensils or through automatic service ice dispensing equipment. Ice dispensing utensils shall be stored on a clean surface or in the ice with the dispensing utensil's handle extended out of the ice. Between uses, ice transfer receptacles shall be stored in a way that protects them from contamination. Ice storage bins shall be drained through an air gap.

(g) Dispensing utensils. To avoid unnecessary manual contact with food, suitable dispensing utensils shall be used by employees or provided to consumers who serve themselves. Between uses during service, dispensing utensils shall be:

(1) Stored in the food with the dispensing utensil handle extended out of the food; or

(2) Stored clean and dry; or

(3) Stored in running water; or

(4) Stored either in a running water dipper well, or clean and dry in the case of dispensing utensils and malt collars used in preparing frozen desserts; or

(5) In a container of water if the water is maintained at a temperature of at least one hundred thirty-five (135) degrees Fahrenheit (fifty-seven (57) degrees Celsius) and the container is cleaned at a frequency specified under TFER §229.165(n)(1)(D)(vii).

(h) Reservice. Once served to a consumer, portions of left-over food shall not be served again except that packaged food, other than potentially hazardous foods/time and temperature control for safety (PHF/TCS), that is still packaged and is still in sound condition may be served.

(i) Display equipment. Food on display shall be protected from consumer contamination by the use of packaging or by the use of easily cleanable counter, serving line or salad bar protector devices, display cases or by other effective means. The minimum height requirement for sneeze guards is eighteen (18) inches unless otherwise specified by the regulatory authority. Enough hot or cold food facilities shall be available to maintain the required temperatures of potentially hazardous foods/time and temperature control for safety (PHF/TCS) on display.

(j) Reuse of tableware. Reuse of soiled tableware by self-service consumers returning to the service area for additional food is prohibited. Beverage cups and glasses are exempt from this requirement.

(k) Unpackaged, raw animal food such as beef, lamb, pork, poultry and fish may not be offered for consumer self-service. This does not apply to consumer self-service or ready-to-eat foods at buffets or salad bars that serve foods such as sushi or raw shellfish, or ready-to-cook individual portions for immediate cooking and consumption on the premises such as consumer cooked meats or consumer selected ingredients for Mongolian barbeque; or raw, frozen, shell-on shrimp or lobster.

- (1) A card, sign or other effective means of notification shall be displayed to notify consumers that clean tableware is to be used upon return to self-service areas such as salad bars and buffets.
- (2) Consumers self-service operations such as buffets and salad bars shall be monitored by food employees trained in safe operating procedures.
- (3) A person may sell unpackaged food that is not potentially hazardous that is displayed, and sold in bulk from a self-service container if:
  - (a) The self-service container has tight-fitting lid that is securely attached to the container; and
  - (b) The container, lid and any utensil are constructed of nontoxic materials that provide for easy cleaning and proper repair.
  - (c) The lid of a gravity feed type container shall be kept closed except when the container is being serviced or refilled.
  - (d) The lid of a scoop utensil type container shall be kept closed except during customer service. The container must have a utensil, equipped with a handle, to be used in dispersing the food.
- (4) The seller shall:
  - (a) Keep the container, lid, and any utensil sanitary to prevent spoilage and insect infestation; and
  - (b) Post in the immediate display area a conspicuous sign that instructs the customer on the proper procedure for dispensing the food.

#### **Sec. 9-26. Food transportation.**

During transportation, food and food utensils shall be kept in covered containers or completely wrapped or packaged so as to be protected from contamination. Foods in original individual packages do not need to be overwrapped or covered if the original package has not been torn or broken. During transportation, including transportation to another location for service or catering operations, food shall meet the requirements of this chapter relating to food protection and food storage.

#### **Sec. 9-27. HACCP plan requirements.**

(a) When a HACCP plan is required. Before engaging in an activity that requires a HACCP plan, a food establishment shall submit to the regulatory authority for approval a properly prepared HACCP

plan as specified under subsection (b) of this section and the relevant provisions of these rules if a variance is required. A food establishment shall have a properly prepared HACCP plan as specified in TFER §229.161--229.175. The HACCP plan shall be followed as submitted to, and approved by the regulatory authority.

(b) Contents of a HACCP plan. For a food establishment that is required under subsection (a) of this section to have a HACCP plan, the plan and specifications shall indicate:

- (1) A categorization of the types of potentially hazardous foods/time and temperature control for safety (PHF/TCS) that are specified in the menu such as soups and sauces, salads, and bulk, solid foods such as meat roasts, or of other foods that are specified by the regulatory authority;
- (2) A flow diagram by specific food and category type identifying critical control points and providing information on the following:
  - (a) Ingredients, materials, and equipment used in the preparation of the food; and
  - (b) Formulation or recipes that delineate methods and procedural control measures that address the food safety concerns involved;
- (3) Food employee and supervisory training plan for the person(s) in charge and food employee(s) pertaining to public health and the safety and integrity of food;
- (4) A statement of standard operating procedures for the plan under consideration including and clearly identifying:
  - (a) Each critical control point;
  - (b) The critical limits for each critical control point;
  - (c) The method and frequency for monitoring and controlling each critical control point by the food employee designated by the person-in-charge;
  - (d) The method and frequency for the person-in-charge to routinely verify that the food employee is following standard operating procedures and monitoring critical control points;
  - (e) Action to be taken by the person-in-charge if the critical limits for each critical control point are not met; and
  - (f) Records to be maintained by the person-in-charge to demonstrate that the HACCP plan is properly operated and managed; and
- (5) Additional scientific data or other information, as requested by the regulatory authority, supporting the determination that food safety is not compromised by the proposal.

(c) Confidentiality, trade secrets. The regulatory authority shall treat as confidential in accordance with the requirements of the Public Information Act, V.T.C.A., Government Code Chapter

552, information that meets the criteria for a trade secret and is contained on inspection report forms and in the plans as specifications submitted.

**Secs. 9-28--9-30. Reserved.**

### **ARTICLE III. - PERSONNEL**

#### **Sec. 9-31. Employee health.**

(a) No person while infected with a disease in a communicable form that can be transmitted by foods or who is a carrier of organisms that cause such a disease or while afflicted with a boil, an infected wound, or an acute respiratory infection, shall work in a food establishment in any capacity in which there is a likelihood of such person contaminating food or food-contact surfaces with pathogenic organisms or transmitting disease to other persons.

(b) There shall be a certified food manager on duty at all times at each permitted food establishment. Certification must be obtained by passing an examination approved by the Texas Department of State Health Services and the regulatory authority.

(c) All food employees shall be required to successfully complete a food handler class taught by the City of Plano or from any approved city, municipality or accredited institution or other approved course within thirty (30) days of hire. If a food employee completes a course other than with the City of Plano, they are required to obtain a food handler card from the City of Plano Health Department. Food handler cards shall be good for a period of two (2) years from the date of issue. This applies without regard to whether the food service establishment is at a fixed location or is a mobile food unit. A food service establishment or mobile food unit that handles only pre-packaged food and does not prepare or package food is not required to obtain a food handler certification.

(d) A food service establishment shall comply with the following:

- (1) Post a sign in a place conspicuous to employees in a form adopted by the executive commissioner of the Health and Human Services Commission, describing a food service employee's responsibilities to report communicable and infectious health conditions to the permit holder; or
- (2) Require that each food service employee sign a written agreement in a form adopted by the executive commissioner to report those health conditions.

(e) Food employees experiencing persistent sneezing, coughing, or a runny nose that causes discharges from the eyes, nose, or mouth may not work with exposed food; clean equipment, utensils, and linens; or unwrapped single-service or single-use articles.

(f) The person-in-charge shall notify the regulatory authority that a food employee is diagnosed with an illness due to Norovirus, Salmonella typhi, Shigella spp., shiga toxin-producing Escherichia coli, or Hepatitis A Virus.

**Sec. 9-32. Personal cleanliness.**

(a) Food employees shall clean their hands and exposed portions of their arms (or surrogate prosthetic devices for hand or arms) for at least twenty (20) seconds, using a cleaning compound in a lavatory that is properly equipped. Food employees shall use the following cleaning procedure:

- (1) Vigorous friction on the surface of the lathered fingers, finger tips, areas between the fingers and under the fingernail, hands and arms (or vigorous rubbing the surrogate prosthetic devices for hands or arms) for at least ten (10) to fifteen (15) seconds followed by;
- (2) Thorough rinsing under clean, running water; and
- (3) Immediately follow the cleaning procedure with drying of cleaned hands and arms (or surrogate prosthetic devices).

(b) Food employees shall keep their fingernails clean, trimmed, unpainted, filed and maintained so the edges and surfaces are not rough.

(c) A chemical hand sanitizing solution used as a hand dip shall be maintained clean and at a strength equivalent to at least one hundred (100) mg/L chlorine.

(d) A chemical hand sanitizing solution used as a hand dip shall have active antimicrobial ingredients that are listed as safe and effective for application to human skin in accordance to TFER §229.163(j).

(e) A person handling food or unsealed containers may not contact with bare hands exposed ready-to-eat food unless:

- (1) Documentation is maintained at the food service establishment listing the foods and food handling activities that involve bare-hand contact; and
- (2) The food service establishment uses two (2) or more of the following contamination control measures:
  - (a) Requiring employees to perform double handwashing;
  - (b) Requiring employees to use fingernail brushes while handwashing;
  - (c) Requiring employees to use a hand sanitizer after handwashing;
  - (d) Implementing an incentive program that encourages employees not to come to work when ill; and
  - (e) Other contamination control measure approved by the regulatory authority.

(f) A food service establishment shall maintain and present upon request documentation that acknowledges employees have received training in the following areas:

- (1) The risks of contacting ready-to-eat foods with bare hands;

- (2) Proper handwashing;
- (3) Proper fingernail maintenance;
- (4) The prohibition of wearing jewelry on the hands and arms during food preparation;
- (5) Good hygienic practices; and
- (6) Company policies governing employee illness and disease transmission in compliance with state and local laws.

**Sec. 9-33. Clothing.**

(a) The outer clothing of all employees shall be clean.

(b) Except as provided under paragraph (c) of this subsection, food employees shall wear hair restraints such as hats, hair coverings or nets, beard restraints, and clothing that covers body hair, that are designed and worn to effectively keep their hair from contacting exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

(c) This section does not apply to food employees such as counter staff who only serve beverages and wrapped or packaged foods, hostesses, and wait staff if they present a minimal risk of contaminating exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

(d) Employees shall remove all jewelry from the arms and hands, which cannot be adequately sanitized during periods when food is being prepared. This does not apply to a plain ring such as a band style ring.

**Sec. 9-34. Employee practices.**

(a) Employees shall consume food only in designated dining areas. An employee dining area shall not be so designated if consuming food there may result in contamination of other food, equipment, utensils, or other items needing protection.

(b) Employees shall not use tobacco in any form while engaged in food preparation or service, nor while in equipment washing or utensil washing or food preparation areas.

(c) Employees shall handle soiled tableware in a way that minimizes contamination of their hands.

(d) Employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices during all working periods in the food establishment.

**Secs. 9-35--9-40. Reserved.**

## **ARTICLE IV. - EQUIPMENT AND UTENSILS**

### **Sec. 9-41. Materials.**

(a) General. Multi-use equipment and utensils shall be constructed and repaired with safe materials, including finishing materials; shall be corrosion resistant and nonabsorbent; and shall be smooth, easily cleanable, and durable under conditions of normal use. Equipment, utensils, and single service articles shall not impart odors, color, or taste, nor contribute to the contamination of food.

(b) Lead. Pewter alloys containing lead in excess of five one-hundredths (0.05) percent may not be used as food contact surfaces. Solder and flux containing lead in excess of two-tenths (0.2) percent may not be used as a food contact surface.

(c) Solder. If solder is used, it shall be composed of safe materials and be corrosion resistant and comply with International Plumbing Code.

(d) Wood. Hard maple or equivalently nonabsorbent materials that meets the general requirements set forth in subsection (a) of this section may be used for cutting blocks, cutting boards, salad bowls, and baker's tables. Wood may be used as specified in TFER §229.165(a)(9) for single-service articles, such as chopsticks, stirrers, or ice cream spoons. The use of wood as a food-contact surface under other circumstances must be approved by the regulatory authority.

(e) Plastics. Safe plastic or safe rubber or safe rubber-like materials that are resistant under normal conditions of use to scratching, scoring, decomposition, crazing, chipping and distortion, that are of sufficient weight and thickness to permit cleaning and sanitizing by normal dishwashing methods, and which meet the general requirements set forth in subsection (a) of this section, are permitted for repeated use.

(f) Mollusk and crustacean shell. Mollusk and crustacean shells may be used only once as a serving container. Further reuse of such shells for food service is prohibited.

(g) Single-service. Reuse of single-service articles is prohibited.

### **Sec. 9-42. Design and fabrication.**

(a) General. All equipment and utensils, including plasticware, shall be designed and fabricated for durability under conditions of normal use and shall be resistant to denting, buckling, peeling, pitting, chipping and crazing.

(b) Equipment in new or extensively remodeled establishments shall be National Sanitation Foundation or equivalent approval. Any other equipment is subject to approval by the regulatory authority. The regulatory authority directs the replacement because the facilities and equipment constitute a public health hazard or nuisance or no longer comply with the criteria upon which the facilities and equipment were accepted:

- (1) Food contact surfaces shall be easily cleanable, smooth, and free of breaks, open seams, cracks, chips, pits and similar imperfections, and free of difficult to clean internal corners and crevices.
- (2) Cast iron may be used as a food contact surface only if the surface is heated, such as in grills, griddle tops, and skillets.
- (3) Threads shall be designed to facilitate cleaning; ordinary "V" type threads are prohibited in food-contact surfaces, except that in equipment such as ice makers or hot oil cooking equipment and hot oil filtering systems such threads shall be minimized.
- (4) Equipment containing bearings and gears requiring unsafe lubricants shall be designed and constructed so that the lubricant cannot leak, drip, or be forced into food or onto food-contact surfaces.
- (5) Only safe lubricants shall be used on equipment designed to receive lubrication of bearings and gears on or within food-contact surfaces. Lubricants with incidental food contact shall meet the requirements specified in 21 CFR §178.3570, if they are used on food-contact surfaces, on bearings and gears located on or within food-contact surfaces, or on bearings and gears that are located so that lubricants may leak, drip, or be forced into food or onto food-contact surfaces.
- (6) Tubing conveying beverages or beverage ingredients to dispensing heads may be in contact with stored ice, provided that such tubing is fabricated from safe materials, is grommeted at entry and exit points to preclude moisture (condensation) from entering the ice machine or the ice storage bin, and is kept clean. Drainage or drainage tubes from dispensing units shall not pass through the ice machine or the ice storage bin.
- (7) Sinks and drain boards shall be self-draining.

(c) Accessibility. Unless designed for in-place cleaning, food-contact surfaces shall be accessible for cleaning and inspection.

- (1) Without being disassembled; or
- (2) By disassembling without the use of tools; or
- (3) By easy disassembling with the use of only simple tools such as a mallet, a screwdriver, or an open-end wrench.

(d) In-place cleaning. Equipment intended for in-place cleaning shall be so designed and fabricated that:

- (1) Cleaning and sanitizing solutions can be circulated throughout a fixed system using an effective cleaning and sanitizing regimen; and
- (2) Cleaning and sanitizing solutions will contact all interior food-contact surfaces; and

(3) The system is self-draining or capable of being completely evacuated.

(4) Clean in Place (CIP) equipment that is not designed to be disassembled for cleaning shall be designed with inspection access points to ensure that all interior food contact surfaces throughout the fixed system are being effectively cleaned.

(e) Pressure spray cleaning. Fixed equipment designed and fabricated to be cleaned and sanitized by pressure spray methods shall have sealed electrical wiring, switches, and connections.

(f) Thermometers. Indicating thermometers required for immersion into food or cooking media shall be of metal stem-type construction, numerically scaled and accurate to +/- two (2) degrees Fahrenheit.

(g) Nonfood-contact surfaces. Surfaces of equipment not intended for contact with food, but which are exposed to splash or food debris or which otherwise require frequent cleaning, shall be designed and fabricated to be smooth, nonabsorbent, corrosion-resistant, washable, free of unnecessary ledges, projections, or crevices, and readily accessible for cleaning, and shall be of such material and in such repair as to be easily maintained in a clean and sanitary condition.

(h) Ventilation hoods design. Ventilation hoods and devices shall be designed to prevent grease or condensation from collecting on walls and ceilings, and from dripping into food or onto food contact surfaces.

(1) Filters or other grease extracting equipment shall be readily removable for cleaning and replacement if not designed to be cleaned in place. All ventilation hoods and related equipment must be installed accordance with the International Mechanical Code.

(2) Exhaust ventilation hood systems in food preparation and warewashing areas including components such as hoods, fans, guards, and ducting shall be designed to prevent grease or condensation from draining or dripping onto food, equipment, utensils, linens, and single-service and single-use articles.

(i) Existing equipment. Equipment which was installed in a food establishment prior to the effective date of this chapter, and which does not fully meet all of the design and fabrication requirements of this rule, shall be deemed acceptable in that establishment as long as there is no change of ownership, in good repair and capable of being maintained in a sanitary condition, and the food-contact surfaces are nontoxic. Replacement equipment and new equipment acquired after the effective date of this chapter shall meet the requirements of this chapter.

#### **Sec. 9-43. Equipment installation and location.**

(a) General. Equipment, including ice makers and ice storage equipment, shall not be located under exposed or unprotected sewer lines or water lines, open stairwells, or other sources of contamination. This requirement does not apply to automatic fire protection sprinkler heads that may be required by law.

(b) Table mounted equipment.

(1) Equipment that is placed on tables or counters, unless portable, shall be sealed to the table or counter or elevated on legs to provide at least a four-inch clearance between the table or counter and equipment and shall be installed to facilitate the cleaning of the equipment and adjacent areas.

(2) Equipment is portable within the meaning of section 9-43(b)(1) if:

(a) It is small and light enough to be moved easily by one (1) person; and

(b) It has no utility connection, or has a utility connection that disconnects quickly, or has a flexible utility connection line of sufficient length to permit the equipment to be moved for easy cleaning.

(c) Floor-mounted equipment. Floor mounted equipment, unless readily moveable, shall be:

(1) Sealed to the floor; or

(2) Installed on a raised platform of concrete or other smooth masonry in a way that meets all the requirements for sealing or floor clearance; or

(3) Elevated on legs to provide at least a six-inch clearance between the floor and equipment, except that vertically mounted floor mixers may be elevated to provide at least a four-inch clearance between the floor equipment if no part of the floor under the mixer is more than six (6) inches from cleaning access.

(d) Equipment is easily movable if:

(1) It is mounted on wheels or casters; and

(2) It has no utility connection or has a utility connection that disconnects quickly, or has a flexible utility line of sufficient length to permit the equipment to be moved for easy cleaning.

(3) Unless sufficient space is provided for easy cleaning between and behind each unit of floor-mounted equipment, the space between it and adjoining equipment units, and between it and adjacent walls, shall be closed; or, if exposed to seepage, the equipment shall be sealed to the adjoining equipment or adjacent walls.

(e) Aisles and working spaces. Aisles and working spaces between units of equipment and walls, shall be unobstructed and of sufficient width to permit employees to perform their duties readily without contamination of food or food-contact surfaces by clothing or personal contact. All easily movable storage equipment such as pallets, racks, and dollies shall be positioned to provide accessibility to working areas.

**Secs. 9-44--9-50. Reserved.**

**ARTICLE V. CLEANING, SANITATION, AND STORAGE  
OF EQUIPMENT UTENSILS**

**Sec. 9-51. Equipment and utensil cleaning and sanitization.**

- (a) Cleaning frequency.
  - (1) Tableware shall be washed, rinsed, and sanitized after each use.
  - (2) The food contact surfaces of equipment shall be kept free of food debris and other oil accumulations. Equipment food contact surfaces and utensils shall be clean to sight and touch.
  - (3) Equipment food contact surfaces and utensils shall be cleaned and sanitized: before each use with a different type of raw animal food such as beef, fish, lamb, pork or poultry; each time there is a change from working with raw foods to working with ready-to-eat foods; between uses with raw fruits or vegetables and with potentially hazardous food; before using or storing a food temperature measuring device; and at any time during the operation when contamination may have occurred.
  - (4) The food contact surfaces of cooking and baking equipment, similar cooking devices and the cavities and door seals of microwave ovens shall be cleaned at least once a day (or at a frequency to preclude accumulation of soil residues). Except that this shall not apply to hot oil cooking equipment and oil filtering equipment.
  - (5) The food contact surfaces of all cooking equipment shall be kept free of encrusted grease deposits and other accumulated soil.
  - (6) The regulatory authority approves the cleaning schedule based on consideration of:
    - (a) Characteristics of equipment and its use;
    - (b) The type of food involved;
    - (c) The amount of food residue accumulation, the temperature at which the food is maintained during the operation, and the potential for rapid and progressive multiplication of pathogenic or toxigenic microorganisms that are capable of causing foodborne disease.
  - (7) Nonfood contact surfaces of equipment shall be cleaned as often as is necessary to keep the equipment free of accumulations of dust, dirt, food particles, and other debris.
- (b) Wiping cloths.
  - (1) Cloths used for wiping food spills on tableware, such as plates or bowls being served to the consumer, shall be clean, dry and used for no other purpose.

- (2) Moist cloths for wiping used for wiping food spills on kitchenware and food-contact surfaces of equipment shall be clean and rinsed frequently in an approved sanitizing solution and used for no other purpose. These cloths shall be stored in the sanitizing solution between uses.
  - (3) Moist cloths used for cleaning nonfood-contact surfaces of equipment such as counters, dining table tops and shelves shall be clean and rinsed as specified in (b)(2) of this paragraph, and used for no other purpose. These cloths shall be stored in the sanitizing solution between uses.
  - (4) Wet wiping cloths used with a freshly made sanitizing solution and dry wiping cloths shall be free of food debris and visible soil.
  - (5) Working containers of sanitizing solution for storage of in-use wiping cloths may be placed above the floor and used in a manner to prevent contamination of food, equipment, utensils, linens, single-service or single-use articles.
  - (6) Sponges may only be used for scraping and scouring soiled dishware.
- (c) Manual cleaning and sanitizing.
- (1) A three (3) compartment sink shall be used for washing, rinsing and sanitizing of utensils and equipment done manually. Existing establishments not having a three (3) compartment sink that can demonstrate an acceptable procedure for washing, rinsing and sanitizing utensils and equipment may be exempt from this requirement by the regulatory authority. Sinks shall be large enough to permit the complete immersion of the utensils and equipment and each compartment sink shall be supplied with hot and cold potable running water. Suitable equipment shall be made available if washing, rinsing and sanitizing cannot be accomplished by immersion. Two (2) compartment sinks are not acceptable.
  - (2) Drain boards or easily movable dish tables of adequate size shall be provided for proper handling of soiled utensils prior to washing and for cleaned utensils following sanitizing and shall be located so as not to interfere with the proper use of the dishwashing facilities.
  - (3) Equipment and utensils shall be preflushed or prescraped and, when necessary, presoaked to remove gross food particles and soil.
  - (4) Except for fixed equipment and utensils too large to be cleaned in sink compartments, manual washing, rinsing and sanitizing shall be conducted in the following sequence:
    - (a) Sinks shall be cleaned prior to use; and
    - (b) Equipment and utensils shall be thoroughly washed in the first compartment with a hot detergent solution that is kept clean; and
    - (c) Equipment and utensils shall be rinsed free of detergent and abrasives with clean water in the second compartment; and

- (d) Equipment and utensils shall be sanitized in the third compartment according to one (1) of the methods included in sub-section (5) a-e of this section.
- (5) The food-contact surfaces of all equipment and utensils shall be sanitized by:
- (a) Immersion for at least thirty (30) seconds in clean, hot water at a temperature of at least one hundred seventy-one (171) degrees Fahrenheit (seventy-seven (77) degrees Celsius); or;
  - (b) Immersion for at least sixty (60) seconds in a clean solution containing at least fifty (50) mg/L of available chlorine as a hypochlorite and a temperature of at least seventy-five (75) degrees Fahrenheit (twenty-four (24) degrees Celsius); or
  - (c) Immersion for at least sixty (60) seconds in a clean solution containing at least twelve and one-half (12.5) mg/L of available iodine and have a pH not higher than five (5.0) and at a temperature of at least seventy-five (75) degrees Fahrenheit (twenty-four (24) degrees Celsius); or
  - (d) Immersion in a solution of quaternary ammonia shall have a minimum temperature of seventy-five (75) degrees Fahrenheit (twenty-four (24) degrees Celsius); have a concentration of two hundred (200) mg/L or as indicated by the manufacturer use directions included in the labeling and used in water with five hundred (500) mg/L hardness or less or in water having a hardness no greater than specified by the manufacturer label.
  - (e) If immersion in a clean solution containing any other solution of chlorine, quaternary ammonia or iodine is used, the permit holder shall demonstrate to the regulatory authority that the solution achieves sanitization.
  - (f) If a chemical sanitizer other than chlorine, iodine, quaternary ammonium compound is used, it shall meet the requirements as specified in 21 CFR §178.1010. Sanitizing solutions are approved by the regulatory authority and applied in accordance with the manufacturers use directions included in the labeling.
  - (g) Treatment with steam, free from harmful materials or additives in the case of equipment too large to sanitize by immersion, but in which steam can be confined; or
  - (h) Rinsing. Spraying or swabbing with a chemical sanitizing solution at least twice the strength required for that particular sanitizing solution under clauses (e-f) of this sub-section, in the case of equipment too large to sanitize by immersion.
- (6) When hot water is used for sanitizing, the following facilities shall be provided and used:
- (a) An integral heating device or fixture installed in, on, or under the sanitizing compartment of the sink capable of maintaining the water at a temperature of one hundred seventy-one (171) degrees Fahrenheit (seventy-seven (77) degrees Celsius); and

- (b) A numerically scaled indicating thermometer, accurate to +/- three (3) degrees Fahrenheit, convenient to the sink for frequent checks of water temperature; and
  - (c) Dish baskets of such size and design to permit complete immersion of the tableware, kitchenware, and equipment in the hot water.
- (7) When chemicals are used for sanitization, a test kit or other device that accurately measures the milligrams per liter concentration of the solution shall be provided, available, and used.
- (d) Mechanical cleaning and sanitizing.
- (1) Cleaning and sanitizing may be done by spray-type or immersion dishwashing machines or by any other type of machines or device if it is demonstrated that it thoroughly cleans and sanitizes equipment and utensils. These machines and devices shall be properly installed and maintained in good repair. Machines and devices shall be operated in accordance with manufacturers' instructions, and utensils and equipment placed in the machine shall be exposed to all dishwashing cycles. Automatic detergent dispensers, wetting agents, dispensers, and liquid sanitizer injectors, if any, shall be properly installed and maintained.
  - (2) The pressure of final rinse water supplied to spray-type dishwashing machines shall not be less than fifteen (15) nor more than twenty-five (25) pounds per square inch measured in the water line immediately adjacent to the final rinse control valve. A one-fourth-inch IPS valve shall be provided immediately upstream from the final rinse control valve to permit checking the flow pressure of the final rinse water.
  - (3) Machine or water line mounted numerically scaled indicating thermometers accurate to +/- three (3) degrees Fahrenheit, shall be provided to indicate the temperature of the water in each tank of the machine and the temperature of the final rinse water as it enters the manifold.
  - (4) Rinse water tanks shall be protected by baffles, curtains, or other effective means to minimize the entry of wash water into the rinse water. Conveyors in dishwashing machines shall be accurately timed to assure proper exposure times in wash and rinse cycles in accordance with manufacturers' specifications attached to the machines.
  - (5) Drain boards shall be provided and be of adequate size for the proper handling of soiled utensils prior to washing and of cleaned utensils following sanitization and shall be so located and constructed as not to interfere with the proper use of the dishwashing facilities. This does not preclude the use of easily moveable dish tables for the storage of soiled utensils or the use of easily moveable dish tables for the storage of clean utensils following sanitization.
  - (6) Equipment and utensils shall be flushed or scraped and, when necessary, soaked to remove gross food particles and soil prior to being washed in a dishwashing machine unless a prewash cycle is a part of dishwashing machine operation. Equipment and utensils shall be placed in racks, trays or baskets, or on conveyors, in a way that food contact surfaces are exposed to the unobstructed application of detergent wash and clean rinse waters and that permits free draining.

- (7) Machines (single-tank, stationary-rack, door-type machines and spray-type glass washers) using chemicals for sanitization may be used provided that:
- (a) The temperature of the wash water shall not be less than one hundred twenty (120) degrees Fahrenheit (forty-nine (49) degrees Celsius); and
  - (b) The wash water shall be kept clean; and
  - (c) Chemicals added for sanitization purposes shall be automatically dispensed; and
  - (d) Utensils and equipment shall be exposed to the final chemical sanitizing rinse in accordance with the manufacturers' specifications for time and concentration or an exposure time of at least seven (7) seconds for a chlorine solution of fifty (50) mg/L that has a pH of ten (10) or less and a temperature of at least one hundred (100) degrees Fahrenheit, thirty-eight (38) degrees Celsius or a pH of eight (8) or less and a temperature of at least seventy-five (75) degrees Fahrenheit, twenty-four (24) degrees Celsius. An exposure time of thirty (30) seconds is required for other chemical sanitizing solutions; and
  - (e) The chemical sanitizing rinse water temperature shall not be less than seventy-five (75) degrees Fahrenheit (twenty-four (24) degrees Celsius) nor less than the temperature specified by the machine's manufacturer; and
  - (f) Chemical sanitizers used shall be approved and a test kit or device that accurately measures the milligrams per liter concentration of the solution shall be available and used.
- (8) Machines using hot water for sanitizing may be used provided that wash water and pumped rinse water shall be kept clean and water shall be maintained not less than the temperatures stated below:
- (a) Single-tank, stationary-rack, dual-temperature machine:
 

Wash temperature	150°F (66°C)
Final rinse temperature	180°F (82°C)
  - (b) Single-tank, stationary-rack single-temperature machine:
 

Wash temperature	165°F (74°C)
Final rinse temperature	165°F (74°C)
  - (c) Single-tank, conveyor machine:
 

Wash temperature	160°F (71°C)
Final rinse temperature	180°F (82°C)
  - (d) Multi-tank, conveyor machine:
 

Wash temperature	150°F (66°C)
Pumped rinse temperature	160°F (71°C)
Final rinse temperature	180°F (82°C)

- (e) Single-tank, pot, pan, and utensil washer (either stationary or moving rack):
  - Wash temperature 140°F (60°C)
  - Final rinse temperature 180°F (82°C)

(9) All dishwashing machines shall be thoroughly cleaned once a day, or more often when necessary to maintain them in a satisfactory operating condition.

(10) A warewashing machine that is installed after adoption of these rules by the regulatory authority, shall be equipped to:

(a) Automatically dispense detergents and sanitizers; and

(b) Incorporate a visual means to verify that detergents and sanitizers are delivered or a visual or audible alarm to signal if the detergent and sanitizers are not delivered to the respective washing and sanitizing cycles.

(e) Drying. After sanitization, all equipment and utensils shall be air-dried. The use of towels is prohibited.

#### **Sec. 9-52. Equipment and utensil storage.**

(a) Handling. Cleaned and sanitized equipment and utensils shall be handled in a way that protects them from contamination. Spoons, knives, and forks shall be touched only by their handles. Cups, glasses, bowls, plates and similar items shall be handled without contact with inside surfaces or surfaces that contact the users' mouth.

(b) Storage.

(1) Cleaned and sanitized utensils and equipment shall be stored at least six (6) inches above the floor in a clean, dry location in a way that protects them from contamination by splash, dust, and other means. The food contact surfaces of fixed equipment shall also be protected from contamination. Equipment and utensils shall not be placed under exposed sewer lines or water lines, except for automatic fire protection sprinkler heads that may be required by law.

(2) Utensils shall be air dried before being stored or shall be stored in a self-draining position.

(3) Glasses and cups shall be stored inverted. Other stored utensils shall be covered or inverted, whenever practical. Facilities for the storage of knives, forks, and spoons shall be designed and used to present the handle to the employee or consumer. Unless tableware is prewrapped, holders for knives, forks, and spoons at self-service locations, shall protect these articles from contamination and present the handle of the utensil to the consumer.

(4) If presenting is practiced, all unprotected, unused, preset tableware shall be collected for washing and sanitizing after the meal period; and after any place at a table or counter is occupied.

(c) Single service articles.

(1) Single-service articles shall be stored at least six (6) inches above the floor in closed cartons or containers which protect them from contamination and shall not be placed under exposed sewer lines or water lines, except for automatic fire protection sprinkler heads that may be required by law.

(2) Single-service articles shall be handled and dispensed in a manner that prevents contamination of surfaces which may come in contact with food or with the mouth of the user.

(3) Single-service knives, forks, and spoons packaged in bulk shall be inserted into holders or be wrapped by an employee who has washed his hands immediately prior to sorting or wrapping the utensils. Unless single-service knives, forks, and spoons are prewrapped or prepackaged, holders shall be provided to protect these items from contamination, and present the handle of the utensil to the consumer.

(d) Prohibited storage area. The storage of food, equipment, utensils or single-service articles in toilet rooms or vestibules is prohibited.

**Secs. 9-53--9-60. Reserved.**

## **ARTICLE VI. - SANITARY FACILITIES AND CONTROLS**

### **Sec. 9-61. Water supply.**

(a) General. Enough potable water for the needs of the food establishment shall be provided from a source constructed and operated according to law.

(b) Transportation. All potable water not provided directly by pipe to the food establishment from the source shall be transported in a bulk water transport system and shall be delivered to a closed water system. Both of these systems shall be constructed and operated according to law.

(c) Bottled water. Bottled and packaged potable water shall be obtained from a source that complies with all laws and shall be handled and stored in a way that protects it from contamination. Bottled and packaged potable water shall be dispensed from the original container.

(d) Water under pressure. Water under pressure at the required temperatures shall be provided at all fixtures and equipment that use water.

(e) Hot water. Hot water generation and distribution systems shall be sufficient to meet peak hot water demands throughout the food establishment. Water under pressure at the required minimum temperature of one hundred (100) degrees Fahrenheit (forty-five (45) degrees Celsius) must be provided.

(f) Steam. Steam used in contact with food or food-contact surfaces shall be free from any harmful materials or additives.

### **Sec. 9-62. Sewage.**

All sewage, including liquid waste, shall be disposed of by a public sewage system. Nonwater carried sewage disposal facilities are prohibited, except as permitted by Article IX, Section 9-92(i) of this chapter (relating to temporary food establishments) or as permitted by the regulatory authority as provided in chapter 21 of this code.

### **Sec. 9-63. Plumbing.**

(a) General. Plumbing shall be sized, installed and maintained in accordance with the current plumbing code as adopted and enforced by the City of Plano Building Inspection Department. There shall be no cross-connection between the potable water supply and any nonpotable or questionable water supply nor any source of pollution through which the potable water supply might become contaminated.

(b) Non-potable water system. A non-potable water system is permitted only for purposes such as air conditioning and fire protection and only if the system is installed according to law and the nonpotable water does not contact, directly or indirectly, food, potable water, equipment, that contacts food, or utensils. The piping of any nonpotable water system shall be durably identified so that it is readily distinguishable from piping that carries potable water.

(c) Backflow.

(1) The potable water system shall be installed to preclude the possibility of backflow. A backflow or backsiphon prevention device installed on a water supply system shall meet American Society of Sanitary Engineering (ASSE) standards for construction, installation, maintenance, inspection and testing for that specific application and type of device.

(2) An air gap between the water supply inlet and the flood level rim of the plumbing fixture, equipment, or nonfood equipment shall be at least twice the diameter of the water supply inlet and may not be less than one (1) inch (twenty-five (25) millimeters). Air gaps shall comply with ASME 112.1.2.

(3) A backflow prevention device shall be located so that it may be serviced and maintained.

(4) A hose shall not be attached to a faucet unless a backflow prevention device is installed.

(d) Grease traps.

(1) Grease traps shall be sized, installed and maintained in accordance with Chapter 21 of this Code of Ordinances.

(2) Grease traps shall be required and located to be easily accessible for cleaning.

(3) Shall be located outside the food preparation area unless otherwise approved by the regulatory authority.

(4) If located inside the food preparation area, the lid must be flush to the floor.

(e) Garbage grinders. If used, garbage grinders shall be installed and maintained according to law.

(f) Drains. Except for properly trapped open sinks, there shall be no direct connection between the sewage system and any drains originating from equipment in which food, portable equipment, or utensils are placed. Floor drains must be properly covered with drain grates. When a dishwashing machine is located within five (5) feet of a trapped floor drain, the dishwasher waste outlet may be connected as in section 9-63(c) to a properly vented floor drained trap if permitted by the International Plumbing Code.

#### **Sec. 9-64. Toilet facilities.**

(a) Toilet installation. Toilet facilities shall be installed in the number required by the International Plumbing Code, shall be conveniently located, and shall be accessible to employees at all times. At least one (1) restroom is required for employee use. When four (4) or more employees of different sex are employed, two (2) restrooms are required. A minimum of two (2) restrooms are required and must be accessible to the public in establishments that offer on-site consumption.

(b) Toilet design. Toilets and urinals shall be designed to be easily cleanable.

(c) Toilet rooms. Toilet rooms shall be completely enclosed and shall have tight-fitting, self-closing, solid doors, which shall be closed except during cleaning or maintenance.

(d) Toilet fixtures. Toilet fixtures shall be kept clean and in good repair. A supply of toilet tissue shall be provided at each toilet at all times. Easily cleanable receptacles shall be provided for waste materials. Toilet rooms shall have at least one (1) covered waste receptacle.

#### **Sec. 9-65. Lavatory facilities.**

(a) Lavatory installation. Lavatories shall be at least the number required by law, shall be installed according to law, and shall be located to permit convenient use by all employees in food preparation areas and utensil-washing areas. Lavatories shall be accessible to employees at all times. Sinks used for food preparation or for washing equipment or utensils shall not be used for handwashing.

(b) Handsinks. A separate sink assigned for handwashing provided with hot and cold running water tempered through a mixing valve shall be located to be accessible to each food preparation and utensil washing area. As a general rule, a handsink shall be located within twenty-five (25) linear feet of food preparation and utensil washing areas so it is convenient for employees to wash hands. Floor pedals, knee pedals, electronic eye and metered faucets are allowable. A liquid soap dispenser and individual sanitary hand towels are required. Blow dryers are not allowed in food preparation areas.

(c) Lavatory faucets. Each lavatory shall be provided with hot and cold water tempered by means of a mixing valve or combination faucet. Any self-closing, slow-closing, or metered faucet used shall be designed to provide a flow of water for at least fifteen (15) seconds without the need to reactivate the faucet. Steam-mixing valves are prohibited.

(d) Lavatory supplies. A supply of hand-cleansing soap or detergent shall be available at each lavatory. A supply of sanitary towels or a hand-drying device providing heated air shall be conveniently located near each lavatory. Common towels are prohibited. If disposable towels are used, easily cleanable waste receptacles shall be conveniently located near the handwashing facilities.

(e) Lavatory maintenance. Lavatories, soap dispensers, hand-drying devices and all related fixtures shall be kept clean and in good repair.

**Sec. 9-66. Garbage and refuse.**

(a) Containers.

(1) Garbage and refuse shall be kept in durable, easily cleanable, insect-proof, and rodent-proof containers that do not leak and do not absorb liquids. Plastic bags and wet strength paper bags may be used to line these containers, and they may be used for storage inside the food establishment.

(2) Containers used in food preparation and utensil-washing areas shall be kept covered except when actually in use.

(3) Containers stored outside the establishment, and dumpsters, compactors and compactor systems shall be easily cleanable, shall be provided with tight-fitting lids, doors or covers, and shall be kept covered when not in actual use. In containers designed with drains, drain plugs shall be in place at all times, except during cleaning.

(4) There shall be a sufficient number of containers to hold all the garbage and refuse that accumulate. The regulatory authority may require additional service, dumpsters or larger dumpsters to accommodate the garbage and refuse that accumulates at the food establishment.

(5) Soiled containers shall be cleaned at a frequency to prevent insect and rodent attraction. Each container shall be thoroughly cleaned on the inside and outside in a way that does not contaminate food, equipment, utensils, or food preparation areas.

(6) Suitable facilities, including hot water and detergent or steam shall be provided and used for washing containers. Liquid waste from compacting or cleaning operations shall be disposed of as sewage. Power washing and contracted cleaning services shall be performed according to applicable law.

(b) Storage.

(1) Garbage and refuse on the premises shall be stored in a manner to make it inaccessible to insects and rodents. Outside storage of unprotected plastic bags or wet-strength paper bags or baled units containing garbage or refuse is prohibited.

(2) Cardboard or other packaging materials that does not contain food residues and that is awaiting regularly scheduled delivery to a recycling or disposal site may be stored outside in a covered receptacle if it is stored so that it does not create a rodent harborage problem.

- (3) Garbage or refuse storage rooms, if used, shall be constructed of easily cleanable, nonabsorbent, washable materials, shall be kept clean, shall be insect-proof and rodent-proof and shall be large enough to store the garbage and refuse containers that accumulate.
  - (4) Outside storage areas or enclosures shall be large enough to store the garbage and refuse containers that accumulate and shall be kept clean. Garbage and refuse containers, dumpsters, and compactor systems located outside shall be stored on or above a smooth surface of nonabsorbent material, such as concrete or machine-laid asphalt, that is kept clean and maintained in good repair.
- (c) Disposal.
- (1) Garbage and refuse shall be disposed of often enough to prevent the development of odor and the attraction of insects and rodents.
  - (2) Where garbage or refuse is burned on the premises, it shall be done by controlled incineration that prevents the escape of particulate matter in accordance with law. Areas around incineration facilities shall be kept clean and orderly.

**Sec. 9-67. Insect and rodent control.**

(a) General. Effective measures intended to prevent the presence of rodents, flies, cockroaches and other insects on the premises shall be utilized as determined by the regulatory authority. The premises shall be kept in such condition as to prevent the harborage or feeding of insects or rodents.

(b) Insect control devices that are used to electrocute or stun flying insects shall be designed to retain the insect within the device. Insect control devices shall be installed so that the devices are not located over food preparation area; and dead insects and insect fragments are prevented from being impelled onto or falling on exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

(c) Preventive application for insect and rodent control shall be performed by a certified pest control operator.

(d) Opening to the outside shall be effectively protected against the entrance of rodents. Outside openings shall be protected against the entrance of insects by tight-fitting, self-closing doors, closed windows, screening, controlled air currents, or other means. Screen doors shall be self-closing, and screens for windows, doors, skylights, transoms, intake and exhaust air ducts, and other openings to the outside shall be tight-fitting and free of breaks. Screening material shall not be less than sixteen (16) mesh to the inch.

**Secs. 9-68--9-70. Reserved.**

## **ARTICLE VII. - CONSTRUCTION AND MAINTENANCE OF PHYSICAL FACILITIES**

### **Sec. 9-71. Floors.**

(a) Floor construction. Floors and floor coverings of all food preparation, food service, food storage, and utensil-washing areas, and the floors of all walk-in refrigerating units, dressing rooms, locker rooms, toilet rooms and vestibules shall be constructed of smooth durable material such as stainless steel, terrazzo, ceramic or quarry tile, or the equivalent as approved by the regulatory authority and shall be maintained in good repair. Sealed concrete and VCT (vinyl composite tile) are not acceptable as a floor surface for areas mentioned above.

(b) Durable grades of sheet vinyl may be used in dry storage areas. Sealed concrete may be used in walk-in freezer units maintaining a temperature of zero (0) degrees Fahrenheit or below. Nothing in this rule shall prohibit the use of anti-slip floor covering in areas where necessary for safety reasons.

(c) Floor carpeting. A floor covering such as carpeting or similar material may not be installed as a floor covering in food preparation areas, walk-in refrigerators, warewashing areas, toilet room areas where handwashing lavatories, toilets, and urinals are located, refuse storage rooms, or other areas where the floor is subject to grease, moisture, flushing, or spray cleaning methods. If carpeting is installed as a floor covering in areas other than those specified above, it shall be: securely attached to the floor with a durable mastic, by using a stretch and tack method, or by another method; and install tightly against the wall under the coving or installed away from the wall with a space between the carpet and the wall and the edges of the carpet secured by metal stripping or some other means.

(d) Prohibited floor covering. The use of cardboard, sawdust, wood shavings, peanut hulls, or similar materials as a floor covering is prohibited.

(e) Floor drains. Proper installed, trapped floor drains shall be provided in floors that are water flushed for cleaning or that receive discharges of water or other fluid waste from equipment, or in areas where pressure spray methods for cleaning equipment are used. Properly trapped floor drains are required in all restrooms. Such floor drains shall be constructed of stainless steel, terrazzo, ceramic or quarry tile or similar material and shall be graded to drain.

(f) Mats and duckboards. Mats and duckboards shall be of nonabsorbent, grease resistant materials and of such size, design, and construction as to facilitate their being easily cleaned. Duckboards shall not be used as storage racks.

(g) Floor junctures. In all new or extensively remodeled establishments utilizing stainless steel, terrazzo, ceramic or quarry tile or similar materials, and where water flush cleaning methods are used, the junctures between walls and floors shall be of the same material.

(h) Utility line installation. Exposed utility service lines and pipes shall be installed in a way that does not obstruct or prevent cleaning of the floor. In all new or extensively remodeled establishments, installation of exposed horizontal utility lines or pipes on the floor is prohibited.

### **Sec. 9-72. Walls and ceilings.**

(a) Maintenance. Walls and ceilings, including doors, windows, skylights, and similar closures, shall be clean and maintained in good repair.

(b) Construction. The walls, including nonsupporting partitions, wall coverings, and ceilings of walk-in refrigerating units, food preparation areas, dry storage areas, food storage areas, equipment-washing and utensil washing areas, toilet rooms and vestibules shall be light colored, smooth, nonabsorbent, and easily cleanable such as FRP (fiberglass reinforced paneling), stainless steel ceramic, quarry or terrazzo tile or equivalent approved by the regulatory authority.

(c) Exposed construction. Studs, joists, and rafters shall not be exposed in those areas listed in subsection (b) of this section. If exposed in other rooms or areas, they shall be finished to provide an easily cleanable surface.

(d) Utility line installation. Exposed utility service lines and pipes shall be installed in a way that does not obstruct or prevent cleaning of the walls and ceilings. Utility service lines and pipes shall not be unnecessarily exposed on walls or ceilings in those areas listed in subsection (b) of section 9-72 of this rule.

(e) Attachments. Light fixtures, vent covers, wall-mounted fans, decorative materials, and similar equipment attached to the walls and ceilings shall be easily cleanable and shall be maintained in good repair.

(f) Covering material installation. Wall and ceiling materials shall be attached and sealed so as to be easily cleanable.

### **Sec. 9-73. Cleaning physical facilities.**

(a) General. Floors, mats, duckboards, walls, ceilings, and attached equipment and decorative materials shall be kept clean. Cleanings of floors and walls, except emergency cleaning of floors, shall be done during periods when least amount of food is exposed, such as after closing or between meals. Only dustless methods of cleaning floors and walls shall be used, such as vacuum cleaning, wet cleaning, or the use of dust arresting sweep compounds with brooms.

(b) Utility facility. In new or extensively remodeled establishments at least one (1) utility sink or curbed cleaning facility with a floor drain shall be installed and used for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water or similar liquid wastes. The use of lavatories, utensil-washing or equipment-washing or food preparation sinks for this purpose is prohibited.

### **Sec. 9-74. Lighting.**

(a) General. At least fifty (50) foot candles of light shall be provided to all working surfaces and at least thirty (30) foot candles of light shall be provided to all other surfaces and equipment in food preparation, utensil-washing, and handwashing areas, and in toilet rooms. At least twenty (20) foot-candles of light at a distance of thirty (30) inches from the floor shall be provided in all other areas, except that this requirement applies to dining areas only during cleaning operations.

- (b) All light fixtures must be maintained clean, operational, and in good repair.
- (c) Protective shielding.
  - (1) Shielding to protect against broken glass falling onto food shall be provided and maintained in good repair for all artificial lighting fixtures located over, by, or within food storage, food preparation, food service, and food display facilities, and facilities where utensils and equipment are cleaned and stored.
  - (2) Infra-red or other heat lamps shall be protected against breakage by a shield surrounding and extending beyond the bulb, leaving only the face of the bulb exposed. Teflon coated safety bulbs are allowed.

**Sec. 9-75. Ventilation.**

(a) General. All rooms shall have sufficient ventilation to keep them free of excessive heat, steam, condensation, vapors, obnoxious odors, smoke and fumes. Ventilation systems shall be installed and operated according to law, kept clean, maintained in good repair, vented to the outside, and shall not create an unsightly, harmful or unlawful discharge.

(b) Special ventilation.

- (1) Intake and exhaust air-ducts shall be maintained to prevent the entrance of dust, dirt, and other contaminating materials.
- (2) In new or extensively remodeled establishments, all rooms from which obnoxious odors, vapors, or fumes originate shall be mechanically vented to the outside.
- (3) Ventilation hoods are required for any cooking, grilling, baking, and frying areas or as required by the latest edition of the International Mechanical Code.

**Sec. 9-76. Dressing rooms and locker room areas.**

(a) Dressing rooms and areas. If employees routinely change clothes within the establishment, rooms or areas shall be designated and used for that purpose. These designated rooms or areas shall not be used for food preparation, storage or service, or for utensil washing or storage.

(b) Locker area. Enough lockers or other suitable facilities shall be provided and used for the orderly storage of employee clothing and other belongings. Lockers or other suitable facilities may be located only in the designated dressing rooms or in food storage rooms or areas containing only completely packaged food or packaged single-service articles.

(c) Personal items. Personal items shall not be stored in food storage, food preparation or food service areas.

**Sec. 9-77. Poisonous or toxic materials.**

(a) Materials permitted. Only those poisonous or toxic materials necessary for the maintenance of the establishment, cleaning or sanitizing of equipment and utensils, and the control of insects and rodents shall be present in food establishment.

(b) Labeling of materials. Containers of poisonous or toxic materials shall be prominently and distinctly labeled according to law for easy identification of contents.

(c) Storage of materials.

(1) Poisonous or toxic materials consist of the following three (3) categories:

(a) Insecticides and rodenticides;

(b) Detergents, sanitizers, and related cleaning or drying agents;

(c) Caustics, acids, polishes, and other chemicals.

(2) Each of these categories shall be stored and located to be physically separated from each other. All poisonous or toxic materials shall be stored in cabinets or in similar physically separated compartments or facilities used for no other purpose. To preclude potential contamination, poisonous or toxic materials shall not be stored above food, food equipment, utensils, or single-service articles, except that this requirement does not prohibit the convenient availability of detergent or sanitizers at utensil or dishwashing stations.

(d) Use of materials.

(1) Bactericides, cleaning compounds or other compounds intended for use on food contact surfaces, shall not be used in a way that leaves a toxic residue on such surfaces, nor in a way that constitutes a hazard to employees or other persons.

(2) Poisonous or toxic material shall not be used in a way that contaminates food, equipment, or utensils, nor in a way that constitutes a hazard to employees or other persons, nor in a way other than in full compliance with the manufacturer's labeling.

(e) Personal medications.

(1) Only those medications that are necessary for the health of employees shall be allowed in the food establishment. This section does not apply to medicines that are stored or displayed for retail sale.

(2) Medicines that are in a food establishment for the employee's use shall be labeled and located to prevent the contamination of food, equipment, utensils, linens, and single-service and single-use articles.

- (3) Refrigerated medicines, storage. Medicines belonging to employees or to children in a day care center that require refrigeration and are stored in a food refrigerator shall be stored in a package or container and kept inside a covered, leak proof container that is identified for the storage of medicines; and located so that they are inaccessible to children.

(f) First aid supplies. First aid supplies shall be stored in a way that prevents them from contaminating food and food-contact surfaces.

**Sec. 9-78. Premises.**

(a) General.

- (1) Food establishments and all parts of the property used in connection with operations of the establishment shall be kept free of litter.
- (2) The walking and driving surfaces of all exterior areas of food establishments shall be surfaced with concrete or asphalt or with gravel or similar materials and minimize dust. These surfaces shall be graded to prevent pooling and kept free of litter.
- (3) Only articles necessary for the operation and maintenance of the food establishment shall be stored on the premises.
- (4) The traffic of unnecessary or unauthorized persons through the food preparation and utensil-washing areas is prohibited.
- (5) Signs depicting the Heimlich maneuver for dislodging an obstruction from a choking person shall be in all food establishments and shall be in a place conspicuous to employees or customers. The sign must meet all requirements of TFER §229.173(c)(1-6).

(b) Living areas. Living or sleeping quarters within a food establishment is prohibited.

(c) Laundry facilities.

- (1) Laundry facilities in a food establishment shall be restricted to the washing and drying of linens, cloths, uniforms and aprons necessary to the operation. If such items are laundered on the premises, an electric, gas, or steam dryer shall be provided and used.
- (2) Separate rooms shall be provided for laundry facilities except that such operations may be conducted in storage rooms containing only packaged foods or packaged single-service articles.

(d) Linens and clothes storage.

- (1) Clean clothes and linens shall be stored in a clean place and protected from contamination until used.

(2) Soiled clothes and linens shall be stored outside the food preparation area in nonabsorbent containers or washable laundry bags until removed for laundering.

(e) Cleaning equipment storage. Maintenance and cleaning tools such as brooms, mops, vacuum cleaners and similar equipment shall be maintained and stored in a way that does not contaminate food, utensils, equipment, or linens and shall be stored in an orderly manner to facilitate the cleaning of that storage location.

(f) Animals.

(1) Except as specified in subparagraph (2) of this paragraph, live animals may not be allowed on the premises of a food establishment and in areas immediately adjacent under the control of the food establishment.

(2) Live animals may be allowed in the following situations if the contamination of food, clean equipment, utensils, linens, and unwrapped single-service and single-use articles cannot result:

(a) Edible fish or decorative fish in aquariums, shellfish or crustacea on ice or under refrigeration, and shellfish and crustacea in display tank systems. Livefish tanks are subject to removal by regulatory authority if not maintained in clean sanitizing condition.

(b) Patrol dogs accompanying police or security officers in offices and dining, sales, and storage areas, and sentry dogs running loose in outside fenced areas;

(c) In areas that are not used for food preparation and that are usually open for customers, such as dining and sales areas, service animals that are controlled by the disabled employee or person, or service animals in training when accompanied by an approved trainer, if a health or safety hazard will not result from the presence or activities of the service animal;

(3) Pets are allowed in the common dining areas of institutional care facilities if:

(a) Effective partitioning and self-closing doors separate the common dining areas from food storage or food preparation areas;

(b) Condiments, equipment, and utensils are stored in enclosed cabinets or removed from the common dining areas when pets are present; and

(c) Dining areas including tables, countertops, and similar surfaces are effectively cleaned before the next meal service.

**Secs. 9-79--9-80. Reserved.**

## **ARTICLE VIII. - MOBILE FOOD ESTABLISHMENTS**

### **Sec. 9-81. Mobile food service.**

(a) General. Mobile food establishments shall comply with the requirements of this chapter, except as otherwise provided in section 9-81(b). The regulatory authority may impose additional requirements to protect against health hazards related to the conduct of the food establishment as a mobile operation, may prohibit the sale of some or all potentially hazardous foods/time and temperature control for safety (PHF/TCS), and when no health hazard will result, may waive or modify requirements of this chapter relating to physical facilities, except those requirements in section 9-81(d-e), section 9-82(a) and section 9-83(a-b) of this article.

- (1) The regulatory authority may require a mobile food establishment operator to demonstrate that the unit is "readily moveable". The regulatory authority may prohibit alteration, removal, attachments, placement or change in, under, or upon the mobile food establishment that would prevent or otherwise reduce ready mobility. A regulatory authority may require a mobile food establishment to come, on an annual basis, to a location designated by the regulatory authority as proof that the mobile food establishment is readily moveable. A regulatory authority may require that mobile food establishments that violate this section go for re-inspection to a location designated by the regulatory authority.
- (2) The mobile food establishment shall operate in a manner that does not violate any existing laws.

(b) Restricted operations. Mobile food establishments that serve only food that is prepared, packaged in individual servings, transported and stored under conditions meeting the requirements of those sections, or beverages that are not potentially hazardous and are dispensed from covered urns or other protected equipment, need not comply with requirements of this chapter pertaining to the necessity of water and sewage systems nor to those requirements pertaining to the cleaning and sanitization of equipment and utensils if the required equipment for cleaning and sanitization exists at its commissary.

- (1) Pushcarts shall be limited to pre-packaged ice cream or pre-packaged non-potentially hazardous food as approved by the regulatory authority.
- (2) Food prepared in a private home may not be used or offered for human consumption from a mobile unit. Food must comply with all labeling laws.
- (3) Food temperatures. All food temperature requirements shall be met as contained in this chapter.

(c) Single service articles. Mobile food establishments shall provide only single-service articles for use by the consumer.

(d) Mobile water system materials, design, and operation. A mobile food establishment requiring a water system shall have a potable water system under pressure. The system shall be of sufficient capacity to furnish enough hot and cold water for food preparation, utensil cleaning and sanitizing and

handwashing, in accordance with the requirements of this chapter. The water inlet shall be located in such a position that it will not be contaminated by waste discharge, road dust, oil or grease, and it shall be kept capped when not being filled. The water inlet shall be provided with a transition connection of a size or type that will prevent its use for any other service. All water distribution pipes or tubing shall be constructed and installed in accordance with the requirements of this chapter.

(e) Waste retention. If liquid waste results from operation of a mobile food unit, the waste shall be stored in a permanently installed retention tank that is at least fifteen (15) percent larger capacity than the water supply tank. Liquid waste shall not be discharged from the retention tank when the mobile food unit is in motion. All liquid waste shall be disposed of in compliance with all existing laws to include chapter 21 of this code. All connections on the vehicle for servicing mobile food unit waste disposal facilities shall be of different size and type than those used for supplying potable water to the mobile food unit. The waste connection shall be located lower than the water inlet connection to preclude contamination of the potable water system.

- (1) Mobile food establishment water and wastewater exemption. A mobile food vendor that sells only prepackaged food is exempt from these rules pertaining to water and wastewater.
- (2) Vehicle identification. Mobile food units shall identify the vehicle with characters three (3) inches high on both exterior sides of the unit stating the name of the company.
- (3) Registration. Mobile food units must comply with all state and local laws pertaining to registration of the vehicle.
- (f) Existing refrigeration equipment. Existing refrigeration equipment must maintain food at the required temperatures as specified in this chapter.

#### **Sec. 9-82. Commissary; base of operations.**

(a) Mobile food establishments shall operate from a commissary (or other fixed food establishment) and shall report at least daily to such location for all supplies and for all cleaning and servicing operations. A current and notarized letter identifying the mobile food establishment, the commissary (or other fixed food establishment), and confirming that the mobile food establishment is operating from that commissary is required at the time of permit application and at each renewal of the permit.

(b) The commissary or other fixed food establishment used as a base of operation for mobile food units shall be constructed and operated in compliance with the requirements of this chapter or by the approval of the regulatory authority.

(c) The mobile food establishment shall maintain a log documenting the date and time of each supply, cleaning, or servicing operation at the commissary or other fixed food establishment. The log shall be kept in the mobile food establishment, shall be signed by a responsible person, and shall be made available to the regulatory authority upon request.

**Sec. 9-83. Servicing area and operations.**

- (a) Servicing area.
  - (1) A mobile food unit servicing area shall be provided and shall include at least overhead protection for any supplying, cleaning or servicing operation. Within this servicing area, there shall be a location provided for the flushing and drainage of liquid wastes separate from the location provided for water servicing and for the loading and unloading of food and related supplies. This servicing area will not be required where only packaged food is placed on the mobile food unit or where mobile food units do not contain waste retention tanks.
  - (2) The surface of the servicing area shall be constructed of a smooth nonabsorbent material, such as concrete or machine-laid asphalt, and shall be maintained in good repair, kept clean, and be graded to drain.
  - (3) The construction of the walls and ceilings of the servicing area is exempt from the provisions of Article VII, section 9-72 of this chapter (relating to construction and maintenance of physical facilities).
- (b) Servicing operations.
  - (1) Potable water servicing equipment shall be installed according to law and shall be stored and handled in a way that protects the water and equipment from contamination.
  - (2) The mobile food unit liquid waste retention tank, where used, shall be thoroughly flushed and drained during the servicing operation. All liquid waste shall be discharged to a sanitary sewage disposal system in accordance with Article VI of this chapter (relating to sanitary facilities and controls).

**Sec. 9-84. Catering services.**

(a) A person shall not engage in a catering service unless the service is affiliated with a food establishment operating from a fixed facility that is permitted by the regulatory authority.

(b) A catering service shall comply with the requirements of this chapter as the regulatory authority determines is necessary to protect public health and safety.

**Secs. 9-85--9-90. Reserved.**

**ARTICLE IX. - TEMPORARY FOOD SERVICE**

**Sec. 9-91. General.**

(a) A temporary or seasonal food establishment shall comply with the requirements of this chapter except as otherwise provided in this rule. The regulatory authority may impose additional requirements to protect against health hazards related to the conduct of the temporary food establishment, may prohibit the sale of some or all potentially hazardous foods/time and temperature

control for safety (PHF/TCS), and when no health hazard will result, may waive or modify requirements of this chapter.

- (1) The operation of a temporary food establishment may not exceed fourteen (14) consecutive days per event and must be in conjunction with a special event or celebration as approved by the regulatory authority. A limit of eight (8) temporary permits per calendar year per vendor, group or organization will be enforced. Vendors with multiple booths at a single event will be recorded as participating in one (1) event towards the eight (8) maximum allowed per calendar year.
- (2) The operation of a seasonal food establishment is greater than fourteen (14) days but less than forty-five (45) consecutive days per event per vendor. Seasonal permits are limited to three (3) per calendar year per vendor per location. Fees for all permits are included in a separate fees ordinance as approved by Council.

(b) If the temporary food establishment is outdoors, every food preparation and serving area must have a fire resistant overhead covering that protects the interior of the facility from the weather. Floors must be constructed of concrete, asphalt, tight wood or other similar easily cleanable material, and kept in good repair.

(c) All food shall be prepared in a permitted food establishment or on the premises. No food or beverage stored or prepared in a private home may be offered for sale, sold or given away from a temporary or seasonal food facility.

(d) All food and beverages shall be protected at all times from unnecessary handling and shall be stored, displayed and served so as to be protected from contamination.

(e) The regulatory authority may establish additional structural or operational requirements as necessary to ensure that food is of safe and sanitary quality.

#### **Sec. 9-92. Restricted operations.**

(a) These provisions are applicable whenever a temporary food establishment is permitted, under the provisions of section 9-91 of this article, to operate without complying with all the requirements of this rule.

(b) Potentially hazardous foods/time and temperature control for safety (PHF/TCS). Temporary Permits Only.

- (1) Only those PHF/TCS requiring limited preparation, such as hamburgers and frankfurters that only require seasoning and cooking, shall be prepared or served unless otherwise approved by the regulatory authority. PHF/TCS will be limited to three (3) types per food booth. PHF/TCS include meats, eggs, dairy products, rice, beans, potatoes, chili, etc. The preparation or service of other PHF/TCS, including pastries filled with cream or synthetic cream, custards, and similar products, is prohibited. This prohibition does not apply, however, to any PHF/TCS that has been prepared or packaged under conditions meeting the requirements of this chapter, is obtained in individual servings, is stored at a temperature of forty (40) degrees Fahrenheit (five (5) degrees Celsius) or below, or at a temperature of one hundred forty (140) degrees

Fahrenheit (sixty (60) degrees Celsius) or above, in facilities that meet the requirements of this chapter, prepared the same day as the special event and is served directly in the unopened container in which it was packaged.

- (2) Raw seafood and poultry are only allowed under two (2) conditions:
  - (a) Product must be pre-cut, and frozen, to go from the freezer to the fryer or;
  - (b) The product must be pre-cooked.
- (3) PHF/TCS allowed to be cooked on-site from a raw state are those which are fast cooking such as:
  - (a) Pre-formed hamburger patties;
  - (b) Beef/chicken fajitas;
  - (c) Pre-cooked sausage and hot dogs;
- (4) Outdoor grilling during temporary events must adhere to requirements in Chapter 8 of this Code of Ordinances, policies and procedures as outlined in the "Temporary Events Procedures" document and is subject to permitting by the regulatory authority in accordance with § 9-114 of this Chapter. Outdoor grilling for personal or residential use is allowed and outside the scope of this regulation.
- (5) Food temperatures. All food temperature requirements shall be met as contained in this chapter.

(c) Seasonal permits. Seasonal permittees may serve non-PHF/TCS products including but are not limited to snowcones, packaged chips, candy, pickles and canned or bottled drinks.

(d) Ice. Ice that is consumed or that contacts food shall have been made under conditions meeting the requirements of TFER §229.164(c)(6). The ice shall be obtained only in chipped, crushed, or cubed form and in a single-use safe plastic or wet-strength paper bags filled and sealed at the point of manufacture. The ice shall be held in these bags until it is dispensed in a way that protects it from contamination.

(e) Equipment.

- (1) Equipment shall be located and installed in a way that prevents food contamination and that also facilitates cleaning the establishment.
- (2) Food-contact surfaces of equipment shall be protected from contamination by consumers and other contaminating agents. Where helpful to prevent contamination, effective shields for such equipment shall be provided.

(f) Single-service articles. All temporary food establishments shall provide only single-service articles for use by the consumer.

(g) Water. Enough potable water shall be available in the establishment for food preparation, for cleaning and sanitizing utensils and equipment and for handwashing. A heating facility located on the premises and capable of producing enough hot water for these purposes shall be provided.

(h) Wet storage. The storage of packaged food in contact with water or undrained ice is prohibited. Wrapped sandwiches shall not be stored in direct contact with ice.

(i) Waste. All sewage, including liquid waste, shall be disposed of according to law. All refuse shall be disposed of in a manner approved by the regulatory authority.

(j) Handwashing. A convenient handwashing facility shall be available for employee handwashing. This facility shall consist of an insulated container with a spigot that can be turned on to allow potable, clean, warm water to flow for handwashing; a wastewater container; soap; disposable towels; and waste receptacle.

(k) Floors. Floors shall be constructed of concrete, asphalt, tight wood or other similar cleanable material, and kept in good repair.

(l) Walls and ceiling of food preparation areas.

(1) Ceilings shall be made of wood, canvas, or other materials that protect the interior of the establishment from the weather. Walls and ceilings of food preparation areas shall be constructed in a way that prevents the entrance of insects and rodents. Doors of food preparation areas shall be solid or screened and shall be self-closing. Screening material used for walls, doors or windows shall be at least sixteen (16) mesh to one (1) inch (16 mesh to 25.4 millimeters); or other effective means.

**Secs. 9-93, 9-94. Reserved.**

## **ARTICLE X. - BED AND BREAKFAST FOOD ESTABLISHMENTS**

**Sec. 9-95. Requirements.**

(a) General. Bed and breakfast food establishments shall comply with the minimum requirements of this section.

(b) Food supplies. Food shall be obtained from approved sources, shall be in sound condition, and be safe for human consumption.

(c) Food preparation and protection.

(1) Food shall be prepared and protected in accordance with these rules.

(2) All food temperature and date marking requirements shall be met in accordance with these rules.

(d) Cleaning and sanitizing.

(1) Manual. A three-compartment sink shall be used if washing, rinsing and sanitizing of utensils and equipment is done manually; or a two-compartment sink may be utilized if single service tableware is provided, and if an approved detergent sanitizer is used.

(2) Mechanical. Cleaning and sanitizing may be done by spray-type or immersion dishwashing machines or by any other type of machine or device if it is demonstrated that it thoroughly cleans and sanitizes equipment and utensils either by chemical or mechanical sanitization.

(e) Personal hygiene. Employees shall conform to good hygienic practices as required in these rules.

(f) Employee restrooms. A restroom shall be available for use by employees.

(g) Equipment and utensil design and construction. All equipment and utensils shall be constructed of safe materials and maintained in good repair.

(h) Handsinks.

(1) Location. An accessible and conveniently located handsink shall be provided in or immediately adjacent to food preparation areas.

(2) Intended use. Handsink(s) shall be used for no other purpose other than handwashing.

(i) Food contact surfaces. All food contact surfaces, counters, or work surfaces in the establishment shall be smooth, non-absorbent and easily cleanable.

(j) Insect proof/rodent proof.

(1) Food service preparation and storage areas shall be constructed and maintained to prevent the entry of pests and other vermin.

(2) Pesticides and rodenticides shall be applied according to law.

(k) Equipment shall be provided to maintain potentially hazardous food/time and temperature control for safety (PHF/TCS) at the temperatures required by these rules.

(l) Garbage receptacles. Impervious receptacles shall be provided for storage of garbage and refuse.

(m) Sewage. Sewage shall be disposed through an approved facility that is:

(1) A public sewage treatment plant; or

(2) An individual sewage disposal system that is sized, constructed, maintained, and operated according to law.

(n) Water supply. Hot and cold water under pressure shall be provided and shall be from an approved source.

**Secs. 9-96--9-100. Reserved.**

## **Article XI. FARMERS' MARKET & VENDORS**

**Sec. 9-101. General.**

(a) All farmers' markets and every farmers' market vendor shall comply with the requirements of this chapter.

**Sec. 9-102. Responsibility, assignment.**

(a) The farmers' market permit holder shall be the person in charge or shall designate a person in charge and shall ensure that a person in charge is present at the farmers' market during all hours of operation. The person in charge shall have proof of successfully passing a Texas Department of State Health Services recognized Certified Food Managers Course.

(b) Where it is allowed, farmers' market vendors that offer, sell, sample or distribute potentially hazardous foods/time and temperature control for safety (PHF/TCS), shall have a person in charge that can show proof of successfully passing a Texas Department of State Health Services (TDSHS) recognized Certified Food Handler Course. Food vendors that offer, sell, or distribute only prepackaged, non – PHF/TCS food items and plants, nuts in the shell and whole, raw fruits and vegetables that are intended for hulling, peeling or washing by the consumer before consumption are exempt from the certified food handler requirement. Proof of successfully passing a TDSHS recognized Certified Food Manager Course is required of farmers' market vendors if their operations or food items offered are determined by the regulatory authority to be capable of causing foodborne illness or increased public health risk.

(c) The person in charge of the farmers' market shall maintain a list of all farmers' market vendors. The list shall be maintained for at least ninety (90) calendar days from the date of the end of the market. This list shall include, at a minimum:

- (1) The name, address, and phone number of the vendor;
- (2) The date(s) the vendor operated at the farmers' market;
- (3) A list of the food items offered by vendor for each date operated at the farmers' market;
- (4) A copy of any applicable permits held by the vendor; and

- (5) The address or location of each food item's origin, including information on where the food items were grown, cultivated or otherwise obtained by the vendor.

### **Sec. 9-103. Food.**

(a) Preventing contamination:

- (1) Food display. Except for plants, nuts in the shell and whole, raw fruits and vegetables that are intended for hulling, peeling or washing by the consumer before consumption, food on display shall be protected from contamination by use of packaging; counter, service line, or sneeze guards that comply with National Sanitation Foundation (NSF) or equivalent standards; completely enclosed display cases accessible only to farmers' market vendor staff; or by other means approved by the regulatory authority.

(b) Approved Source. Only food from an approved source as defined in the Texas Food Establishment Rules (TFER) may be offered at a farmers' market. Foraged foods, gleaned foods and food prepared in a private residence, a cottage food production operation or from an unlicensed food manufacturer or wholesaler are not from an approved source and may not be used or offered in a farmers' market.

(c) Prohibited items. Fish, foraged foods, game animals, poultry, eggs, refrigerated dairy items, meats, gleaned foods, home-canned or home-packaged items and other potentially hazardous foods/time and temperature controlled for safety (PHF/TCS) are prohibited at a farmers' market.

(d) Temperature Requirements. Food temperatures must be in compliance with TFER or as set by the Executive Commissioner of Health of the Texas Department of State Health Services. Equipment used to keep foods shall comply with TFER and shall maintain required temperatures for the duration of the farmers' market, including preparation.

(e) Sampling: Sampling is allowed only where permitted by the regulatory authority in compliance with the following standards:

- (1) Non-PHF/TCS shall be offered to the consumer in individual servings and shall not be offered on a self-service basis. Samples shall be prepared in advance in a permitted facility. If the facility is located outside the City of Plano a copy of the most recent inspection for the facility must be provided. Portioning food on-site is prohibited. Portions shall be completely covered or enclosed until given to the consumer.
- (2) Only single-service articles may be given to the consumer for use.

- (3) Foods prepared on-site such as soups, dips, relish, condiments and sauces shall be maintained at or below 40 degrees Fahrenheit or at or above 140 degrees Fahrenheit.
- (4) At least one thermometer accurate to +/- 2 degrees Fahrenheit shall be on-site for each piece of equipment used to hold proper temperatures.
- (f) Animals, prohibition.
  - (1) Except as specified in subparagraph (2), or as otherwise allowed by law live animals and pets are not allowed on the premises of a farmers' market.
  - (2) Live animals may be allowed if a health or safety hazard will not result from the presence or activities of the animals in the following situations:
    - (a) Patrol dogs accompanying police or security officers; or,
    - (b) Personal assistance/service animals that are conspicuously and properly identified and under direct physical control of the owner.
  - (3) Animals may not be vended, sold, offered for adoption or given away at a farmers' market.

**Sec. 9-104. Equipment, utensils and facilities.**

- (a) Functionality of equipment.
  - (1) Except for a municipally-owned farmers' markets, equipment used to keep foods subject to this Article frozen or refrigerated shall comply with TFER and be able to maintain required temperatures for the duration of operations.
  - (2) Tables used within the vending area shall be made of non-porous material and be easily cleanable.
  - (3) Utensils used for sampling shall be made of non-porous material and shall be disposable unless approved by the regulatory authority.
- (b) Equipment, numbers and capacities.
  - (1) Where required, at least one (1) hand wash sink or facility complying with §9-92(j) shall be located within twenty-five (25) linear feet of each vendor approved to conduct sampling operations.

- (2) Where a hand wash sink is required, it shall be capable of maintaining hot water, have a potable tanked water source and have a waste tank at least sixty-six percent (66%) greater than the potable source water tank. A portable hand sink may be used if it satisfies the listed requirements.
- (3) A hand wash sink is not required for facilities with only pre-packaged products and plants, nuts in the shell and whole, raw fruits and vegetables that are intended for hulling, peeling or washing by the consumer before consumption.
- (4) Trash receptacles shall be available to each farmers' market vendor, and shall be non-porous and insect and rodent resistant. Trash shall be disposed of offsite as needed to prevent pests, but in no event will trash disposal be less frequent than once per day.

(c) Physical facilities

- (1) Floor Construction. Floors and floor coverings of all vending areas shall be located on a concrete or asphalt surface providing adequate drainage.
- (2) Vending areas shall be covered, free of pests and capable of providing shelter for vendors and customers.

(d) Plans Review. Each person desiring to operate a farmers' market shall submit the following to the regulatory authority at least five (5) working days prior to the proposed start date of the farmers' market:

- (1) A farmers' market permit application;
- (2) A floor plan or diagram of the farmers' market location and layout, including the area reserved for vendors;
- (3) An equipment list;
- (4) A list of food items proposed to be offered or vended;
- (5) Proof of food origin, copy of manufacturer's license, copy of storage license or a description of approved source where food items will be obtained;
- (6) A copy of approved food label(s); and
- (7) A description of each method used to disposing of solid and liquid waste.

**Secs. 9-105--9-107. Reserved.**

## **ARTICLE XII. - INSPECTION AND ENFORCEMENT**

### **Sec. 9-108. Authority.**

(a) The provisions of this chapter shall be enforced by the director of health and his/her representatives. The director of health and his/her representatives have the authority to issue citations to persons violating the provisions of this chapter. It shall be unlawful for any person to interfere with a health specialist, director of health or designee in the performance of his/her duties as prescribed in this chapter.

(b) Additional Requirements. In accordance with section 229.171(b) of the Texas Food Establishment Rules, the regulatory authority may impose additional specific requirements, if necessary to protect against public health hazards or nuisances. Should such additional specific requirements be imposed, the regulatory authority shall document the conditions that necessitate the imposition of the additional requirements and the underlying public health rationale supporting the regulatory authority's decision to impose the additional specific requirements.

(c) Variance or Waiver. In accordance with section 229.171(c) of the Texas Food Establishment Rules, upon finding that no health hazard or nuisance would result, the regulatory authority may grant a variance by modifying or waiving the requirements of this section. Documentation supporting any waiver or variance will be maintained as required by the Texas Food Establishment Rules.

(d) Appeal. A decision of the regulatory authority made under this section is subject to the appeal procedures of section 9-115 of this Chapter.

### **Sec. 9-109. Access.**

In accordance with section 229.171 (h)(i)(2) of the Texas Food Establishment Rules, agents of the regulatory authority, after proper identification, shall be granted access to enter any permitted food establishment at any reasonable time, for the purpose of making inspections to determine compliance with this chapter. If any person denies access sought under this section, the regulatory authority may seek a warrant or take other actions authorized by the Texas Food Establishment Rules.

### **Sec. 9-110. Report of inspections.**

(a) Whenever an inspection is made of a food establishment, the findings shall be recorded on the inspection report form provided by the regulatory authority. The original of the inspection report form shall be furnished to the owner or person-in-charge at the completion of the inspection and constitutes a written notice. The inspection report form shall summarize the requirements of this chapter. The completed form is a public document that shall be made available for public disclosure to any person who requests it according to law.

(b) Additional requirements, preventing health hazards, provision for conditions not addressed.

(1) If necessary to protect against public health hazards or nuisances, the regulatory authority may impose specific requirements in addition to the requirements contained in these rules that are authorized by law.

- (2) The regulatory authority shall document the conditions that necessitate the imposition of additional requirements and the underlying public health rationale. The documentation shall be provided to the permit applicant or permit holder and a copy shall be maintained in the regulatory authority's file for the food establishment.

#### **Sec. 9-111. Correction of violations.**

The inspection report form shall specify a reasonable period of time for the correction of the violations found, and correction of the violations shall be accomplished within the period specified, in accordance with the following provisions:

- (1) A food establishment shall immediately discontinue operations and notify the regulatory authority if an imminent health hazard may exist because of an emergency such as a fire, flood, extended interruption of electrical or water service, sewage backup, misuse of poisonous or toxic materials, onset of an apparent foodborne illness outbreak, gross insanitary occurrence or condition, or other circumstance that may endanger public health.
- (2) All violation of critical items shall be corrected within a time specified by the regulatory authority, but in any event, not to exceed ten (10) days.
- (3) All non-critical items shall be corrected as soon as possible, but in any event, by the time of the next routine inspection, but not to exceed ninety (90) days.
- (4) When the establishment receives a failing score; the establishment shall cease operations immediately. The establishment shall remain closed until re-opened by the regulatory authority.
- (5) In the case of temporary food establishments, all violations shall be corrected immediately.

#### **Sec. 9-112. Examination and condemnation of food.**

(a) The regulatory authority may examine and collect samples of food as often as necessary for the enforcement of this chapter.

(b) The regulatory authority shall, upon written notice to the owner or person-in-charge specifying the reason, condemn, denature or destroy or place under detention any food, which it has probable cause to believe, is unapproved, adulterated or misbranded. Under a hold order, food shall be permitted to be suitably stored. It shall be unlawful for any person to remove or alter a hold order, notice or tag placed on food by the regulatory authority, and neither food nor the containers shall be relabeled, repacked, reprocessed, altered, disposed of or destroyed without the permission of the regulatory authority.

(c) After the owner or person-in-charge has been afforded an appeal as provided for in section 9-115 of this article and on the basis of evidence produced at such hearing, or on the basis of examination in the event a written request is not received within ten (10) days the regulatory authority may cancel the hold order or may oversee the disposal of the food placed under the hold order or direct the owner or person-in-charge to bring it into compliance with the provisions of this chapter.

### **Sec. 9-113. Procedure when infection is suspected.**

(a) Based on the findings of an investigation related to a food employee who is suspected of being infected or diseased, the regulatory authority may issue an order to the suspected food employee or permit holder to institute one or more of the following control measures:

- (1) The immediate exclusion of the food employee from all food establishments;
- (2) The immediate closing of the food establishment by summarily suspending a permit to operate in accordance with law;
- (3) Restriction of the food employee's services to some area of the establishment where there would be no danger of transmitting disease.

Any order issued under this section shall contain the information required by section 229.171(o)(3) of the Texas Food Establishment Rules, and shall be subject to the appeal procedure set forth therein.

(b) Exclusions and restrictions. The person in charge shall:

- (1) Exclude a food employee from a food establishment if the food employee is diagnosed with an infectious agent such as: Salmonella typhi, Shigella spp., shiga toxin-producing Escherichia coli, Norovirus, or Hepatitis A virus.
- (2) Restrict a food employee from working with exposed food; clean equipment, utensils and linens; and unwrapped single-service and single-use articles, in a food establishment if the food employee is suffering from a symptom of diarrhea, fever, vomiting, jaundice, sore throat with fever, not experiencing a symptom of acute gastroenteritis specified but has a stool that yields a specimen culture that is positive for Norovirus, Salmonella typhi, Shigella spp., or shiga toxin-producing Escherichia coli; or has a lesion containing pus such as a boil or infected wound that is open or draining and is not covered with an impermeable cover.
- (3) If the population served is a highly susceptible population, exclusion of food employees must adhere to all laws in accordance with TFER §229.163(d)(2)(D)(i-iii) and FDA Food Code 2-201.12(c).
- (4) For a food employee who is jaundiced:
  - (a) If the onset of jaundice occurred within the last seven (7) calendar days, exclude the food employee from the food establishment or
  - (b) If the onset of jaundice occurred more than seven (7) calendar days before, food employees must be excluded from food establishments serving highly susceptible populations or restrict food employees activities specified under (b)(2) of this section if the food employee does not serve highly susceptible populations.

### **Sec. 9-114. Permit.**

(a) Required; transferability. It shall be unlawful for any person to operate a food establishment, mobile food establishment, farmers' market, or food-processing plant within the City of Plano, who does

not possess a valid permit issued by the regulatory authority. Only a person who complies with the requirements of this chapter shall be entitled to receive and retain such a permit. Permits shall not be transferable from a person to another person or location. A valid permit shall be posted in public view at every establishment. Permits for temporary establishments shall be issued for a period of time not to exceed fourteen (14) calendar days. Seasonal permits may be issued for a period not to exceed forty-five (45) calendar days. Farmers' market permits shall be valid from April 1 through October 31 of the year issued.

(b) Review of plans. A review of plans shall be conducted by the regulatory authority when any of the following events occur: (1) a food establishment, mobile food establishment, farmers' market, or food processing plant is constructed or remodeled to the extent a building permit is required; (2) an existing structure or vehicle is converted to use as a food service operation; or (3) there has been a change in ownership of a food establishment, mobile food establishment, farmers' market, or food processing plant. Properly prepared plans and specifications for such construction, remodeling, or conversion shall be submitted to the regulatory authority for review and approval before construction, remodeling, or conversion is begun. The plans and specifications shall indicate the proposed layout, arrangement, mechanical plans and construction materials of work areas, and the type, model, and capacity, if available, of proposed fixed equipment and facilities. The regulatory authority shall approve the plans and specifications if they meet the requirements of this ordinance. No food establishment, mobile food establishment, farmers' market, or food processing plant shall be constructed, extensively remodeled, or converted except in accordance with plans and specifications approved by the regulatory authority. A preoperational inspection will be conducted in each food establishment, mobile food establishment, farmers' market, or food processing plant prior to the start of operations to determine compliance with approved plans and with the requirements of this chapter.

(c) Application. Any person desiring to operate a food establishment, mobile food establishment, farmers' market or food processing plant shall make written application and pay the appropriate fee for a permit provided by the regulatory authority. Such application shall include the applicant's full name, business address and whether such applicant is an individual or a business entity, the type of business entity, and if a partnership, the name and address of each partner; the location and type of the proposed establishment; a menu of each food item that the applicant proposes to serve, and the signature of the applicant or applicants.

(1) Temporary permits.

- (a) Temporary permit fees shall be reviewed, set, and adopted by action of the City Council.
- (b) Application and fees must be submitted at least five (5) working days prior to the event, or fourteen (14) working days prior to the event if five (5) or more booths are permitted for the same event. Applications received after these deadlines will be subject to an additional administrative fee.
- (c) Events where vendors have more than one (1) booth will be charged an initial fee for the first booth and subsequent fees for each additional booth. Participation in events by vendors with multiple booths will count as only one (1) permit towards the annual limit of eight (8) temporary permits for the same vendor.

- (d) Fees are non-refundable and applications will not be accepted after 4:00 p.m. on Thursday immediately preceding the event.
  - (e) Establishments with a valid City of Plano health permit must apply for a temporary permit when participating in an event. An administrative fee will apply.
  - (f) A permit waiver may be obtained if proof of charitable, non-profitable status, i.e. church, school district, charity, government agency, etc. is submitted with application; however, a processing fee will be charged.
  - (g) Out of town vendors must submit a copy of the current local permit and a copy of the most recent health inspection report conducted by their local regulatory authority.
  - (h) Food manufacturers must submit a copy of the state manufacturer' license with their application.
- (2) Seasonal permits.
- (a) Seasonal permit fees shall be reviewed, set, and adopted by action of the City Council.
  - (b) Seasonal permit applications and fees must be submitted at least five (5) working days prior to the start date. Applications submitted less than five (5) working days prior to the start date will be subject to an administrative fee.
  - (c) Applications will not be accepted after 4:00 p.m. on Thursday immediately preceding the event.
  - (d) Vendors with seasonal permits may not operate at the same location for more than forty-five (45) days during the same calendar year.
- (3) Annual permits.
- (a) Fees. Food establishment annual permit fees shall be reviewed, set, and adopted by action of the City Council.
  - (b) Inspection; issuance of permit. Upon receipt of such an application, the regulatory authority shall make an inspection of the establishment to determine compliance with the provisions of the article. When inspection reveals that the applicable requirements of this article have been met, a permit shall be issued to the applicant by the regulatory authority.
- (4) Farmers' Market permits.
- (a) Fees. Farmers' Market permit fees shall be reviewed, set, and adopted by action of the City Council.
  - (b) Inspection; issuance of permit. Upon receipt of such an application, the regulatory authority shall make an inspection of the establishment to determine compliance with the provisions of the article. When inspection reveals that the applicable requirements of this

article have been met, a permit shall be issued to the applicant by the regulatory authority.

(5) Suspension of permits.

(a) Emergency Suspension. If the regulatory authority finds a condition constituting an imminent health hazard as defined in Section 9-2(42), or that a public health nuisance (as that term is defined in section 341.011 of the Texas Health and Safety Code) that is an immediate and substantial hazard to the public health exists in the operation of an establishment permitted under this section, he or she may issue a summary suspension without prior warning, notice or hearing, if the notice:

- (1) states the reasons for the suspension;
- (2) states the evidence that the permit holder shall provide in order to demonstrate that the reasons for suspension have been eliminated;
- (3) states that the permit holder may request an appeal hearing by submitting a timely request to the regulatory authority, and;
- (4) provides the name and the address of the regulatory authority representative to whom a request for appeal hearing may be made.

(b) General Suspension. If the regulatory authority finds a condition constituting a public health nuisance (as that term is defined in section 341.011 of the Texas Health and Safety Code), but not constituting an immediate and substantial hazard to the public health exists in the operation of an establishment permitted under this section, he or she may issue a written notice ordering abatement of the nuisance to any person responsible for the nuisance. Whenever a permit holder or operator has failed to comply with any notice issued under the provisions of this division, the permit holder or operator shall be notified in writing that the permit is, upon receipt of the suspension notice, immediately suspended, and that an opportunity for a hearing will be provided if a written request for a hearing is filed with the regulatory authority by the permit holder within five (5) business days.

(c) The issuance of a suspension shall be a remedy in addition to, and not in lieu of, any penalty authorized under subsection (8) of this section, and shall not limit any other rights of the regulatory authority to pursue other actions or remedies to address any violation of the provisions of this article.

(6) Reinstatement of suspended permits. Any person whose permit has been suspended may, not more than sixty (60) days after the date of suspension, make application for a reinspection for the purpose of reinstating the permit. Within ten (10) business days following receipt of a written request, including a statement signed by the applicant that in his opinion the condition causing the suspension of the permit has been corrected, the regulatory authority shall make a reinspection. If the applicant is complying with the requirements of this article, the permit shall be reinstated.

- (7) Revocation. If a permit holder has been issued more than three (3) violation notices or citations pertaining to any of the requirements of this article during a twelve (12) month period, a permit may be permanently revoked after an opportunity for a hearing has been provided by the regulatory authority. Prior to such action, the regulatory authority shall notify the permit holder in writing, stating the reasons that the permit should be permanently revoked. The permit shall be revoked at the end of five (5) business days following service of this notice, unless a request for a hearing is filed with the regulatory authority, by the permit holder within such five-day period.
- (8) Penalty. Any violation of the provisions or terms of this ordinance by any person shall be a misdemeanor offense and shall be subject to a fine in accordance with Section 1-4(a) of the City Code of Ordinances for each offense. Every day a violation continues shall constitute a separate offense.

### **Sec. 9-115. Appeal.**

Appeal of Decision. An appeal may be made from the decision of the regulatory authority under Section 9-108, Section 9-112, or Section 9-114 of this Chapter, or from an appeal made to the regulatory authority under Section 9-113 of this Chapter. An appeal must be made in writing to the City Manager no later than five (5) business days after notice of the complained-of action or decision has been received by the appellant. The appeal shall: (1) set forth the decision of the regulatory authority complained of; (2) contain any documents and argument on this issue for the City Manager to consider; and (3) if applicable, discuss any emergency or exigent circumstances that appellant believes are material to when the hearing should be set. A hearing shall be scheduled at a time and place designated by the City Manager no later than five (5) business days after receiving an appeal that conforms with the requirements of this section, and the City Manager's written decision shall be furnished to the appellant no later than five (5) business days after the date of the hearing.

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

**Section V.** Any person, firm, or corporation violating any of the provisions or terms 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 THOUSAND AND 00/100 DOLLARS (\$2,000.00)** for each offense. Each and every violation shall be deemed to constitute a separate offense.

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

**DULY PASSED AND APPROVED** this the 26<sup>th</sup> day of November, 2012.

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Phil Dyer, MAYOR

ATTEST:

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Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

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Diane C. Wetherbee, CITY ATTORNEY



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		11/26/12		
Department:		Health		
Department Head		Brian Collins		
Agenda Coordinator (include phone #): <b>Doris Callaway, Ext. 7494</b>				
<b>CAPTION</b>				
An Ordinance of the City of Plano, Texas, repealing Ordinance No. 2010-7-8, entitled "Health Categories and Fees", and replacing it with this ordinance, to be entitled "Health Categories and Fees" to amend Animal Services and Health fees; providing a repealer clause, a severability clause, and an effective date.				
<b>FINANCIAL SUMMARY</b>				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: <b>2012-13</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
<b>FUND(S):     N/A</b>				
<b>COMMENTS:</b> The impact of the ordinance changes are unknown at this time and will depend on the Farmers Market Event vendor participation.				
STRATEGIC PLAN GOAL: Updates to the Health Categories and Fees Ordinance relate to the City's Goal of Financially Strong City with Service Excellence and Safe Large City.				
<b>SUMMARY OF ITEM</b>				
This Ordinance will update the Animal Services and Health fee schedule to reflect new fees for specific services provided by the departments. These fees will generate revenue for the City and mitigate costs associated with performing services and administering programs.				
List of Supporting Documents: Animal Services and Health Fee Schedule Memo			Other Departments, Boards, Commissions or Agencies	



City of Plano  
P.O. Box 860358  
Plano, Texas 75086-0358  
972-941-7143  
972-941-7142 FAX

## **MEMORANDUM**

*Health Department*

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**DATE:** September 24, 2012

**TO:** Brian Collins, Director of Health

**FROM:** Jamey Cantrell, Animal Services Manager  
Geoffrey Heinicke, Health Manager

**SUBJECT:** Revisions to Health Department Fees

As part of the on-going budget process, departmental staff identified several areas where program fees should be adjusted or implemented to capture cost of providing services to the community. A summary of proposed changes to the Animal Services and Health ordinance follows.

### Animal Services

A local veterinarian recommended that the ordinance be changed to allow first time registration fees for any dog, cat, or ferret less than twelve months of age be at the reduced sterilized rate even if the animal has not yet been sterilized. Previously, veterinarians were recommending that owners wait until their pet was sterilized to avoid the increased registration fee for intact animals. If the owner fails to return for sterilization, the animal often times would never be registered. This change will enable animals to be registered as soon as a rabies vaccination is given to prevent the owner from failing to register at a later date. This change will not result in any additional revenue.

In 2010, a late fee of \$10.00 was implemented to encourage pet owners to be timely in the registering of their pets and to help with the additional costs of trying to collect on past due charges. The wording is being changed to more clearly indicate the exact time the registration is considered overdue. This change will not result in any additional revenue.

Health

A \$50.00 re-inspection fee will be assessed for food establishments that require a re-inspection due to deficiencies identified during a routine inspection. This new fee will cover the cost of inspectors performing multiple follow-up inspections to ensure compliance of critical violations. Subsequent re-inspections will be assessed a \$50.00 fee until correction is achieved. The new fee for re-inspection is estimated to generate \$1,000 in additional revenue.

The farmers' market permit fee category will be assessed based on the number of vendors at a farmers' market. The proposed fee structure is comparable to existing food establishment categories and is designed to cover expenses incurred with providing inspection services and additional administrative costs.

**An Ordinance of the City of Plano, Texas, repealing Ordinance No. 2010-7-8, entitled “Health Categories and Fees”, and replacing it with this ordinance, to be entitled “Health Categories and Fees” to amend Animal Services and Health fees; providing a repealer clause, a severability clause, and an effective date.**

**WHEREAS**, on July 26, 2010, the City Council of the City of Plano duly passed Ordinance No. 2010-7-8 which adopted permit and inspection fees for health department services; and

**WHEREAS**, staff recommends that the Animal Services and Health fee schedule be amended to include new fees; and

**WHEREAS**, the City Council recognizes that these amendments are necessary to address increased administrative costs for providing specific services; and

**WHEREAS**, generation of resources through fees needed to administer the programs and services of the City of Plano is of vital concern to all citizens and must be considered for each year in concurrence with the annual budget for the City; and

**WHEREAS**, the City Council, based upon staff recommendations and review and consideration of these matters, and in concurrence with the adoption of the annual budget for the City of Plano, has determined that it is in the best interest of the City of Plano, Texas, to revise the fees hereinafter set forth, and that they are proper and should be approved and adopted.

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

**Section I.** Ordinance No. 2010-7-8 providing permit and service fees for certain health department services is hereby repealed and replaced with the following text:

“Definitions.

*Farmers’ Market* means an area at which two or more farmers’ market vendors offer produce for retail sale.

*Farmers’ Market Vendor* means any person who operates, offers or sells produce originating from the vendor’s property at a farmers’ market.

*Full Service* means a food service operation that prepares two or more products that involve cooking of raw meat or cooling and reheating of any cooked product.

*Fast Food* means a food service operation that is primarily a cook-serve operation with minimum cooling of cooked products and no reheating.

*Convenience Store* means a food operation that sells pre-packaged food items (including Potentially Hazardous Foods “PHF”), whole fruit and pastry items with limited hot hold service.

*Retail Store* means a food operation without on-site cooking that sells packaged food items for retail sale; including but not limited to PHF items.

*Specialty/Coffee Shops* means a food operation that sells liquid drinks, coffee, pastries or prepackaged food items.

*Bakery* means a food operation that sells baked goods, coffee, and beverages. PHF’s are limited to one (kolache), no sandwiches or salads.

*Prepackaged Stores* means a food operation that sells only prepackaged foods or prepackaged foods and single service ice cream. A food operation may not be considered a prepackaged store if it sells milk.

*Grocery Store* means a facility that provides food items for retail sales to the general public and that contains two or more of the following categories of food items: (a) bakery/deli items, (b) meat/seafood, (c) produce, dairy, and grocery, but which does not have fast food, coffee shop, or other ready-to-eat food service operations within the facility.

*Mega Store* means a facility that meets the definition of a Grocery Store, but which also has fast food, coffee shop, or other food service operations serving ready-to-eat food located within the facility. These include, but are not limited to, a franchised food service operation located within the facility.

*Seafood/Meat Market* means a facility that sells primarily raw meat or seafood products.

*Exempt* means all public schools located in the Plano City Limits and City of Plano facilities.

*Potentially Hazardous Food/Time and Temperature Control for Safety Food (PHF/TCS)* means a food that requires time and temperature control for safety (TCS) to limit pathogenic microorganism growth or toxin production which consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacean, or other ingredients including synthetic ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms. The term does include fresh shell eggs, which is raw or heat-treated; a food of plant origin that is heat-treated or consists of raw seed sprouts; cut melons; cut leafy greens; cut tomatoes or mixtures of cut tomatoes that are not modified in a way so they are unable to support pathogenic microorganism growth or toxin formation; and garlic-in-oil mixtures that are not modified in a way that results in mixtures that do not support growth. This term does not include: an air-cooled hard-boiled egg with shell intact, or a shell egg that is not hard-boiled, but has been treated to destroy all viable Salmonellae; a food, in an unopened commercially hermetically sealed container, that is shelf stable; a food for which a product assessment including laboratory evidence, demonstrates that time and temperature control for safety is not required and that may contain a preservative, other barrier to the growth of microorganisms, or a combination of barriers that inhibit the growth of microorganisms; or a

food that does not support the growth of microorganisms as specified even though the food may contain an infectious or toxigenic microorganism or chemical or physical contaminant at a level sufficient to cause illness.

### HEALTH DEPARTMENT FEES

RETAIL FOOD PERMIT FEES:	Fee
1. Mega Stores	\$ 1000.00
2. Grocery Stores	\$ 800.00
3. Full Service	\$ 500.00
4. Exempt	-0-
5. Fast Foods	\$ 400.00
6. Convenience	\$ 300.00
7. Non-PHF	\$ 200.00
8. Misc. Vending	
A. Hot Trucks	\$ 300.00
B. Catering, Prepackaged	\$ 275.00
C. Push Cart (Ice Cream)	\$ 150.00
9. Seasonal, Non-PHF	\$ 150.00
Temporary	\$ 75.00
10. Farmers' Market	
A. 1-30 Vendors	\$ 200.00
B. 31-60 Vendors	\$ 400.00
C. 61+ Vendors	\$ 600.00

### POOL INSPECTION, WASTEHAULER AND PRETREATMENT FEES

POOL	Fee
1. Swimming Pool Inspection Fee	\$ 200.00
2. Additional Pool	\$ 100.00
<b>WASTE HAULER AND TRAP FEES</b>	
1. Waste Haulers	\$ 300.00
2. Generator Inspection	\$ 250.00
<b>INDUSTRIAL WASTEWATER PRETREATMENT</b>	
1. Industrial Pretreatment Annual Fee	\$ 300.00
2. Industrial Pretreatment BMP Permit Fee	\$ 50.00
<b>INDUSTRIAL USER FEES</b>	
1. Industrial User Fee Per Outfall (monthly)	\$ 590.00

No permit shall be issued or renewed until such fee is paid. Late fees for permit renewals shall apply as follows:

Late Fees:

Food and Pool Permits-Renewals:

1-30 days after expiration date	10% of permit fee
31-60 days after expiration date	15% of permit fee
60 or more days after expiration date	30% of permit fee

Liquid Waste Generator Permit Renewals:

1-30 days after expiration	\$ 50.00
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Certificate of Occupancy (C/O) and Temporary C/O (T/C/O) Fees:

First C/O or T/C/O inspection	-0-
Second inspection	\$ 75.00

Body Art Permit Fee	\$ 200.00
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Re-inspection Fees:

Swimming Pool Re-inspection	\$ 50.00
Food Establishment Re-inspection	\$ 50.00

For food establishment re-inspections required due to non-compliance issues.

Training Fees:

Food Manager Certification	\$ 100.00
Food Handler Class	\$ 25.00
Food Handler Card for Off-site Course	\$ 15.00
Food Manager Review Course	\$ 25.00
Certified Pool Operator Course	\$ 200.00

A permit fee of Seventy-Five Dollars (\$75.00) must accompany each completed temporary food service permit application. An additional Fifty Dollars (\$50.00) will be assessed if application is submitted less than five (5) business days prior to the event. All nonprofit organizations shall be exempt from the temporary food service permit fee charge. Proper documentation of nonprofit status must be provided to the Health Department at the time of application.

Vendors having more than one booth at an event will be charged Seventy-Five Dollars (\$75.00) for the first booth and Twenty-Five Dollars (\$25.00) for each additional booth.

A permit fee of One Hundred Fifty Dollars (\$150.00) must accompany each completed seasonal food service permit application. An additional Fifty Dollars (\$50.00) will be assessed if application is submitted less than five (5) business days prior to the event. Proper documentation of nonprofit status must be provided to the Health Department at the time of application.

A permit fee waiver may be obtained if proof of charitable non-profit (tax-supported) status is submitted with application. There is a Twenty Dollar (\$20.00) permit processing and inspection fee.

A plans review fee of Three Hundred Dollars (\$300.00) shall be charged for the review of plans and specifications of new construction or remodeled facilities.

#### ANIMAL SERVICES FEES

##### Annual Registration Fees:

Dog, cat or ferret annual registration	\$ 30.00
Sterilized dog, cat, or ferret registration, annual	\$ 10.00
Dangerous animal registration, annual	\$ 250.00
Lost registration tag fee	\$ 5.00

##### Permit Fees:

Commercial Breeder Permit, annual	\$ 75.00
Animal Establishment Permit, annual	\$ 75.00
Animal Exhibition Permit, per seven (7) day period	\$ 25.00
Pet Grooming Facility permit, annual	\$ 50.00
Multi-Pet Permit Application Fee, annual	\$ 15.00
Wildlife Educational Center permit, annual	\$ 200.00
Wildlife Rehabilitator permit, annual	No charge

Any Commercial Breeder, Animal Establishment, Pet Grooming Facility, or Wildlife Educational Center that does not receive a satisfactory annual inspection shall be charged a re-inspection fee for each subsequent inspection that is performed until a satisfactory rating is achieved. The cost for each inspection shall be \$25.00 and all re-inspection fees must be paid prior to the issuance of any permit.

Any Commercial Breeder, Animal Establishment, Pet Grooming Facility or Wildlife Educational Center that applies for its annual permit 1-30 days after the expiration date of its previous permit shall pay a late fee of \$25.00. Any Commercial Breeder, Animal Establishment, or Pet Grooming Facility that applies for its annual permit 31 or more days after the expiration date of its previous permit shall pay a late fee of \$50.00.

##### Impound and Boarding Fees:

First Impoundment	\$ 75.00
The first impound fee may be reduced by the following amounts if the animal, at the time of impound, is:	
Sterilized	\$ 40.00
Currently vaccinated against rabies	\$ 10.00
Currently licensed with the city	\$ 10.00
Identified by traceable identification	\$ 15.00
Second Impoundment in any twelve (12) month period	\$ 100.00

Third and all subsequent impoundments in any twelve (12) month period:  
Previous full impound fee plus \$ 100.00

Boarding fee per animal, daily for all or part of any one day \$ 10.00

Adoption Fees:

Dog or cat \$ 80.00  
Ferret \$ 50.00  
Birds, small mammals, reptiles: \$ 25.00

Miscellaneous Fees:

Microchipping fee \$ 15.00  
Rabies vaccination fee \$ 10.00  
First time registration of any dog, cat, or ferret twelve (12) months  
of age or less, sterilized or unsterilized \$ 10.00  
Local Rabies Control Authority Incident Fee  
(includes all boarding and observation fees, or ship and test fees) \$ 100.00  
Livestock capture and impoundment, per head \$ 100.00  
Boarding fee, per head per day \$ 15.00  
Deceased dog, cat, or other small animal cremation fee \$ 20.00  
Owner surrender fee for any dog, cat, or other small animal \$ 25.00

No permit or license shall be issued or renewed until such fee is paid.

The Health Director or his designee shall have the authority to refund, reduce, or waive animal services fees.

Effective January 1, 2011, any owner that applies for an annual registration thirty-one (31) or more days after the expiration date of its previous registration shall be assessed a late fee of \$10.00.

The annual registration fee for sterilized animals shall be reduced to \$5.00 if the owner of the animal is sixty (60) years of age or older or provides proof of receiving financial assistance from any governmental agency due to the owner being considered disabled or low-income. This fee shall also be reduced for animals that are used by law enforcement agencies and for certified assistance animals.”

**Section II.** 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 III.** 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 IV.** This Ordinance shall become effective immediately upon its passage.

**DULY PASSED AND APPROVED** this the 26th day of November, 2012.

\_\_\_\_\_  
Phil Dyer, MAYOR

ATTEST:

\_\_\_\_\_  
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

\_\_\_\_\_  
Diane C. Wetherbee, CITY ATTORNEY