PLANO CITY COUNCIL

WILL CONVENE INTO EXECUTIVE SESSION AT 5:00 P.M., NOVEMBER 28, 2005 AND PRELIMINARY OPEN MEETING IMMEDIATELY THEREAFTER, IN THE PLANO MUNICIPAL BUILDING, 1520 K AVENUE, IN COMPLIANCE WITH VERNON'S TEXAS CODES ANNOTATED, GOVERNMENT CODE CHAPTER 551 (OPEN MEETINGS ACT), AS FOLLOWS:

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

EXECUTIVE SESSION

I.	Legal Advice A. Respond to questions and receive legal advice on agenda items B. Release of Attorney Report on Ethics Complaint Filed in 2000	Wetherbee	10 min
II.	Personnel Evaluation of Council Appointees	Council	10 min.
III.	Real Estate Park Land Acquisition	Wendell	10 min.

PRELIMINARY OPEN MEETING

I.	Consideration and action resulting from executive session discussion: Council action on release of attorney report on ethics complaint filed in 2000	Council	5 min.
II.	DART Status Report	Pope	5 min.
III.	Mobility Report	Neal	5 min.
IV.	Comprehensive Monthly Financial Report	McGrane	5 min.
V.	Discussion and Direction Restricted Parking of Oversized Vehicles in Other Districts	Turner/ O'Banner	10 min.
VI.	Discussion and Direction re Towing for No Financial Responsibility	Rushin	10 min.

VII.	Report on Meetings with Cities and Collin County Re City of Plano Funding of Charitable Organizations	Mayor	10 min.
VIII.	Council items for discussion/action on future agendas	Council	5 min.
IX.	Consent and Regular Agenda	Council	5 min.
X.	Council Reports	Council	5 min.

A. Council May Receive Information, discuss and provide direction on the following reports:

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

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

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

CITY COUNCIL

1520 AVENUE K

DATE: **November 28, 2005**

CALL TO ORDER: **7:00 p.m.**

INVOCATION: **Rabbi Stefan Weinberg**
Congregation Anshai Torah

PLEDGE OF ALLEGIANCE: **Boy Scout Troop 285**
St. Mark's Catholic Church

ITEM NO.	EXPLANATION	ACTION TAKEN
	THE MISSION OF THE CITY OF PLANO IS TO PROVIDE OUTSTANDING SERVICES AND FACILITIES, THROUGH COOPERATIVE EFFORTS WITH OUR CITIZENS THAT CONTRIBUTE TO THE QUALITY OF LIFE IN OUR COMMUNITY. **The City Council may convene into Executive Session to discuss posted items in the regular meeting as allowed by law.** **PROCLAMATIONS AND SPECIAL RECOGNITION** Proclamation: National Adoption Month - 2005 Special Recognition: Plano Police Department School Crime Stoppers Program Special Recognition: Purchasing Division – Achievement of Excellence in Procurement Award Special Recognition: Diane Palmer – President, National Purchasing Institute Presentation: To the City Council from Sci-Tech Discovery Center **GENERAL DISCUSSION** **In accordance with the Open Meeting Act, the City Council will hear comments of public interest, but any discussion shall be limited to placing the item on a future agenda for further consideration.** **Remarks are limited to five (5) minutes per speaker, with a maximum of 30 total minutes of testimony. Other time restraints may be directed by the Mayor.** **Specific factual information or an explanation of current policy may be made in response to an inquiry; but any discussion or decision must be limited to a proposal to place the item on a future agenda. Speakers will be notified when speaking time has expired.**	

ITEM NO.	EXPLANATION	ACTION TAKEN
	BOARD/COMMISSION REPORTS	
	Tax Increment Financing Reinvestment Zone No. 1 Board – John McGrane Tax Increment Financing Reinvestment Zone No. 2 Board – John McGrane	
	CONSENT AGENDA	
	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. The Council will then take action on the remainder of the Consent Agenda items. Citizens are limited to two (2) items and discussion time of three (3) minutes each.	
(a)	**Approval of Minutes** November 10, 2005 November 14, 2005 November 16, 2005	
	Approval of Expenditures	
	Award/Rejection of Bid/Proposal: (Purchase of products/services through formal procurement process by this agency)	
(b)	**Bid No. 2006-18-C** Repair Clamps and Couplings to Municipal Water Works for bid line items 1, 2 and 20 for a value of $28,780 and Ferguson Water Works for bid line items 3 through 19 and 21 through 32 for a value of $17,569 in the estimated annual amount of $46,348. This will establish a one-year contract with two optional one-year renewals.	
(c)	**Bid No. 2006-14-C** for an annual contract for Purchase and Delivery of Bulk Fuel to Martin Eagle Oil Company Inc. in the estimated annual amount of $168,000. This will establish a one-year contract with four optional one-year renewals.	
(d)	**Bid No. 2005-269-C** for Environmental Waste Truck Parts to Heil of Texas, Western Refuse & Recycling Equipment, Inc. and SWS in the estimated annual amount of $258,462. This will establish an annual fixed-price contract with two optional one-year renewals.	
(e)	**Bid No. 2006-13-B** for Dump Trucks from Southwest International Trucks Inc. in the amount of $197,860.	
(f)	**Bid No. 2006-12-B** for one (1) Heavy Duty Skid Steer Loader with Rubber Tracks from Bobcat of McKinney for Municipal Drainage Operations in the amount of $35,247.	

ITEM NO.	EXPLANATION	ACTION TAKEN
	Purchase from Existing Contract/Agreement: (Purchase of products/services through Cooperative Purchasing Interlocal Contract with another governmental/quasi-governmental agency or an additional purchase from current City of Plano annual purchase agreement).	
(g)	To authorize the purchase of twelve (12) Chevrolet ½ ton Extended Cab Hybrid Pickups to be utilized in various City Departments in the amount of $248,617 from Caldwell Country Chevrolet through the Texas Building and Procurement Commission contract and authorizing the City Manager to execute all necessary documents (TBPC #070-A1)	
(h)	To approve the terms and conditions of an engineering services contract by and between the City and Huitt-Zollars, Inc. in the amount of $212,500 for Wyatt North Addition Paving and Water Project and authorizing the City Manager or his designee to execute all necessary documents.	
(i)	To authorize the purchase of a service contract for network infrastructure switches in the amount of $140,532 from Internetwork Experts through a Department of Information Resources (DIR) Contract, and authorizing the City Manager to execute all necessary documents. (DIR-BUSOP-012).	
	Approval of Contract: (Purchase of products/services exempt from State of Texas Competitive Bid Laws.	
(j)	To approve an Agreement for Professional Services by and between the City of Plano, Texas and the Bellsnyder Group for Legislative Services in the amount of $30,000.	
	Change Order: (Change to current City of Plano contract allowable under State law)	
(k)	To JRJ Paving, L.P., increasing the contract by $96,767 for Hedgcoxe Widening and Improvements, Change Order No. 3. (Original Bid #B104-05)	
	Adoption of Resolutions	
(l)	To state the City of Plano's intent to apply for designation of the City as a "Preserve America" Community and to commit to protecting and celebrating heritage assets.	
(m)	To approve the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano and Collin County, Texas, providing terms and conditions concerning the collection of property taxes, authorizing its execution by the City Manager; and providing an effective date.	
(n)	To approve the purchase of SmartNet 800 MHz mobile, portable, and consolette radios from Motorola Communications and Electronics, Incorporated, a sole-source provider; authorizing the City Manager to take such action as necessary to effectuate the purchase; and providing an effective date.	
(o)	To approve the terms and conditions of an Agreement by and between CommVault Systems, Inc. and the City of Plano; authorizing its execution by the City Manager; and providing an effective date.	

ITEM NO.	EXPLANATION	ACTION TAKEN
(p)	To find Michael Rapplean, Gary Kirkwood and Tim Love are entitled to defense representation pursuant to City Code of Ordinances in connection with the matter of Percy Bennett v. City of Plano, Michael J. Rapplean, Gary Kirkwood and Tim Love; and providing an effective date.	
(q)	To approve and authorize refunds of property tax overpayments; and providing an effective date.	
(r)	To approve an Access and Parking Easement Agreement between the City of Plano and the Plano Independent School District providing for parking and access drives on Renner Middle School property, for use associated with the Tom Muehlenbeck Center, authorizing execution of the Access and Parking Easement Agreement by the City Manager; and providing an effective date.	
(s)	To approve the terms and conditions of a Service Agreement between the City of Plano and Physio-Control Corporation for inspection and maintenance services of the Fire Department's Physio-Control Corporation manufactured biomedical equipment; authorizing its execution by the City Manager; and providing an effective date.	
(t)	To approve the terms and conditions of a development agreement for Plano-Rice Field Redevelopment Project by and between Lexington Luxury Builders, LLC and the City of Plano; authorizing its execution by the City Manager; and providing an effective date.	
	Adoption of Ordinances	
(u)	To amend Article III, Property Maintenance Code, of Chapter 6, Buildings and Building Regulations, of the Code of Ordinances of the City of Plano by adding Division 3, Registration and Inspection of Multi-Family Dwelling Complexes, to provide for procedures allowing registration and inspection of multi-family dwelling complexes; providing a penalty clause; a severability clause; a repealing clause; a publication clause and an effective date.	
(v)	To adopt and enact Supplement Number 72 to the Code of Ordinances for the City of Plano; providing for amendment to certain sections of the Code; and providing an effective date.	
(w)	To amend Ordinance No. 2005-9-23 to correct Exhibit "A" which listed the incorrect number of Fire Captain positions and incorrect Assistant Fire Chief compensation in the original ordinance; and providing a repealer clause, a severability clause, and an effective date.	
	ITEMS FOR INDIVIDUAL CONSIDERATION:	
	The purpose of a Public Hearing is to receive input and information with the clarification that the focus of the City Council is on the singularly presented position, and not on repetition. To more effectively consider all presentations, applicants will limit their presentations to 15 minutes with a five (5) minute rebuttal time, if needed. All other speakers will be limited to a maximum of 30 total minutes of testimony, and three minutes per individual on any single issue. Other time restraints may be imposed at the discretion of the Mayor.	

ITEM NO.	EXPLANATION	ACTION TAKEN
(1)	**Public Hearing** pursuant to Chapter 26 of the Texas Parks and Wildlife Code pertaining to the use or taking of a portion of a City of Plano park and known as Jack Carter Park for a Communications Facilities License Agreement for cellular technology incorporated within the existing TXU Electric transmission tower.	
(2)	**A resolution** to approve the terms and conditions of a Communications Facilities License Agreement by and between the City of Plano, Texas and Dallas MTA, L.P., a Texas Limited Partnership, d/b/a Verizon Wireless, to locate, place, attach, install and operate telecommunications ground equipment in certain specific portions of the public rights-of-way in the City of Plano near Jack Carter Park identified as the Preston Meadow site; authorizing its execution by the City Manager; and providing an effective date.	
(3)	**Public Hearing** pursuant to Chapter 26 of the Texas Parks and Wildlife Code pertaining to the use or taking of a portion of a City of Plano park and known as Preston Meadow Park – Wellington Site for a Communications Facilities License Agreement for cellular technology incorporated within the existing TXU Electric transmission tower.	
(4)	**A resolution** to approve the terms and conditions of a Communications Facilities License Agreement by and between the City of Plano, Texas and Dallas MTA, L.P., a Texas Limited Partnership, d/b/a Verizon Wireless, to locate, place, attach, install and operate telecommunications ground equipment in certain specific portions of the public rights-of-way in the City of Plano near Preston Meadow Drive identified as the Wellington site; authorizing its execution by the City Manager; and providing an effective date.	
(5)	**Purchase from Existing Contract/Agreement:** To approve the terms and conditions of an engineering services contract by and between the City and Jacobs Civil, Inc. in the amount of $1,289,300.00 for the Parker Road and U.S. 75 Interchange Design and authorizing the City Manager or his designee to execute all necessary documents.	
(6)	**Public Hearing and an ordinance as requested in Zoning Case 2005-26** – To amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2004-9-37, as heretofore amended, so as to amend Planned Development-65-Central Business-1, containing 75.03± acres of land located at the northeast and southeast corners of Dallas North Tollway and Legacy Drive in the City of Plano, Collin County, Texas, regarding signage and townhouse regulations and ground floor retail uses; directing a change accordingly in the official zoning map of the City; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date. Applicant: City of Plano	
(7)	**Public Hearing and an ordinance as requested in Zoning Case 2005-39 –** To amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2004-9-37, as heretofore amended, so as to rezone 4.2± acres located at the southeast corner of Legacy Drive and Preston Meadow Drive in the City of Plano, Collin County, Texas, from Single-Family Residence-7 to Neighborhood Office; directing a change accordingly in the official zoning map of the City; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date. Applicant: DMC Mazal, Ltd.	

ITEM NO.	EXPLANATION	ACTION TAKEN
(8)	**Public Hearing and an ordinance as requested in Zoning Case 2005-40 –** To amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2004-9-37, as heretofore amended, granting Specific Use Permit No. 570 so as to allow the additional use of Automobile Leasing/Renting on 0.1± acre of land located within the Shops of Willow Bend Mall, 547± feet east of Plano Parkway and 733± feet south of Chapel Hill Boulevard in the City of Plano, Collin County, Texas, presently zoned Regional Commercial; directing a change accordingly in the official zoning map of the City; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date. Applicant: Brian Haigwood	
(9)	**Public Hearing and an ordinance as requested in Zoning Case 2005-41 –** To amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2004-9-37, as heretofore amended, granting Specific Use Permit No. 514 so as to allow the additional use of Day Care on 35.0± acres of land located at the northeast corner of Plano Parkway and Coit Road in the City of Plano, Collin County, Texas, presently zoned Planned Development-128-Light Industrial-1; directing a change accordingly in the official zoning map of the City; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date. Applicant: Montessori New Beginnings Academy	
(10)	**Public Hearing and an ordinance as requested in Zoning Case 2005-42 –** To amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2004-9-37, as heretofore amended, so as to rezone 18.4± acres located at the northeast corner of Headquarters Drive and Dallas North Tollway in the City of Plano, Collin County, Texas, from Central Business-1 to Planned Development-65-Central Business-1; directing a change accordingly in the official zoning map of the City; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date. Applicant: EDS Information Services, LLC.	
(11)	**Public Hearing and an ordinance as requested in Zoning Case 2005-44 –** To amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2004-9-37, as heretofore amended, so as to eliminate Stipulation 2. Sub-Area B (Town Center) m. Phasing of Planned Development-20-Mixed Use and to rezone 9.5± acres located on the east side of Preston Road, 490± feet south of McDermott Road in the City of Plano, Collin County, Texas, from Planned Development-163-Mixed Use with Specific Use Permit No. 553 for Private Club to Planned Development-20-Mixed Use with Specific Use Permit No. 553 for Private Club; directing a change accordingly in the official zoning map of the City; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date. Applicant: City of Plano **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.**	

Pat Evans
Mayor

Ken Lambert
Mayor Pro Tem

Scott Johnson
Deputy Mayor Pro Tem

Shep Stahel
Place 1

Loretta Ellerbe
Place 3

Sally Magnuson
Place 4

Harry LaRosiliere
Place 5

Jean Callison
Place 7

Thomas H. Muehlenbeck
City Manager

November 22, 2005

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

Honorable Mayor and City Council:

We will begin our meeting Monday in Executive Session with legal advice, personnel and real estate.

The Preliminary Open Meeting agenda consists of the DART Report, the Mobility Report and the Comprehensive Monthly Financial Report. You also have for discussion and direction the restricted parking of oversized vehicles in other districts and towing for no financial responsibility. There will be a report on meetings with other cities and Collin County regarding the City of Plano funding of charitable organizations.

I look forward to seeing you Monday evening.

Sincerely yours,

Thomas H. Muehlenbeck
City Manager

THM/bn

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

Preliminary Open Meeting Item II.

DART Report
Robert Pope

Pomela

plano Transportation Division

Transportation Mobility / Safety Report

October 2005

- Traffic Signals:

  New Signal Construction/Design:
  - ✓ **Implemented new off-peak timing on Park Blvd west of Ohio Drive to Midway Road**
  - ✓ **Began development of computer graphics for new 2070 signal control system**
  - ✓ **Began developing As-Built drawings for 200 signalized intersections**
  - o Design traffic signal at Custer and Ridgeview (5% complete)
  - o Continued installing new 2070 controllers - (**80%** completed)
  - o Construct traffic signal at Independence/Glencliff (turn-on **11/05**)
  - o Constructing traffic signal at Plano Parkway @ Parkwood Boulevard **(turn-on 12/05)**
  - o Design traffic signal at Spring Creek and Parkwood (**35%** completed)

- Traffic Safety:
  - ✓ **Legacy Drive (from Bishop to Communications) – As part of the DNT service road widening project, lane use changes were implemented for westbound traffic to provide two left- turn-only lanes plus three through lanes. A westbound right-turn lane will be opened in the near future.**
  - ✓ **Attended PISD / City of Plano joint safety meeting**
  - ✓ **Working with TxDOT to modify signing at Spring Creek and US-75 frontage roads**
  - o Working with other cities to develop uniform strategy in response to HB 87 (gives city council authority to post 25 mph without engineering study)
  - o Analyzing two completed CIP intersection improvement projects to determine their effectiveness (**90%** completed)
  - o Analyzing employee commute patterns (**30%** completed)
  - o Implemented a "Resident Parking Only" plan for Haggard Park neighborhood (60 day test underway)
  - o Working with TxDOT to modify existing median islands on US-75 frontage roads at Plano Parkway (**80%**)
  - o 2006 HAL/HARS program (**30%** completed)
  - o Revising Sections 12.72 & 12.73 of the Code of Ordinances (school zones)

- Safe Streets Program (SSP)
  - ✓ **Parkhaven Drive - The Temporary Plan for is scheduled to be mailed 11/05**
  - ✓ **City Council approves: Changes to the Substitution process, addition of new definitions, and new procedures for Multiple, Simultaneous, and Adjacent program requests.**
  - ✓ **Hawkhurst Drive – Mailed Permanent Plan survey to residents. Responses due 11/05**
  - ✓ **Seabrook Drive and Cumberland Trail - Neighborhoods sent comment forms to gather input on their Temporary Plans. Meetings will be held November 7th and 14th respectively**

Participating Neighborhoods
- o Kimble Drive (**forms sent to neighborhood sponsor 10/05**)
- o Royal Oaks Drive (Heavy enforcement ended 7/05 but did not resolve the speeding problem. A Temporary Plan is being developed)
- o Mission Ridge from Parker to Matterhorn **(Temporary Plan under development)**
- o Blue Ridge Trail north of Spring Creek (**Temporary Plan to be mailed 12/05**)

- Parkhaven Drive (Temporary Plan under development)
- Winding Hollow Lane (new participating neighborhood)
- Russell Creek Drive (Temporary devices installed 5/05)
- Hawkhurst Drive (**Permanent Plan mailed 10/05**)
- Ranier Road (north of Spring Creek Parkway) (Work Order sent to Public Works to install Permanent Plan)
- Seabrook (Temporary devices installed 3/05. **Comments forms mailed to residents**)
- Cumberland Trail (Temporary devices installed 3/05. Comment forms mailed to residents)
- Crossbend from Tumbril Lane to Coit (Temporary devices installed **4/05 – Comment forms being mailed to residents 11/05**)
- Ranier Road south of Spring Creek Parkway (Work Order sent to Public Works to install Temporary Plan)
- Sailmaker Drive (Temporary *substitution* devices installed)
- Travis Drive (Temporary devices installed 5/05)
- Lexington Drive (Work order sent to Pubic Works to install Temporary Plan)
- Country Place Drive north of Park Boulevard (Work order sent to Pubic Works to install Temporary Plan)
- Peachtree Lane (Temporary Plan approved by residents. **Work Order sent to Public Works for installation of Temporary Devices**)
- Parkhaven Drive (Temporary Plan to be mailed **11/05**)
- Silverstone Drive (Temporary Plan approved by residents. **Work Order sent to Public Works for installation of Temporary Devices**
- Mission Ridge North of Spring Creek (Work order sent to Pubic Works to install Temporary Plan)

- Long Range Planning:

  - US-75 Ramp Reversal project. (**TISEO PAVING CO. was the low bidder at $8.26M)**
  - Revise Plano Thoroughfare Standards (Graphics work **50%** complete)
  - Attended monthly DRMC, RTC, TAC, STTC, and ITE meetings

Preliminary Open Meeting Item IV.

Comprehensive Monthly Financial Report
John McGrane

Due to the short holiday week, the Comprehensive Monthly Financial Report will be available in hard copy in the Finance and City Secretary Departments.

POM IV-a

INTEROFFICE MEMORANDUM

TO: TOM MUEHLENBECK, CITY MANAGER

FROM: CYNTHIA O'BANNER, PROPERTY STANDARDS DIRECTOR

SUBJECT: RESTRICTED PARKING OF OVERSIZED VEHICLES IN OTHER DISTRICTS

DATE: 11/3/2005

CC: FRANK TURNER, EXECUTIVE DIRECTOR

City Council recently requested staff review the enforcement procedures for City Code of Ordinance, Chapter 12, Section 12-114 (c)(2)(b) concerning oversized vehicle parking restrictions in districts other than residential. Oversized vehicles are those described as any motor home, bus, trailer, semi-trailer, pole trailer, truck tractor, house trailer, special mobile equipment, farm tractor or implement of husbandry. The referenced code section does not outline any specific notice provisions. Council raised concerns with the amount of time property owners are currently allowed to voluntary correct violations of this code section. Council also expressed concerns with the one (1) hour parking limitation of these described vehicles between the hours of 7:01am and 7:59pm as currently established by code.

The referenced code section states that it shall be unlawful for such vehicles to park or stand at any time from 8:00pm until 7:00am on parking lots or other private property in any zoning district except Light Industrial-1 and Light Industrial-2 or within any zoning district from 8:00 pm until 7:00am if within five hundred (500) feet of a single-family, two-family or multi-family residence. Currently, after an initial offense, property owners and/or tenants are issued a written notice allocating twelve (12) days to comply with parking regulations of oversized vehicles prior to citing for non-compliance. Subsequent occurrences of the same or similar violations result in immediate citations without issuing additional or further notices. This practice was established based on a prior legal opinion and recommendation to provide written notice prior to issuance of initial citations. Since notice requirements are not outlined in this code section, the compliance time period may be reduced or shortened by an administrative change in internal procedures.

To deter and prohibit long term or overnight parking of oversized vehicles, **Staff recommends reducing the initial notice compliance period for property owners in violation** of this code section from twelve (12) days to two (2) days. Subsequent infractions would continue to be subject to immediate citations without additional or further notice.

Staff also proposes changing the one (1) hour parking limitation to four (4) hours; however this change would require a revision to the current code. Staff will proceed with the recommended code revision as directed by Council.

Attachment: CoO 12-114

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Sec. 12-114. Parking of trucks, tractors, etc., in residential districts.

(a) ***Definitions.*** The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Boat trailer means a trailer or semitrailer which is designed and constructed to carry a sailboat, motorboat or other vessel used upon any body of water.

Bus means every motor vehicle designed for carrying more than ten (10) passengers and used for the transportation of persons, and every motor vehicle other than a taxicab, designed and used for the transportation of persons for compensation.

Farm tractor means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines and other implements of husbandry.

House trailer means a trailer or semitrailer which is designed, constructed and equipped as a dwelling place, living abode or sleeping place (either permanently or temporarily) and is equipped for use as a conveyance on streets and highways, and shall include those vehicles commonly known as recreational vehicles.

Implement of husbandry means every vehicle designed and adapted for use as a farm implement, machinery or tool as used in tilling the soil, but shall not include any passenger car or truck.

Motor home means every vehicle designed, constructed and equipped as a dwelling place, living abode or sleeping place (either permanently or temporarily) and equipped for use as a conveyance on streets and highways.

Pole trailer means every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes or structural members capable, generally, of sustaining themselves as beams between the supporting connections.

Semitrailer means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

Special mobile equipment means every vehicle not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway, included but not limited to ditchdigging apparatus, well-boring apparatus and road construction and maintenance machinery such as asphalt spreaders, bituminous mixers, bucket loaders, tractors other than truck tractors, ditchers, levelling graders, finishing machines, motor graders, road rollers, scarifiers, earth moving carryalls and scrapers, power shovels and draglines, and self-propelled cranes and earth moving equipment. The term does not include house trailers, dump trucks, truck mounted transit mixers, cranes or shovels or other vehicles designed for the transportation of persons or property to which machinery has been attached.

Trailer means every vehicle with or without motive power other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight and that of its load rests upon or is carried by another vehicle.

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Truck means every motor vehicle designed, used or maintained primarily for the transportation of property.
Truck tractor means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

(b) ***Purpose.*** The city council hereby declares its purpose in enacting this section to be:

(1) To reduce hazardous traffic conditions in any area classified as a residential district by the comprehensive zoning ordinance of the city by prohibiting the parking or standing on any public street, alley, or right-of-way between alleys and streets within any such area of commercial, motor and recreational vehicles and trailers as defined in this section; to preserve the character of such residential districts; and to protect and further the peace, safety, welfare and good order of the city; and

(2) To reduce hazardous nighttime driving conditions in any area classified as other than a residential district by the comprehensive zoning ordinance of the city by prohibiting the parking or standing on any public highway, street or alley within any such area of vehicles, trailers and motor homes as defined in this section, during nighttime hours.

(c) *Restricted areas and times.*

(1) *Single-family, two-family, multi-family dwelling districts.*

It shall be unlawful for any person to park or stand or to allow any motor home, bus, trailer, boat trailer, semi-trailer, pole trailer, truck tractor, house trailer, special mobile equipment, farm tractor or implement of husbandry to park or stand upon any public street, highway, alley or public right-of-way between any street and alley, within any part of the city classified by the comprehensive zoning ordinance of the city as a single-family dwelling district, two-family dwelling district, or multi-family dwelling district. It shall be unlawful for any person to park or stand or allow any vehicle to park or stand upon any public street, highway, alley or public right-of-way between any street and alley within a residentially-classified district where a portion of the vehicle or any accessory attached to the vehicle extends more than ninety-five (95) inches into the roadway as measured from the face of the curb adjacent to said vehicle. This subsection shall not prevent the parking or standing of the above-described vehicles and/or trailers upon any public street, highway or alley in any such zoned area, for the purpose of expeditiously loading and unloading passengers, freight or merchandise, but not otherwise.

(2) *Other districts.*

a. It shall be unlawful for any person to park or stand or to allow any truck with a rated capacity in excess of three-quarters of a ton according to the manufacturer's rated classification or any motor home, bus, trailer, semitrailer, pole trailer, truck tractor, house

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trailer, special mobile equipment, farm tractor or implement of husbandry to park or stand upon any public street, highway, alley or any public right-of-way between any street and alley, within any part of the city classified as any district other than one set out in subsection (c)(1) of this section, at any time from 8:00 p.m. until 7:00 a.m. In addition, such vehicles shall not be allowed to park or stand upon any public street, highway, alley, or any public right-of-way between any street or alley within five hundred (500) feet of a lot containing a single-family, two-family or multi-family residence at any time unless in the process of loading or unloading passengers, freight or merchandise.

b. It shall be unlawful for any person to park or stand or to allow any vehicle described in paragraph a, above to park or stand at any time from 8:00 p.m. until 7:00 a.m. on parking lots or other private property in any zoning district except Light Industrial-1 and Light Industrial-2. In addition, such vehicles shall not be allowed to park or stand within five hundred (500) feet of a lot containing a single-family, two-family or multi-family residence at any time from 8:00 p.m. until 7:00 a.m. on parking lots or other private property in any zoning district. Parking is limited to one (1) continuous hour in duration when allowed, even if the vehicle is moved up to five hundred (500) feet from its original location, except in Light Industrial-1 and Light Industrial-2 zoning districts where vehicles may be parked longer unless within five hundred (500) feet of a lot containing a single-family, two-family or multi-family residence. Vehicles in the process of loading or unloading passengers, freight or merchandise in a designated loading area, and delivery and other vehicles used by tenants or occupants of the property are exempt from these regulations, as are vehicles operated by registered guests on a property providing commercial overnight lodging. Parked vehicles shall not have engines running unless they are in the process of loading or unloading, or are parked in Light-Industrial-1 and Light-Industrial-2 zoning districts and not within five hundred (500) feet of a lot containing a single-family, two-family or multi-family residence.

(Ord. No. 64-6-2, § 3, 6-29-64; Ord. No. 79-7-10, §§ 1--3, 7-23-79; Ord. No. 79-8-29, § 1, 8-27-79; Ord. No. 99-9-36, § I, 9-27-99; Ord. No. 99-11-9, § I, 11-8-99; Ord. No. 2004-7-9, § I, 7-26-04)

Cross references: Zoning, App. A.

Sec. 12-115. Parking of certain equipment in certain zoning districts.

(a) It shall be unlawful for an owner, occupant or person in charge of property zoned as a single-family dwelling district, two-family dwelling district, or multifamily dwelling district to permit the parking, standing or storing of house trailers, mobile homes, motor vehicles, trucks, truck trailers, passenger motor vehicles, motor homes, camper cabins, motorcycles, trailers, boats, farm machinery or similar equipment upon the property without locating same on a standard driveway or other asphalt or concrete surface; except that any truck or truck tractor exceeding one and one-half (1 1/2) tons capacity may not be parked, left standing or stored on the property.

(b) Any person, firm, or corporation violating any of the provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, be subject to a fine not

Pom Vd

exceeding five hundred dollars ($500.00) for each offense, and each and every day or portion thereof that such violation shall continue shall be deemed to constitute a separate offense.

(c) The city manager or his designee(s) is hereby authorized to enforce the provisions of this section.

(Ord. No. 79-11-9, §§ 1, 2, 11-12-79; Ord. No. 83-11-20, § 1, 11-22-83; Ord. No. 98-5-20, § II, 5-26-98)

Remove

Date: *November 16, 2005*

To: *Bruce D. Glasscock, Executive Director*

From: *Gregory W. Rushin, Chief of Police*

Subject: *Towing for No Financial Responsibility.*

I will make a short presentation to Council at the November 28, 2005 preliminary meeting to inform Council and the public of the Plano Police Department's intent to institute a directive to allow Officers to tow vehicles that are operated on City roadways without required financial responsibility.

Issue:

Drivers are required to maintain financial responsibility for vehicles they operate on Texas roadways. Uninsured vehicles are involved in many accidents each year. According to the Texas DPS, one in five drivers in Texas do not have insurance on the vehicles they operate. Last year, 13,661 citations were issued for no insurance in Plano, and 788 of these citations were issued at accident scenes. Through September of this year, 10,461 citations have already been issued for no insurance, of which 582 were at accident scenes. As a result of issues and concerns about uninsured vehicles some cities have developed tow policies for these vehicles.

Other Cities:

Irving, Desoto, Haltom City and Mesquite currently tow vehicles for which there is no proof of financial responsibility. Arlington will implement their program on December 1, 2005. Several other cities, such as Garland, are preparing similar tow policies.

The Irving Police Department was the first local agency of comparable size to Plano to begin such a towing practice, so they have the most data to date. A summary of their policy follows:

- Uninsured vehicle involved in accident – Even on first offense, if operator admits to not having insurance or officer is able to verify that coverage does not exist, their vehicle is towed.
- Traffic stops or other contacts – If the Officer is able to verify through computer checks or personal contacts that driver has previously received a citation

Item VI a

(subsequent offense) and continues to operate vehicle without insurance, then the vehicle is towed.

- Delayed enforcement – If the driver presented insurance at the scene of an accident, but it is later determined that the insurance was not valid the original investigating officer will issue a citation at large.
- The Officer will make reasonable efforts to provide for the safety of the displaced driver and occupants.
- The Officer is allowed discretion not to tow an uninsured vehicle.
- The Watch Commander may suspend these tows based on workload and weather conditions.

Irving PD advised that they towed about 144 cars the first month they implemented this program. This is about 5 cars per day. They report they currently tow an average of 6-8 cars a day under this new program.

Issues to consider when developing a policy

1. The legality of such a program
   The police and city legal departments have reviewed and cleared the proposed Plano Police program.

2. Capacity of Signature Towing
   The City contracts with Signature Towing. General Manager Rick Lundberg indicated they would have no problem with the increased number of tows anticipated. They tow for Irving, so they already have experience with this practice. They will have sufficient space for the anticipated increased tows. He stated they would require the person claiming a vehicle to present proof of insurance at their lot before they will release the vehicle.

3. Officer time/city resources
   We do not believe it will utilize an unreasonable amount of officer time and city resources based on the increase in tows at Irving and the confidence Signature Towing has expressed.

4. Possible perception of bias
   Irving reported initial concerns from some in their Hispanic community when the program first began, but this concern appears to have waned based on news reports and discussions with Irving Police personnel. We have utilized our Unidos Program to educate members of our Hispanic community on the program, and have not received any negative feedback or concerns.

Conclusion:

On January 1, 2006, a new Plano Police Department Directive will allow Officer to begin towing vehicles where owners fail to maintain financial responsibility as required by law. This will be allowed only at accidents in which we can positively ascertain that the

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vehicle is in violation of law and on traffic stops when the driver is found to have previously operated the vehicle without insurance and is still operating the vehicle in violation of the financial responsibility laws.

The program will be strictly regulated by a new Administrative Directive, and coupled with community education prior to the start of the program. A draft copy of the directive is attached for your perusal. If you have any questions or concerns pleas advise. Thanks.

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Towing of Uninsured Motor Vehicles

Cost of Uninsured Motorists

- There is a cost to all citizens when motorists operate uninsured vehicles in Plano
- According to Texas DPS – 1 in 5 Texas drivers do not have insurance (Dallas Morning News 10/23/05)
- In 2004 in Plano
  - 13661 citations were issued for no insurance
  - 780 were issued at accident scenes
- January through September 2005
  - 10461 citations were issued for no insurance
  - 582 were issued at accident scenes

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DallasNews.com Sunday, October 23, 2005

Car towings well-received

Irving: Police uncertain if numbers of uninsured down; other cities join in

By ERIC AASEN
Staff Writer

IRVING — Police like it. The public does, too. And cities are jumping on the bandwagon.

It's hard to find many complaints about a new policy catching on in North Texas: hauling uninsured vehicles to the impound lot.

But as the policy's popularity spreads, police departments are struggling to figure out whether it's an effective way of getting uninsured vehicles and their drivers off the street.

For now, at least, it's worth a shot, police say, because it's a way to combat the issue of uninsured motorists.

The problem seems overwhelming: About one in five Texas drivers doesn't have car insurance, the state Department of Public Safety estimates.

Irving is among the first North Texas cities to launch a towing policy. Others, such as Arlington, are following suit. DeSoto, Haltom City and Mesquite have enacted their own programs, and other cities are studying the idea.

Irving police are pleased with their policy so far. Since June, police have been towing uninsured cars that were in accidents or were pulled over for traffic stops.

Police aren't releasing impounded cars until motorists show proof of insurance.

See TOWING Page 21B

Metroplex Cities That Have Similar Programs

- DeSoto
- Irving
- Mesquite
- Haltom City
- Arlington – 12/01/05

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Purpose

- Establish guidelines & procedures to allow officers to tow uninsured vehicles under certain circumstances
- Begin program on January 1, 2006
- After publicizing through media and Unidos

Issues to Consider

- Legality of program
- Officer time/City resources
- Capacity of Signature Towing
- Possible perception of bias

Pom VIY

Circumstances under which uninsured vehicles may be impounded:

- Traffic Stops
  - Through officer's investigation, the driver is known to have previously operated vehicle without insurance and
  - Driver continues to operate vehicle without insurance and
  - Driver is being arrested.

Circumstances under which uninsured vehicles may be impounded (Continued):

- Accident scene
  - Driver admits to having no insurance or
  - Officer is able to verify that no coverage exists the vehicle may be impounded.

Tom V15

Impound Procedure

- A vehicle impounded under this policy will only be taken by Signature Towing to their lot.
- Impounding officer will indicate "No Insurance" on the tow slip.
- Impounding officer will make reasonable efforts to provide for the safety of the driver and any occupants.
- The Watch Commander my suspend "No Insurance" tows due to workload or weather conditions.

Releasing Vehicles from Impound

- Proof of insurance will be required to be shown to a representative of Signature Towing prior to release of the vehicle.
- No vehicle impounded under this policy will be driven or towed from the Signature Towing lot until proof of insurance is presented.

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PLANO POLICE DEPARTMENT — Administrative Directive 112.037

Effective: October 15, 2005
Replaces: New
Revised:
Affects: All Personnel

Towing of Uninsured Motor Vehicles

NEW DRAFT 11/05

I. PURPOSE

Drivers are required to maintain financial responsibility for vehicles operated on Texas roadways. The purpose of this policy is to establish guidelines and procedures to allow for uninsured vehicles to be impounded by officers when the officers encounter individuals who have had an accident or been arrested while operating a motor vehicle without the proper financial responsibility.

II. POLICY

State law requires drivers to maintain financial responsibility. This policy will allow officers to tow uninsured vehicles on arrests and after accidents when drivers cannot provide proof of financial responsibility as required by law.

III. DEFINITIONS

Financial Responsibility – insurance coverage on a specific motor vehicle at the level of liability insurance meeting the state minimums or greater (TTC 601.051-601.124)

Requirement – when the vehicle is operated on a public roadway.

Proof – policy card stating at least the name of the insured or authorized drivers, insured vehicle, insuring company, company phone number, policy number and beginning and expiration dates of coverage or as required by law.

III. PROCEDURES

Requesting proof of financial responsibility is standard procedure on traffic stops and at accident scenes. This policy will allow officers to tow uninsured vehicles under the following circumstances:

A. Arrests

If the officer, through a driver's license check or previous personal contacts with the driver, knows that the driver has previously received a citation for operating a motor vehicle without financial responsibility and is continuing to operate a vehicle without financial responsibility, and the driver is being arrested for any offense, including Failure to Maintain Financial Responsibility, the officer may impound the vehicle.

B. Accidents

1. If during the investigation of a motor vehicle accident, an officer determines that one or more of the involved vehicles was operated without the required proof of financial responsibility, the officer may impound the vehicle(s).

2. This practice should be restricted to those cases where the driver admits to not maintaining legally required financial responsibility or the officer is able to verify that no such coverage exists.

3. If the vehicle is impounded, the officer shall issue a citation for the failure to maintain proof of financial responsibility.

4. Delayed Enforcement

a. If an officer investigates an accident where the driver(s) show the required proof of financial responsibility and it is later determined that the proof was not valid, the original investigating officer should issue a citation.

Pom VII

b. The officer will contact Records to amend the accident report to reflect the issuance of the citation.

C. Impound Procedures

1. Any officer impounding a vehicle under this directive will make reasonable efforts to provide for the safety of the driver and any occupants.

2. A vehicle impounded under this policy will only be taken to the Signature Towing lot.

a. Private tows or tows to dealerships are not allowed if a vehicle is towed as a result of a driver operating a motor vehicle for which valid proof of financial responsibility cannot be proven.
b. A driver may not release the vehicle to another driver.
c. Officers will write the words "No Proof of Financial Responsibility" on the tow slip.

3. The Watch Commander has the authority to suspend these measures based on workload or weather conditions.

D. Releasing Vehicles from Impound

1. Proof of current financial responsibility, applicable to the impounded vehicle, will be required to be shown to a representative of the impound lot prior to the release of any vehicle being driven from the police impound lot.
2. A vehicle impounded for a violation of this policy will not be released from the impound lot until proof of financial responsibility on the towed vehicle is provided.

NEW DRAFT 11/05

pm 11/7

Preliminary Open Meeting Item VII.

Report on Charitable Funding
Mayor

Pom Villa.

Discussion/Action Items for Future Council Agendas
(as of November 21, 2005)

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

November 24 – 25 – Thanksgiving Holidays

December 6 – 10 – NLC – Charlotte, NC

December 12

Achievement of Excellence Award, Purchasing, Ryan
Library Advisory Board Report

December 20 – Employee Holiday Luncheon – Plano Centre

December 23 – 26 – Christmas/ Winter Holidays

December 28 (rescheduled from 12/26) (Winter Holiday)

DART Status Report
Mobility Report
Comprehensive Monthly Financial Report
Heritage Commission Report

January 2, 2006 – New Year Holiday

January 9

Senior Citizens Advisory Board Report

January 23

Transportation Advisory Committee Report

Pam Villa

CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☐ Yes	☒ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☐ Yes	☒ Not Applicable
Council Meeting Date:	11/28/05	Reviewed by Legal	☐ Yes	☒ Not Applicable
Department:	City Manager's Office		Initials	Date
Department Head	Tom Muehlenbeck	Executive Director		
Dept Signature:		City Manager		11/21/05
Agenda Coordinator (include phone #):	**Sharon Wright ext. 7107**			

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

CAPTION

Proclamation: National Adoption Month - 2005

FINANCIAL SUMMARY

☒ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☐ CIP

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

FUND(S):

COMMENTS:

SUMMARY OF ITEM

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

REV 08/98

CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☐ Yes	☒ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☐ Yes	☒ Not Applicable
Council Meeting Date:	11/28/05	Reviewed by Legal	☐ Yes	☒ Not Applicable
Department:	City Manager's Office		Initials	Date
Department Head	Tom Muehlenbeck	Executive Director		
Dept Signature:		City Manager		11.17.05
Agenda Coordinator (include phone #):	**Sharon Wright ext. 7107**			

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

CAPTION

Special Recognition: Plano Police Department School Crime Stoppers Program

FINANCIAL SUMMARY

☒ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☐ CIP

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

FUND(S):

COMMENTS:

SUMMARY OF ITEM

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

REV 08/98

CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☐ Yes	☒ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☐ Yes	☒ Not Applicable
Council Meeting Date:	11/28/05	Reviewed by Legal	☐ Yes	☒ Not Applicable
Department:	City Manager's Office		Initials	Date
Department Head	Tom Muehlenbeck	Executive Director		
Dept Signature:		City Manager		11.17.05
Agenda Coordinator (include phone #):	**Sharon Wright ext. 7107**			

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

CAPTION

Special Recognition: Purchasing Division - Achievement of Excellence in Procurement Award

FINANCIAL SUMMARY

☒ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☐ CIP

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

FUND(S):

COMMENTS:

SUMMARY OF ITEM

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

CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☐ Yes	☒ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☐ Yes	☒ Not Applicable
Council Meeting Date:	11/28/05	Reviewed by Legal	☐ Yes	☒ Not Applicable
Department:	City Manager's Office		Initials	Date
Department Head	Tom Muehlenbeck	Executive Director		
Dept Signature:		City Manager		11.14.05
Agenda Coordinator (include phone #):	**Sharon Wright ext. 7107**			

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

CAPTION

Special Recognition: Diane Palmer - President, National Purchasing Institute

FINANCIAL SUMMARY

☒ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☐ CIP

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

FUND(S):

COMMENTS:

SUMMARY OF ITEM

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

CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☐ Yes	☒ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☐ Yes	☒ Not Applicable
Council Meeting Date:	11/28/05	Reviewed by Legal	☐ Yes	☒ Not Applicable
Department:	City Manager's Office		Initials	Date
Department Head	Tom Muehlenbeck	Executive Director		
Dept Signature:		City Manager		11/1/05
Agenda Coordinator (include phone #):	**Sharon Wright ext. 7107**			

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

CAPTION

Presentation: To City Council - From Sci-Tech Discovery Center

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☐ CIP

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

FUND(S):

COMMENTS:

SUMMARY OF ITEM

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

PLANO CITY COUNCIL
NEIGHBORHOOD ROUNDTABLE
DISTRICT TWO
November 10, 2005

COUNCIL MEMBERS
Pat Evans, Mayor
Ken Lambert, Mayor Pro Tem
Scott Johnson, Deputy Mayor Pro Tem
Shep Stahel
Sally Magnuson
Jean Callison
Loretta L. Ellerbe
Harry LaRosiliere

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

The Plano City Council met informally at 7:10 p.m., Thursday, November 10, 2005, at The Plano Sports Authority Starcenter, Plano, Texas. All Council Members were present with the exception of Mayor Pro Tem Lambert and Council Member Stahel. Mayor Evans welcomed those in attendance, introduced members of the Council and identified the Council districts. She spoke regarding Council Members being elected and serving the City at large and the benefits provided.

Chief of Police Rushin gave an update of crime in Council District 2, spoke to occurring home invasions, and installation of red light cameras.

Mayor Evans advised regarding the questions for the meeting and those in attendance broke into groups for discussion.

Do you agree that traffic, crime, development and property standards enforcement are still the most important issues? What other issues should be included or replace these?

Under the basic issues of traffic, crime, development, and property standards enforcement identified on the list of discussion questions, citizens spoke regarding speeding and being open to creative ideas to remedy the situation.

Citizens spoke to needing more speed trailers, problems with speeding in residential areas and recreational vehicles parked on the street, the quality of the roads and addressing their maintenance, issues of city beautification and dealing with an aging infrastructure, attention to zoning issues and addressing developmental zoning in residential areas, crumbling walls, unattractive power lines, and signage placed on public property.

Can you suggest other ways to improve the existing communications options?

Citizens spoke to the need to better educate the public, encouraging more community involvement, and to the use of the Plano Television Network as a communication tool.

Do you feel you are getting a fair return on your tax investment? Where would you like to see additional services? Are you willing to pay for increased property taxes to pay for additional services? If not, would you want services reduced and if so, which services?

Citizens spoke to giving kudos to the City and to the Park Department, and to existing property taxes being average. They spoke to the need for sidewalks in selected areas, unfair economic development funding competition with other non-DART cities, too long of a period of time between voter approval of capital projects to actual start and completion time, needing more mixed use zoning, utilizing architectural standards for a more attractive appearance with less big box development, providing noise buffers in residential areas, addressing the yard sign issue, and the water shortage caused by the draught.

Mayor Evans thanked those in attendance for their input and stated that issues will be summarized and responses forthcoming from Staff. The meeting was adjourned at 8:50 p.m.

_____
Pat Evans, **Mayor**

Attest

_____
Elaine Bealke, City Secretary

PLANO CITY COUNCIL
PRELIMINARY OPEN MEETING
November 14, 2005

COUNCIL MEMBERS

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

STAFF

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

Mayor Evans called the meeting to order at 5:05 p.m., Monday, November 14, 2005, in Training Room A of the Municipal Center, 1520 K Avenue. All Council Members were present. Mayor Evans then stated that the Council would retire into Executive Session in compliance with Chapter 551, Government Code, Vernon's Texas Codes, Annotated, in order to consult with an attorney and receive Legal Advice and discuss Litigation, Section 551.071, and to discuss Personnel, Section 551.074, for which a certified agenda will be kept in the office of the City Secretary for a period of two years as required.

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

Consideration and Action Resulting From Executive Session Discussion

No action was brought forward.

Discussion and Direction Regarding SH 121 as a Tollway Facility

Deputy Mayor Pro Tem Johnson advised that he and Collin County Commissioner Jack Hatchell met with other city representatives to hear the TxDOT response to a local government control proposal submitted to them.

Mr. Johnson stated that it is most likely the proposal will be turned down as the State of Texas has no new money to fund highway construction and so is looking at the right for private companies, for the most part, to build the highway and charge a toll on the highway with which to fund transportation projects. He stated that tolls would be set with the concurrence of the state, a decision is expected by the end of the year, and that the company winning the bid will construct the remaining portion of State Highway 121. Mr. Johnson stated that the state is not willing to raise the gas tax, money has gone mostly to the smaller or larger cities, and that Plano falls in between being a medium size city. He stated that the state further advised that once a road is selected for tolling, those funds will then be used for all other future TxDOT projects in that county, and that if the desire to toll is turned down by the cities that the State Transportation Department and Highway Commission will view this as a negative and will not in turn look favorably at funding other areas in the county.

Deputy Mayor Pro Tem Johnson stated that other meetings will be held, and that the original resolution was for the cities and the county to have authority and have operational and financial decisions. He stated that what the state is offering through a comprehensive development agreement is some semblance of the cities' request, and further spoke to seeing how things play out before making a decision. Mr. Johnson stated that the North Texas Tollroad Authority (NTTA) has come up with several funding possibilities as well as keeping the tolls at a manageable level.

Collin County Commissioner Jack Hatchell stated that he believes and others concur that the option of the local government agreement is not a choice and recommended that a compromise be worked out instead. He spoke to other opportunities, and stated that he is encouraged by the opportunity for a local board to make recommendations and provide some local control. Mr. Hatchell spoke to being encouraged that excess revenue for projects will be kept in Collin County. He responded to the Council regarding the current structure of the NTTA for excess revenue to go system wide to other toll projects, and spoke to looking at changing this policy to allow for the separating out of a county with regard to revenues. Mr. Hatchell stated that the tolling of State Highway 121 will generate a high volume of revenue and that the criteria for choosing firms is based on what firm will give the highest return on the investment (State Highway 121.)

Final Presentation of the Schematic Design Arts of Collin County/Design Development Services Necessary for ACC to Recommend an Approved Project

Arts of Collin County (ACC) Plano Representative Betty Muns reviewed the history of the ACC Commission, spoke to the selection of staff, the rural setting where the arts hall will be constructed, the master and design plans, and the development of the Arts of Collin County Foundation. She spoke to strong citizen support on the referendum, and stated that everything is on schedule.

Ms. Muns requested Council approval to proceed immediately to the design development stage and authorization from the City of Plano for 1% of the total cost of this project.

Arts of Collin County, Inc. Executive Director James Baudoin spoke to the architectural model on display and to the outstanding work of the ACC Foundation. Vice ACC Foundation President Linda Pardue spoke to the new ACC Director of Develoment Pam Wendland and spoke to her background in fundraising, marketing, and art promotion. Ms. Wendland spoke to enthusiasm for the ACC project and to collectively working with the Foundation and the Commission.

Mr. Baudoin spoke to completion of the schematic design, establishing the project goals, components of Phase 1, and being on schedule. He spoke to the aesthetics of the project, aerial views, varied building elevations, interior and exterior features, and to the grand opening scheduled for 2010. Mayor Pro Tem Lambert spoke to the site work to be completed on the land and to proceeding now with the civil engineering aspect of the job in order to speed things up and to this being a positive effect towards encouraging fundraising. He recommended that the board look at doing some actual groundbreaking and spoke to discussing this with the three participating cities. Mr. Baudoin stated that the City of Allen in the next calendar year will proceed with work on the Exchange Parkway portion of the site.

Discussion and Direction on Rice Field Development

Executive Director Turner spoke to redevelopment of Rice Field as an infill housing project and presented the major business points of the development with Lexington Luxury Builders (Lexington). He stated that the final agreement will come back to the Council in two weeks. Mr. Turner spoke to the price per square foot which represents 100% of cost recovery for the City, documentation of the ability to complete the project, a minimum of 90 owner occupied dwelling units to be constructed, and to securing all subdivision approvals no later than May 1, 2006 with completion in January 1, 2007. He spoke to obtaining the necessary approvals to commence with construction of 12 dwelling units no later than October 1, 2006, the right for the City to repurchase the land at the original purchase price, and to being subject to normal regulatory standards, permits and approvals with construction as specified, and further spoke to incentives from the Neighborhood Empowerment Zone which represents a fee waiver program tied to construction permits issued on or before June 1, 2010. Mr. Turner stated that common open space shall be owned and controlled by the homeowner's association, spoke to the reworking of perimeter streets with maximum cost allowance for the City, drainage improvements required, and stated that Lexington is responsible for paying all on-site improvements. He further spoke to the dedication of streets, alleys, rights-of-way and improvements to the City.

Scott Schaefer of Lexington Luxury Builders addressed the Council and spoke to commemorating Rice Field as "Rice Drive," a center green belt to include a pavilion identified as the Rice Dedication Pavilion with monuments and bronze plaques, and to a 50-yard line preservation monument and time capsule.

Mr. Turner responded to the Council that the last appraisal was done by the Plano Independent School District one year ago at the time of purchase. Mayor Pro Tem Lambert spoke to the sales price being low compared to other townhouse projects in the area, to not liking initial drawdown language in the agreement, the assignment and closing of property language, and recommended there be a right of repurchase for the City. Mr. Turner spoke to the sales price versus the cost of improvements, and to other public improvement expenditures of downtown projects similar in City cost participation. He stated that new limited liability partnerships were also created for other downtown developments, and that there is no automatic recovery for repurchase of the property in similar downtown areas and stated that is not unusual. Mr. Turner responded to Mr. Lambert regarding security if the project is not built as an at-risk measure and spoke to looking at another developer assuming the project. (This item was revisited during the Regular Meeting.)

Remaining items were addressed during the Regular Meeting. Nothing further was discussed. Mayor Evans adjourned the meeting at 7:25 p.m.

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Pat Evans, **MAYOR**

ATTEST

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Elaine Bealke, City Secretary

PLANO CITY COUNCIL
November 14, 2005

COUNCIL MEMBERS
Pat Evans, Mayor
Ken Lambert, Mayor Pro Tem
Scott Johnson, Deputy Mayor Pro Tem
Shep Stahel
Sally Magnuson
Jean Callison
Loretta L. Ellerbe
Harry LaRosiliere

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

Mayor Evans convened the Preliminary Open Meeting directly into the Regular Session on Monday, November 14, 2005, at 7:25 p.m. in the Council Chamber of the Plano Municipal Center, 1520 K Avenue. All Council Members were present.

The invocation was led by Abdul Hadi Khan of the Islamic Association of Collin County.

The Pledge of Allegiance was led by Cub Scout Pack 280 Den 2 from the First United Methodist Church and the Color Guard with the American Legion Post.

Mayor Evans presented proclamations recognizing Veterans' Day, American Cancer Society – Great American Smokeout Day and Animal Shelter Appreciation Week. She further recognized Frank Turner as President of the Greater Dallas Planning Council and Jason Van Sickel, winner of the Lone Star Emmy for Plano Television Network.

GENERAL DISCUSSION

Sonja Hammar, citizen of the City, spoke to pornography being viewed on computers at the City's public libraries and the need for a policy to address the issue. She spoke to providing clarification and more information to the public regarding documents and discussions related to the Arts of Collin County Commission and the Arts of Collin County Foundation. Ms. Hammar stated concerns related to a funding agreement including the designation of a Commission board member as an individual receiving funds and the effect of a severability clause.

Jack Lagos, citizen of the City, spoke regarding a contract for ownership of land at Custer Road and S.H. 121 and the need for the recipient to be a charitable organization. He requested information be provided to the public and an open discussion be held regarding activities of the Arts of Collin County Commission. City Attorney Wetherbee advised that she would respond to Mr. Lagos regarding the contract.

The Council resumed discussion of items from the Preliminary Open Meeting.

Discussion and Direction on Rice Field Development

Executive Director Turner requested Council direction regarding any modifications and advised that the contract would be brought back to the Council on November 28. Mayor Pro Tem Lambert recommended a special warranty deed rather than a general warranty deed.

Council Items for Discussion/Action on Future Agendas

Council Member Stahel requested an update regarding raising the dollar amount per capita for charitable organizations and contacting other cities and the county to determine their interest in the project. Mayor Evans requested an item be placed on the November 28 Council meeting to advise the Council of her discussions on this topic.

Consent and Regular Agendas

Mayor Pro Tem Lambert advised that he would be stepping down on Regular Agenda Item "3," Zoning Case 2005-36 –to rezone 56.5± acres east of Ohio Drive, and west of the future extension of Rasor Parkway due to a possible conflict of interest. Mayor Evans advised Mayor Pro Tem Lambert that DART has been made aware of Consent Agenda Item "S," to support the corridors and continued evaluation of financing alternatives to fund a regional rail authority.

Council Member Stahel advised that he would be stepping down on Consent Agenda Items "D," to authorize the purchase of maintenance and support of HP printers and servers and "J," to approve a contract modification to contract C100-02 Telecommunications Equipment due to possible conflicts of interest. He further requested Consent Agenda Items "K," to approve an agreement between the City of Plano and The Shops at Legacy, L.P. whereby the City will provide funding in part for the 4th Annual Holiday Festival of Tree Lights at The Shops of Legacy and "R," a resolution to approve a funding agreement among the cities of Allen, Frisco and Plano for additional funding in the amount of $705,698 each for design services for a proposed project pertaining to the Arts of Collin County Commission, Inc. be pulled for individual consideration.

Deputy Mayor Pro Tem Johnson requested clarification on the lease terms of Consent Agenda Item "P," a resolution to approve the terms and conditions of a lease agreement by and between the City of Plano and Plano Sports Authority, Inc. (PSA) for the use of a portion of Enfield Park.

Parks Services Manager Fox advised that a stipulation calling for the City to pay for improvements if the lease ended would exclude a case of default on the part of PSA. He further stated that the agreement was based on the agreement for the original facility done in 1998 and spoke to the value of the facility to City residents. City Attorney Wetherbee spoke to the City's vested interest in the improvements and stated that if additional ones are needed, PSA would need permission. Mr. Johnson stated concern with inclusion of this stipulation.

Plano Sports Authority Executive Director Mary Margaret Taylor spoke to the original charter written in 1970 stating that if the PSA were to dissolve, its assets would be deeded to the City, PSA not being able to make improvements without direction from the Parks and Recreation Department and improvements enhancing the field/building. She spoke to the possible inclusion of programs from the United States Tae Kwon Do Federation and the international impact this would have on the community.

Plano Sports Authority President Jeff Trentham spoke regarding the history of agreements between the City and the PSA and advised that he would not have a problem removing this stipulation. City Attorney Wetherbee advised that Staff would consult with representatives of the PSA during the meeting and that the item would be removed for individual consideration later in the meeting.

Council Reports

Council Member Stahel advised regarding a Veteran's Day ceremony conducted at the Plano Senior Center.

Council Member Magnuson advised that she and Deputy Mayor Pro Tem Johnson attended the Environmental Services Annual Dinner and spoke to the exceptional job done by employees.

Deputy Mayor Pro Tem Johnson advised that he and Council Member Magnuson attended an Arbor Day Celebration at Pecan Hollow Golf Course.

Mayor Evans advised regarding a Veteran's Day ceremony held at the Veteran's of Foreign Wars.

BOARD/COMMISSION REPORTS

Retirement Security Plan Committee

Budget and Research Director and board member Rhodes spoke regarding establishment of the committee in 1983 when the City opted out of Social Security. She advised regarding the committee's membership and stated that benefits are paid for by the trust fund. Ms. Rhodes advised regarding the funds' assets, contribution rate and asset allocation and stated that calculations have been reviewed by an actuary for accuracy.

CONSENT AGENDA

Council Member Stahel and citizen Sonja Hammar requested individual consideration of Consent Agenda Item "K." Council Member Stahel and citizen Jack Lagos requested individual consideration of Consent Agenda Item "R."

Council Member Stahel advised that he would be stepping down on Consent Agenda Items "D" and "J" due to possible conflicts of interest.

Staff requested Consent Agenda Item "P" be removed for individual consideration.

Mayor Pro Tem Lambert advised that he would be stepping down on Regular Agenda Item "3" due to a possible conflict of interest.

City Attorney Wetherbee advised that Consent Agenda Item "Q" has several amendments of a non-substantive nature, but would not be removed from the Consent Agenda.

Upon a motion made by Council Member Stahel and seconded by Deputy Mayor Pro Tem Johnson, the Council voted 7-0 to approve and adopt all remaining items on the Consent Agenda as recommended and as follows (Council Member Ellerbe was away from the bench):

Approval of Minutes [Consent Agenda Item (A)]

October 24, 2005

Approval of Expenditures

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

Bid No. 2005-270-B for the Preston Ridge Trail Extension at Carpenter Park to Jim Bowman Construction Company, L.P. in the amount of $222,440. [Consent Agenda Item (B)] (See Exhibit "A")

CSP No. 2005-228-C for Wireless Voice and Data Services to Cingular Wireless in the estimated annual amount of $450,000. [Consent Agenda Item (C)] (See Exhibit "B")

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

To authorize the purchase of sports field lighting equipment for Phase II Lighting Improvements at Schell Park, fields 1 and 2, including installation, poles, wiring, switch gear, and controls in the amount of $141,100 from Techline Sports Lighting, L.P., through the Texas Association of School Board Purchasing Cooperative Program, Contract #204-04, and authorizing the City Manager to execute any and all documents necessary to effectuate this purchase. [Consent Agenda Item (E)]

To authorize the purchase of fiber and copper connectivity for City of Plano offices in the Cox Building in the estimated amount of $25,873 from Henkels & McCoy, Inc., through a City of Plano contract, and authorizing the City Manager to execute all necessary documents. (Contract #C114-04). [Consent Agenda Item (F)]

To authorize the purchase of two (2) Dodge Charger Police Vehicles in the amount of $52,360 from Columbus Country Dodge, through Texas Association of School Board Purchasing Buyboard Contract and authorizing the City Manager to execute all necessary documents (208-04). [Consent Agenda Item (G)]

To authorize the purchase of eleven (11) Chevy Impala (9C3) Unmarked Police Sedans in the amount of $190,058 from Caldwell Country Chevrolet, through Tarrant County Joint Venture Cooperative Purchase Program and authorizing the City Manager to execute all necessary documents. (2005-001) [Consent Agenda Item (H)]

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

To approve the terms and conditions of an engineering services contract by and between the City of Plano and Dannenbaum Engineering Company – Dallas, L.L.C. in the amount of $189,816 for design of Communications Parkway – Spring Creek Parkway to Tennyson Parkway and authorizing the City Manager to execute all necessary documents. [Consent Agenda Item (I)]

Adoption of Resolutions

Resolution No. 2005-11-1(R): To authorize the purchase of a service agreement from 3M Library Systems, suppliers of maintenance for 3M equipment in the amount of $41,449 for the Plano Public Library System; authorizing the City Manager to take such action and execute such documents as necessary to effectuate the purchase approved herein; and providing an effective date. [Consent Agenda Item (L)]

Resolution No. 2005-11-2(R): To approve the terms and conditions of a Communications Facilities License Agreement by and between the City of Plano, Texas and Dallas MTA L.P., d/b/a/ Verizon Wireless, a Texas Limited Partnership, to locate, place, attach, install, operate, and maintain a communications system on certain specific portions of the Tennyson Water Tower in the City of Plano; authorizing its execution by the City Manager; and providing an effective date. [Consent Agenda Item (M)]

Resolution No. 2005-11-3(R): To order Atmos Energy, Mid-Tex Division to show cause regarding the reasonableness of its existing natural gas distribution rates within the City; requiring Atmos Energy, Mid-Tex Division to submit a rate package based on a rate year ending June 30, 2005; directing that such filing shall be made by December 31, 2005; requiring reimbursement of reasonable legal and consultant expenses; requiring delivery of this resolution to the company and legal counsel; and providing an effective date. [Consent Agenda Item (N)]

Resolution No. 2005-11-4(R): To approve the terms and conditions of a Public Right-of-Way Use Agreement by and between the City of Plano, Texas and Tollway-121 Partners, Ltd, a Texas Limited Partnership, to locate, place, attach, install, operate, and maintain a communications system in certain specific portions of the public rights-of-way in the City of Plano; authorizing its execution by the City Manager; and providing an effective date. [Consent Agenda Item (O)]

Resolution No. 2005-11-5(R): To approve the assignment of the cable franchise agreement from Comcast Cable of Plano, Inc. to C-Native Exchange III, L.P.; providing for the transfer of control over C-Native Exchange III, L.P. from Comcast Cable of Plano, Inc. to Time Warner Cable Inc.; providing for amendment to the cable franchise agreement; providing a severability clause; and providing an effective date. [Consent Agenda Item (Q)] (Amendments were made of a non-substantive nature.)

Resolution No. 2005-11-6(R): To support the corridors and continued evaluation of financing alternatives to fund a regional rail authority; authorizing its support by the Mayor, and providing an effective date. [Consent Agenda Item (S)]

Resolution No. 2005-11-7(R): To approve the dedication of a 0.360 acre tract of land and a 1.126 acre tract of land, each owned by the City of Plano, Texas, for dedication as public right of way for Chaparral Road, said parcels situated in the Jeremiah Muncy Survey, Abstract No. 621, in the City of Plano, Collin County, Texas and providing an effective date. (This item will provide additional right of way for Chaparral Road from State Highway 5 (K Avenue) to Emerald Coast Drive.) [Consent Agenda Item (T)]

Resolution No. 2005-11-8(R): To approve the terms and conditions of an interlocal cooperation agreement between the City of Plano, Texas, the City of McKinney, Texas, and the County of Collin, Texas for the disbursement of the 2005 Byrne Justice Assistance Grant Funds; authorizing its execution by the City Manager; and providing an effective date. [Consent Agenda Item (U)]

Adoption of Ordinances

Ordinance No. 2005-11-9: To deny the request of Atmos Energy Corp., Mid-Tex Division, for an annual gas reliability infrastructure program (GRIP) rate increase in this municipality, as a part of the company's statewide gas utility distribution system; approving cooperation with other cities within the Atmos Energy Corp., Mid-Tex Division distribution system as part of the Atmos Cities Steering Committee (ACSC); authorizing ACSC to hire legal and consulting services and to negotiate with the company and direct any necessary litigation; authorizing intervention as part of ACSC in any appeal of the City's action to the Railroad Commission; providing a requirement for a prompt reimbursement of costs incurred by the City; finding that the meeting at which this ordinance is passed is open to the public as required by law; providing for notice of this ordinance to Atmos Energy Corp., Mid-Tex Division; and providing an effective date. [Consent Agenda Item (V)]

Ordinance No. 2005-11-10: To vacate Ordinance No. 2005-10-43 and adopting this ordinance to correct a clerical error; amending the Comprehensive Zoning Ordinance of the City, Ordinance No. 2004-9-37, as heretofore amended, so as to rezone 7.0± acres located at the southwest corner of 18th Street and G Avenue in the City of Plano, Collin County, Texas, from Corridor Commercial with Heritage Resource Designation No. 20 to Planned Development-179-Downtown Business/Government with Heritage Resource Designation No. 20; directing a change accordingly in the official zoning map of the City; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date. Zoning Case 2005-31 [Consent Agenda Item (W)]

Ordinance No. 2005-11-11: To amend Chapter 12, Motor Vehicles and Traffic, Article IV, Speed, Section 12-74(b), Maximum Limits on Specific Streets, of the City of Plano Code of Ordinances to establish the prima facie speed limit for motor vehicles operating along the portion of Parkwood Boulevard between Spring Creek Parkway and State Highway 121 within the corporate limits of the City of Plano; authorizing and directing the Traffic Engineer to cause placement of traffic control devices indicating the speed limit; providing a fine for criminal penalties not to exceed $200 for each offense; and providing a repealer clause, a severability clause, a savings clause, a penalty clause and an effective date. [Consent Agenda Item (X)]

Approval of Agreement

To approve an Administrative Services Agreement with ICMA Retirement Corporation ("ICMA-RC") in the amount of $36,000 for the initial year and $24,000 for the remaining term of the agreement. This agreement covers ICMA-RC's management services of the City's OBRA Plan for retirement accounts of Part-Time, Seasonal and Temporary Employees. The term of this Agreement shall be for a period of five (5) years with the option to renew by five (5) additional one-year terms by the City. [Consent Agenda Item (Y)]

END OF CONSENT

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

Purchase from ExistingContract/Agreement: To authorize the purchase of maintenance and support of HP printers and servers in the amount of $56,440 from Hewlett-Packard Company through a Department of Information Resources (DIR) contract, and authorizing the City Manager to execute all necessary documents. (DIR-BUSOP-178) [Consent Agenda Item (D)]

Upon a motion made by Council Member Callison and seconded by Deputy Mayor Pro Tem Johnson, the Council voted 7-0 to authorize the purchase of maintenance and support of HP printers and servers in the amount of $56,440 from Hewlett-Packard Company through a Department of Information Resources (DIR) contract.

Miscellaneous Purchase Authorization: To approve a contract modification to contract C100-02 Telecommunications Equipment authorizing expenditure for two years maintenance and support in the amount of $104,728 for the VESTA, MAGIC and ORION systems utilized by PSC. [Consent Agenda Item (J)]

Upon a motion made by Council Member LaRosiliere and seconded by Council Member Magnuson, the Council voted 7-0 to approve a contract modification to contract C100-02 Telecommunications Equipment authorizing expenditure for two years maintenance and support in the amount of $104,728 for the VESTA, MAGIC and ORION systems utilized by PSC.

Council Member Stahel resumed his place on the bench.

Miscellaneous Purchase Authorization: To approve an agreement between the City of Plano and The Shops at Legacy, L.P. whereby the City will provide funding in part for the 4th Annual Holiday Festival of Tree Lights at The Shops of Legacy in the amount of $39,000. [Consent Agenda Item (K)]

Sonja Hammar, citizen of the City, spoke to charter provisions prohibiting the spending of public dollars on private property. City Attorney Wetherbee spoke to City funds not being used to fund private subdivisions and this provision being related to development. Ms. Hammar spoke to the contract not being with the property owner and Ms. Wetherbee spoke to providing funding for the lights on property managed by The Shops at Legacy.

Pam Hatcher, citizen of the City, spoke in opposition and to The Shops at Legacy being a private, for profit real-estate development rather than an urban center.

Council Member Magnuson spoke to review of event requests from both the Legacy and Downtown towncenters during Council budget sessions. Mayor Evans advised Council Member Stahel that urban town centers do not have the non-profit status requirement and that they went through the proper channels for approval.

Upon a motion made by Council Member Magnuson and seconded by Council Member LaRosiliere, the Council voted 8-0 to approve an agreement between the City of Plano and The Shops at Legacy, L.P. whereby the City will provide funding in part for the 4th Annual Holiday Festival of Tree Lights at The Shops of Legacy in the amount of $39,000.

Resolution No. 2005-11-12(R): To approve the terms and conditions of a lease agreement by and between the City of Plano and Plano Sports Authority, Inc., a duly authorized Texas nonprofit corporation and the City of Plano, Texas for the use of a portion of Enfield Park for the construction of a multi-use indoor sports facility; authorizing its execution by the City Manager; and providing an effective date. [Consent Agenda Item (P)]

City Attorney Wetherbee advised that Section 6.04 "Amortization of Improvements" may be removed from the lease. Plano Sports Authority Executive Director Mary Margaret Taylor advised the Council that the cost of the new facility would be $15 million.

Upon a motion made by Deputy Mayor Pro Tem Johnson and seconded by Council Member Ellerbe, the Council voted 8-0 to approve the terms and conditions of a lease agreement by and between the City of Plano and Plano Sports Authority, Inc., a duly authorized Texas nonprofit corporation and the City of Plano, Texas for the use of a portion of Enfield Park for the construction of a multi-use indoor sports facility with the deletion of Section 6.04 "Amortization of Improvements"; authorizing its execution by the City Manager; and providing an effective date; and further to adopt Resolution No. 2005-11-12(R) as amended.

Resolution No. 2005-11-13(R): To approve a funding agreement among the cities of Allen, Frisco and Plano for additional funding in the amount of $705,698 each for design services for a proposed project pertaining to the Arts of Collin County Commission, Inc., authorizing the City Manager to execute the agreement; and providing an effective date. [Consent Agenda Item (R)]

Jack Lagos, citizen of the City, spoke to the lack of an approved project and questioned inclusion of the city of Fairview as a member if this is the case. He requested the Council review the requirements for member cities.

City Attorney Wetherbee advised that the city of Fairview has agreed to pay a portion of operation/maintenance costs and stated that no further action is required of the Council with regard to their membership. She reviewed the revisions made which include clarifying the forwarding of an invoice copy for services and/or goods to the cities of Plano and Frisco and further clarified that all records are available for inspection as they represent public records.

Upon a motion made by Deputy Mayor Pro Tem Johnson and seconded by Council Member Ellerbe, the Council voted 8-0 to approve a funding agreement among the cities of Allen, Frisco and Plano for additional funding in the amount of $705,698 each for design services for a proposed project pertaining to the Arts of Collin County Commission, Inc., authorizing the City Manager to execute the agreement; and providing an effective date; and further to adopt Resolution No. 2005-11-13(R).

Council discussion and direction on the regulation of temporary signs, including garage sale signs, and whether temporary sign regulations should remain in the Zoning Ordinance or the General Code of Ordinances; Council action to call a Public Hearing for the Planning and Zoning Commission to repeal the temporary sign regulations from the Zoning Ordinance and to correct the fine discrepancy in Section 3.1604(8)(b)(i). [Regular Agenda Item (1)]

City Attorney Wetherbee advised that currently all temporary sign regulations are included in the Zoning Ordinance which carries a $2,000 maximum fine and spoke to the citizen initiative in 1990 that precludes the placement of temporary directional signs within public rights-of-ways, medians and thoroughfares. She spoke to difficulties in providing education regarding the definition of a public right-of-way, increased enforcement and the possibility that signs could be placed in the Code of Ordinances thereby reducing the maximum fine to $500. Ms. Wetherbee further advised that placing regulations in the Code of Ordinances would allow for a change an election called by either a citizen initiative or Council action, where the Zoning Ordinance would not.

Richard Simmons, citizen of the City, spoke to the negative nature of signs scattered throughout the City, upholding the wishes of the citizens in 1990 and requested continuity of an enforceable regulation.

Dianna Haun, Chair of the Estates of Russell Creek Homeowners Garage Sale Committee spoke to charities benefiting from sales, the excess level of fines, alternate methods of enforcement and fine assessment and possibly requiring more information on signs.

Mayor Evans spoke to the current regulations passed by the election in 1990 which prohibit signs in the public right-of-way and the possibility of moving these to the Code of Ordinances where fines can be lowered. City Attorney Wetherbee spoke to the court's policy regarding fines. Chief Building Official Mata responded to the Council regarding the number of signs picked up during the year.

Council Member Ellerbe spoke regarding the effect of the visibility triangle on placement of signs. Council Member Stahel spoke to the information provided on the City's web site with regard to placement of signs and possible inclusion of the visibility triangle. Director of Planning Jarrell reviewed the two types of visibility clips and Mr. Selso spoke to inspectors having some discretion with regard to the collection of signs.

Upon a motion made by Mayor Pro Tem Lambert and seconded by Deputy Mayor Pro Tem Johnson, the Council voted 8-0 to direct Staff to call a Public Hearing for the Planning and Zoning Commission to repeal the temporary sign regulations from the Zoning Ordinance and to correct the fine discrepancy in Section 3.1604(8)(b)(i).

Ordinance No. 2005-11-14 to amend Chapter 6, Buildings and Building Regulations of the City of Plano Code of Ordinances, by adding Article XII, Temporary Signs, providing temporary signs regulations and definitions; providing a penalty clause; a severability clause; a repealing clause; a publication clause; and an effective date. [Regular Agenda Item (2)]

Ordinance No. 2005-11-14 (cont'd)

Upon a motion made by Mayor Pro Tem Lambert and seconded by Council Member Magnuson, the Council voted 8-0 to amend Chapter 6, Buildings and Building Regulations of the City of Plano Code of Ordinances, by adding Article XII, Temporary Signs, providing temporary signs regulations and definitions; providing a penalty clause; a severability clause; a repealing clause; a publication clause; and an effective date; and further to adopt Ordinance No. 2005-11-14.

Due to a possible conflict of interest, Mayor Pro Tem Lambert stepped down from the bench on the following item.

Public Hearing and adoption of Ordinance No. 2005-11-15 as requested in Zoning Case 2005-36 – To amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2004-9-37, as heretofore amended, so as to rezone 56.5± acres (Tract I - 17.3± acres and Tract II – 39.2± acres) located on the north side of McDermott Road, 270± feet east of Ohio Drive, and west of the future extension of Rasor Parkway in the City of Plano, Collin County, Texas, from Regional Commercial and Neighborhood Office to Planned Development-177-Single-Family Residence Attached (Tract I - 17.3± acres) and Planned Development-178-Single-Family Residence-6 (Tract II – 39.20± acres); directing a change accordingly in the official zoning map of the City; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date. Applicant: Cay Trust No. 2 and Preston/121 J.V. Tabled 10-24-05 [Regular Agenda Item (3)]

Upon a motion made by Council Member Ellerbe and seconded by Council Member LaRosiliere, the Council voted 7-0 to remove the item from the table.

Director of Planning Jarrell advised the Council that policy statements outline where changes in zoning from commercial to residential districts may be appropriate and stated that the request is in compliance concerning the consideration of alternative uses for excess retail land and distances from major corridors. She further advised that the Planning and Zoning Commission recommended approval subject to:

The western 17.3± acre area of the request is recommended as PD-SF-A subject to:

1. The minimum lot area shall be 2,000 square feet.

2. The minimum lot width shall be 24 feet.

3. The minimum lot depth shall be 85 feet.

4. The minimum front yard setback shall be ten feet.

5. The maximum lot coverage shall be 90% total for the primary dwelling plus accessory structures.

Ordinance No. 2005-11-15 (cont'd)

6. The minimum rear yard setback shall be zero feet. No off-street parking spaces exclusive of a garage or carport shall be required.

7. Required usable open space may be provided within the PD-SF-6 portion of the request.

The eastern 39.2± acre area of the request is recommended as PD-SF-6 subject to:

1. The minimum front yard setback shall be 20 feet.

2. The minimum side yard setback shall be six feet.

3. The maximum lot coverage shall be 50% total for the primary dwelling plus accessory structures.

Ms. Jarrell advised the Council that those Planning and Zoning Commission members voting in opposition felt that the townhouse development was fairly dense for this area and she spoke to the proposal generating much less traffic than Retail which is allowed by present zoning.

Mayor Evans opened the Public Hearing. Kirk Williams, representing the applicant, spoke regarding the proposed development. No one else spoke either for or against the request. The Public Hearing was closed.

Upon a motion made by Council Member Magnuson and seconded by Council Member Callison, the Council voted 7-0 to amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2004-9-37, as heretofore amended, so as to rezone 56.5± acres (Tract I - 17.3± acres and Tract II – 39.2± acres) located on the north side of McDermott Road, 270± feet east of Ohio Drive, and west of the future extension of Rasor Parkway in the City of Plano, Collin County, Texas, from Regional Commercial and Neighborhood Office to Planned Development-177-Single-Family Residence Attached (Tract I - 17.3± acres) and Planned Development-178-Single-Family Residence-6 (Tract II – 39.20± acres) as requested in Zoning Case 2005-36 and as recommended by the Planning and Zoning Commission; directing a change accordingly in the official zoning map of the City; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date; and further to adopt Ordinance No. 2005-11-15.

Mayor Pro Tem Lambert resumed his place at the bench.

Resolution No. 2005-11-16(R) to cast its ballot for the election of members to the Collin County Central Appraisal District Board of Directors under the provision of the Property Tax Code; authorizing the Mayor to execute the ballot for and on behalf of the City of Plano; and providing an effective date. [Regular Agenda Item (4)]

Upon a motion made by Mayor Pro Tem Lambert and seconded by Council Member Ellerbe, the Council voted 8-0 to cast all City of Plano votes for the election of Roy Wilshsire to the Collin County Central Appraisal District Board of Directors under the provision of the Property Tax Code; authorizing the Mayor to execute the ballot for and on behalf of the City of Plano; and providing an effective date; and further to adopt Resolution No. 2005-11-16(R).

There being no further discussion, Mayor Evans adjourned the meeting at 9:33 p.m.

Pat Evans, MAYOR

ATTEST:

Elaine Bealke, City Secretary

PLANO CITY COUNCIL
PLANNING AND ZONING COMMISSION
RETREAT
November 16, 2005

COUNCIL MEMBERS
Pat Evans, Mayor
Ken Lambert, Mayor Pro tem
Scott Johnson, Deputy Mayor Pro tem
Shep Stahel
Loretta Ellerbe
Sally Magnuson
Harry LaRosiliere
Jean Callison

COMMISSION MEMBERS
Carolyn Kalchthaler, Chair
Dennis Abraham
Maggie Armstrong
Joyce Beach
Lisette Briley
James Duggan
Joy Flick
Jim Norton

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

Mayor Evans called the meeting to order on Wednesday, November 16, 2005 at 12:40 p.m. at the Oak Point Center, 6000 Jupiter Road in the Multi-Purpose A/B Room. All Council Members were present with the exception of Council Member Magnuson. All Planning and Zoning Commissioners were present with the exception of Dennis Abraham. Mayor Evans advised that former Planning and Zoning Commission members Laura Williamson and Lee Dunlap were also in attendance.

Planning Director Jarrell advised the members that the purpose of the retreat is to exchange ideas as outlined in the agenda.

Group Project – Looking into the Crystal Ball – Past Future Forecasts

Director of Planning Jarrell led the group in a discussion of the projections made in 1991 by the Vision 2015 Committee and provided an update regarding their status.

Presentation and Discussion on Retail Trends and Retail Revitalization

Herbert D. Weitzman, Chairman and CEO of the Weitzman Group and Cencor Realty Services advised the group that the Dallas/Fort Worth retail market has a total inventory of 153 million square feet with 14 million being vacant and spoke to recent closing of grocers and department stores. He stated that Wal-Mart now ranks as the number one grocer in the D/FW area and spoke regarding its effect on other stores.

Mr. Weitzman spoke to the D/FW area having one of the most active restaurant markets in the country, restaurants bringing traffic to shopping centers several times per day and encouraged the City to bring in good ones. He spoke regarding the D/FW area adding 47 million square feet of retail space in the last fifteen years and the problems of speculation projects similar to those in the 1980's. Mr. Weitzman spoke to the importance of redevelopment and spoke to several recent projects in the area including an upgrade of the Collin Creek Mall's food court. He advised that while the national average of retail space per capita is 18 square feet, Plano's average is 58 square feet and he spoke regarding the issues of keeping it all healthy and providing services to an area larger than the City. Mr. Weitzman stated that Collin Creek Mall occupancy averages 95% while Willow Bend Mall is 89% and spoke regarding Plano shopping center categories and the emergence of the "big box" as the latest trend. He spoke to looking for signs of low vacancy, bringing in quality merchants for redevelopment, the effect of redevelopment on the area as a whole and other area cities who have offered assistance to developers of such projects.

Mr. Weitzman responded to the group's questions regarding the movement of activity to other cities, advising them to take a proactive approach to heading off vacancies by stabilizing with good retail developments, utilizing the town center concept, encouraging retail centers to improve landscaping and lighting, bringing in more restaurants and developing gathering areas. He stated that there could be concern regarding the viability of Collin Creek Mall should a retail development occur at S.H. 121 and U.S. 75 and spoke to the City initiating discussions with Collin Creek Mall. Mr. Weitzman spoke to the creation of restaurants in the Dallas Arts District as space becomes empty and spoke to offering incentives to encourage business to locate in Plano. He spoke to the problems encountered by area grocery chains and encouraged the City to work with all owners to coordinate a design plan in retail centers when there is more than one. Mr. Weitzman spoke to the City defining the personality of the downtown area, providing the catalyst to get the parties together and sponsorship which may include events. He spoke to the negative effect of crime and advised that if they feel secure and safe, people will be more inclined to patronize an area.

The group took a brief recess at 2:08 p.m. and reconvened at 2:13 p.m.

Presentation and Discussion on Integrated Storm Water Management (iSWM) and the Creation of Incentives to Promote Storm Water Best Management Practices

City Engineer Upchurch spoke to the effect of storm water management and advised regarding the creation of a new program to address issues. John Promise, P.E., Director of Environment and Development Department of the North Central Texas Council of Governments spoke regarding issues including the disappearance of water features and habitat, erosion and degradation of natural streams, flooding in new and old developed areas and storm water runoff quality being regulated by state permits. He spoke to increased paving and building impacting streams and the development of an integrated storm water management program to address the issues.

Mr. Promise advised that the program would provide integrated quality and quantity management, be integrated throughout all phases of development, be integrated with regulatory requirements and be integrated into everyday drainage design and that it will come before the Council for consideration in several months. He spoke to the basic approach of minimizing imperviousness in new developments through better site designs, the use of best management practices to mitigate impacts, avoiding end-of-pipe federal storm water discharge limits and implementing the program throughout the entire region and advised that cities, developers and regulators need to be flexible.

Alan Greer, P.E., Principal and Regional Manager of Freese and Nichols, Inc. advised that an integrated storm water management system (iSWM) would provide water quality protection, streambank protection and flood control. He spoke regarding implementation of the iSWM site plan process and how it would be used as part of an integrated design approach. Mr. Greer spoke to existing community policies being reviewed for compatibility with the integrated site design principles, the promotion of such designing and low impact development through the use of credits. He spoke to iSWM tools including the integrated site design practices, credits for integrated site designs and water quality reduction, integrated planning and design processes, storm water controls and updated hydrologic and hydraulic technical design data.

Mr. Promise spoke to regional review of the final draft design manual; anticipated endorsement by the North Central Texas Council of Governments; presentation to area Councils, zoning commissions and staffs; encouraging cities to "test drive" the manual before formal consideration; development of ordinance language; and negotiations with the Texas Commission on Environmental Quality on storm water permits. He spoke to iSWM easing the development process through heightened predictability of storm water management requirements, maintaining primary responsibility with the developer for compliance, improving drainage designs and site plans, assuring equity among cities and reducing stream degradation.

Mayor Pro Tem Lambert spoke to implementation when dealing with large corporate builders. Mr. Promise spoke to the importance of involvement by Councils and zoning commissions and to the program being aimed at changing the footprints of lots to be sure that new development does not add new problems. Mr. Upchurch spoke to Staff work with regard to storm water issues and the goals of conducting pre-development conferences with developers to discuss storm water quality protective measures, reviewing site designs for opportunities to achieve storm water quality goals and encouraging the installation of grassy swales or buffer strips by the use of incentives or other means. He advised the group that creek banks and currently affected areas will be integrated into the process. Mr. Promise spoke to the involvement of area cities, using a cooperative approach and the responsibilities of cities to administer programs. Executive Director Hogan spoke to the need for new infrastructure and Mr. Upchurch advised that developers and homeowners associations will be asked to provide maintenance when needed.

The group took a brief recess at 3:08 p.m. and reconvened at 3:25 p.m.

Discussion on Downtown Plano's Potential as a Retail, Entertainment and Restaurant Center

Director of Planning Jarrell spoke regarding the downtown area's emergence with the addition of DART, restaurants, apartments and theaters. She spoke regarding observations by a consultant advising that a decision needs to be made regarding what Downtown should be, that the City has provided infrastructure improvements, and that merchants/property owners need to come together with marketing rather than being fragmented. She spoke to plans to appoint a Downtown Taskforce and providing them with a charge.

The group discussed concerns regarding the vacancy rate, the City inviting businesses in, providing cohesive direction, providing gathering places such as café-oriented restaurants and trendy and interesting locales. They spoke to the need for a mix of chain and independent retailers, the placement of businesses along the DART rail line, and the need for parking close to restaurants. Ms. Jarrell spoke to the riders on DART not providing enough customers to drive business and Long Range Planning Manager Zimmerman spoke to planned placement of a directional kiosk on the DART platform. Executive Director Turner spoke to two or three new restaurants planned for the area and their sensitivity to vehicular traffic. The group spoke to the effect of demographics on the area, the need to create a "destination," and the advantages of valet parking. Ms. Jarrell spoke to providing services for residents of the area and DART sparking additional development. Mr. Turner spoke regarding patronage at restaurants by area employees and stated that evening diners are primarily from a five to six mile radius.

Planning and Zoning Commission Member Flick spoke to giving personality to the downtown area, the imperative nature of a parking structure and including uses that will attract people on a regular basis. She spoke to creating a public/private partnership with the City controlling real estate. Ms. Flick spoke to the need for service uses, grocery stores, entertainment, "white linen" restaurants, and night-time traffic. Council Member LaRosiliere spoke to the Council providing clear direction to the task force, creating a destination area, providing parking so that patrons may walk to their final destination, the need for businesses that fit demographics, the City having ownership of 15th Street and putting dollars behind the ideas. Mayor Pro Tem Lambert spoke to restrictions on the City acquiring property for economic development purposes.

Council Member Stahel spoke to bringing a personality to the area with entertainment, restaurants, small commercial shopping and possibility using existing theater venues for movies. He spoke to servicing those living in the area and giving others a reason to come and stated that if a personality is developed, retailers will follow suit. Mayor Evans spoke to movie theaters providing regular customers to restaurants/retailers and the possibility of an "anchor" store. Council Member Callison spoke to providing a mixture of uses, and the need to address parking and stated that with regard to name-brand stores, citizens may be more inclined to shop where they live. She spoke to shops that are unique in nature and not found in neighborhoods.

Mayor Evans spoke to the City not purchasing property in the downtown area, to the creation of the taskforce and the goal of the City to make the area more independent. She spoke to the committee consisting of those with a stake in the area and to helping them become organized. Mayor Evans spoke to enabling the downtown area to be successful, identify what they can do and what the current problems are. She spoke to the merchants creating a marketing strategy and advised that the committee will begin meeting in January.

Presentation and Discussion on the City's Role in the Creation, Support and Funding of Cultural Facilities

Senior Planner Sims spoke to considering the role of the City in providing and supporting cultural facilities, identifying facilities in the area and providing direction for the Comprehensive Plan update. He spoke regarding the population growth in the region, changes in demographics and consideration of regional, sub-regional and local facilities. Mr. Sims spoke to Staff research of national trends, facilities offered in the Dallas area including historic museums and structures, art museums, festivals, orchestras/symphonies and theaters. He reviewed Plano's current cultural facilities and spoke regarding the role the City could take as either the initiator or the facilitator.

The group provided input as to the types of facilities that could be considered including museums (art, science, sci-tech and roaming exhibits), a performing arts center (providing ballet, dance and sculpture), botanical garden, equestrian facility and a Plano history museum. They spoke regarding citizens who subscribe to the opera or ballet, developing a regional approach and utilizing the performing arts center to provide facilities for many interests. Executive Director Turner spoke to the City typically taking the role of facilitator with projects initiated by the private sector. The group spoke of the City having both roles in various situations and advised there is currently no interest in providing support to Dallas cultural amenities. They spoke regarding corporate sponsorships received by Dallas facilities and support provided on an individual basis.

Director of Planning Jarrell advised that Staff is updating this portion of the Comprehensive Plan and will develop a policy for response to interested parties as a framework for decision-making.

Nothing further was discussed. Mayor Evans adjourned the meeting at 4:56 p.m.

_____
Pat Evans, **MAYOR**

_____
Elaine Bealke, CITY SECRETARY

CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☒ Yes	☐ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☒ Yes	☐ Not Applicable
Council Meeting Date:	11/28/05	Reviewed by Legal	☐ Yes	☒ Not Applicable
Department:	Purchasing		Initials	Date
Department Head	Mike Ryan	Executive Director		11-18-05
Dept Signature:		City Manager		
Agenda Coordinator (include phone #):	**Donna Holden, extension 7248**			

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

CAPTION

Award/Rejection of Bid/Proposal for Bid No. 2006-18-C Repair Clamps and Couplings to Municipal Water Works for bid line items 1, 2 and 20 for a value of $28,779.50, and Ferguson Water Works for bid line items 3 through 19 and 21 through 32 for a value of $17,568.60 in the estimated annual amount of $46,348.10.

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☒ OPERATING EXPENSE ☐ REVENUE ☐ CIP

FISCAL YEAR: 2005-06	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	**0**
Encumbered/Expended Amount	0	0	0	**0**
This Item	0	0	0	**0**
BALANCE	0	0	0	**0**

FUND(S): MUNICIPAL WAREHOUSE FUND

COMMENTS: This item approves price quotes and establishes a one-year contract with two optional one-year renewals. Expenditures will be made in the Municipal Warehouse within the approved annual budget appropriations. The estimated annual amount is $46,348 for the purchase of repair clamps and couplings.

STRATEGIC PLAN GOAL: The purchase of repair clamps and couplings relates to the City's Goal of "Service Excellence".

SUMMARY OF ITEM

ANNUAL CONTRACT WITH RENEWALS

Staff recommends bid of Municipal Water Works for bid line items 1, 2 and 20 ($28,779.50), and Ferguson Water Works for bid line items 3 through 19 and 21 through 32 ($17,568.60) be accepted as lowest responsive, responsible bid conditioned upon timely execution of any necessary contract documents. Award recommendation is based on the vendors providing the lowest responsive, responsible bid price. This will establish a one year contract with two optional one-year renewals for Purchase of Repair Claims and Couplings. The estimated annual expenditure for repair clamps and couplings is $46,348.10.

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

CITY OF PLANO

BID NO. 2006-18-C
REPAIR CLAMPS & COUPLINGS

BID RECAP

Bid opening Date/Time: November 9, 2005 @ 3:30pm

Number of Vendors Notified: 247

Vendors Submitting "NO BIDS": 0

Vendors Non-Responsive to Specification: None

Responsive Bidders:

	Line items 1,2, & 20	Line Items 3-19 & 21-32
Municipal Waterworks	$ 28,779.50	$ 20,672.66
Ferguson Waterworks	$ 48,450.00	$ 17,568.60
Hughes Supply	$ 41,651.60	$ 20,542.89

Donna Holden — Donna Holden, Buyer

November 16, 2005 — Date

b-2

CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☒ Yes	☐ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☒ Yes	☐ Not Applicable
Council Meeting Date:	11/28/05	Reviewed by Legal	☒ Yes	☐ Not Applicable
Department:	Purchasing		Initials	Date
Department Head	Mike Ryan	Executive Director		
Dept Signature:		City Manager		11.18.05
Agenda Coordinator (include phone #):	January Cook, Ext. 7376			

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

CAPTION

Award/Rejection of Bid/Proposal for Bid No. 2006-14-C for an annual contract for Purchase and Delivery of Bulk Fuel to Martin Eagle Oil Company Inc. in the estimated annual amount of $168,000.

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☒ OPERATING EXPENSE ☐ REVENUE ☐ CIP

FISCAL YEAR: 05/06	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	**0**
Encumbered/Expended Amount	0	0	0	**0**
This Item	0	0	0	**0**
BALANCE	0	0	0	**0**

FUND(S): **EQUIPMENT MAINTENANCE FUND**

COMMENTS: This item approves price quotes and establishes a one-year contract with four optional one-year renewals. Expenditures will be made in the Equipment Services Department within the approved annual budget appropriations. The estimated annual amount is $168,000 for Purchase and Delivery of Bulk Fuel.

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

SUMMARY OF ITEM

ANNUAL CONTRACT WITH RENEWALS

Staff recommends bid of Martin Eagle Oil Company Inc. be accepted as lowest responsive, responsible bid conditioned upon timely execution of any necessary contract documents. Award recommendation is based on the vendor providing the lowest firm and fixed mark-up from the daily Net Rack price. This will establish a one year contract with four optional one-year renewals for Purchase and Delivery of Bulk Fuel. The estimated annual expenditure for bulk fuel is $168,000.

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

CITY OF PLANO

Bid No. 2006-14-C

Purchase and Delivery of Bulk Fuel

Bid Recap

Bid opening Date/Time:	11/3/05 @ 3:00 PM
Number of Vendors Notified:	1,548
Vendors Submitting "NO BIDS":	18
Vendors Non-Responsive to Specification:	0

Responsive Bidders	Martin Eagle Oil Co. Inc.	Ricochet Fuel Distributors Inc.
1. Tanker Loads		
A. Regular Unleaded Reformulated Gasoline	+$0.0099	+$0.0621
B. #2 Premium On-Road Diesel	+$0.0099	+$0.0660
C. #2 Premium Off-Road Diesel	+$0.0099	+$0.0660
2. Tank Wagon Loads		
A. Regular Unleaded Reformulated Gasoline	+$0.0574	+$0.300
B. #2 Premium On-Road Diesel	+$0.0574	+$0.300
C. #2 Premium Off-Road Diesel	+$0.0574	+$0.300

January M. Cook

January M. Cook, CPPB
Senior Buyer
Purchasing Division

11/15/2005
Date

C-2

CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☒ Yes	☐ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☒ Yes	☐ Not Applicable
Council Meeting Date:	11/28/05	Reviewed by Legal	☐ Yes	☒ Not Applicable
Department:	Purchasing		Initials	Date
Department Head	Mike Ryan	Executive Director		
Dept Signature:	Mike Ryan	City Manager		11/9/05
Agenda Coordinator (include phone #):	**Dianna Wike Ext. 7549**			

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

CAPTION

Award/Rejection of Bid/Proposal for Bid No. 2005-269-C Environmental Waste Truck Parts to Heil of Texas, Western Refuse & Recycling Eq. Inc., and SWS in the estimated annual amount of $258,461.81.

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☒ OPERATING EXPENSE ☐ REVENUE ☐ CIP

FISCAL YEAR: 05/06, 06/07, 07/08	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	**0**
Encumbered/Expended Amount	0	0	0	**0**
This Item	0	0	0	**0**
BALANCE	0	0	0	**0**

FUND(S): WAREHOUSE

COMMENTS: .This item approved price quotes for three one year contracts with two optional renewals. Staff recommends bids from Heil of Texas, $165,861; Western Refuse & Recycling Equipment Inc., $84,904; and SWS, $7,697. The estimated annual amount is $258,462. Funding for this item is included in the 2005-06 budget.

STRATEGIC PLAN GOAL: Environmental Waste Truck Parts relates to the City's goal of "Service Excellence".

SUMMARY OF ITEM

ANNUAL CONTRACT WITH RENEWALS

Staff recommends bid of Heil of Texas in the estimated annual amount of $165,860.62 (Items 2A, 4-9, 11-13, 14-20, 21, 22-27A), Western Refuse & Recycling Eq. Inc. in the estimated annual amount of $84,904.00 (Items 1, 1A, 2, 3, 10, 13A, 20A, 21A, 28, 29) and SWS in the estimated annual amount of $7,697.19 (Items 31, 32, 34, 35) be accepted as lowest responsible bids conditioned upon timely execution of any necessary contract documents. This will establish an annual fixed price contract with two optional one-year renewals. The contract will be for the purchase of Environmental Waste Truck Parts.

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

CITY OF PLANO
BID NO. 2005-269-C
ENVIRONMENTAL WASTE TRUCK PARTS

BID RECAP

Bid opening Date/Time:	10/20/2005 @ 3:00 PM
Number of Vendors Notified:	1116
Vendors Submitting "NO BIDS":	17
Vendors Non-Responsive to Specification:	Western Refuse & Recycling Eq. Inc. Line Items: 4, 5, 6, 7, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27

Responsive Bidders	Items 2A, 4- 9, 11-13, 14-20, 21, 22-27A	Items 1, 1A, 2, 3, 10 13A, 20A, 21A, 28, 29	Item 31, 32, 34, 35
Heil of Texas	**$165,860.62**	$122,390.43	$ 8,354.06
Western Refuse & Recycling Eq. Inc.	$107,222.00*	**$ 84,904.00**	$ 1,469.50*
SWS	$0*	$ 3,391.00*	**$ 7,697.19**
		TOTAL AWARD:	**$258,461.81**

(*) Denotes vendor did not bid all items

Dianna Wike

Dianna Wike, C.P.M., Buyer

11/07/2005

Date

d.2

CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☒ Yes	☐ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☒ Yes	☐ Not Applicable
Council Meeting Date:	11/28/05	Reviewed by Legal	☐ Yes	☒ Not Applicable
Department:	Purchasing Division		Initials	Date
Department Head	Mike Ryan	Executive Director		11-17-05
Dept Signature:		City Manager		11.17.05
Agenda Coordinator (include phone #):	January Cook X7376			

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

CAPTION

Award/Rejection of Bid/Proposal for Bid No. 2006-13-B for (9) Dump Trucks from Southwest International Trucks Inc. in the amount of $197,860.

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☒ OPERATING EXPENSE ☐ REVENUE ☐ CIP

FISCAL YEAR: 05/06	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	270,000	0	**270,000**
Encumbered/Expended Amount	0	0	0	**0**
This Item	0	-197,860	0	**-197,860**
BALANCE	0	72,140	0	**72,140**

FUND(S): EQUIPMENT REPLACEMENT FUND

COMMENTS: Funds are included in the FY 2005-06 adopted budget for the replacement purchase of (2) Dump Trucks for Municipal Drainage Operations, and (2) Dump Trucks for the Streets Department. The balance of funds will be used for other equipment replacement purchases.

STRATEGIC PLAN GOAL: Equipment replacement relates to the City's goal of "Service Excellence".

SUMMARY OF ITEM

Staff recommends bid of Southwest International Trucks Inc. in the amount of $197,860 be accepted as the lowest responsive responsible bid meeting specifications for the purchase of Item 1 - Four (4) 6 to 7 yard dump trucks. These units are approved scheduled replacements for unit #30402, unit #38012, unit #38014, and unit #38015 funded by Municipal Drainage Operations (471) and Streets Department (742).

Furthermore, staff recommends rejecting all bids received for Item 2 – Five (5) 12 to 14 yard dump trucks due to a change in departmental needs. The specifications will be revised and distributed for re-bid at a later date.

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

E-1

CITY OF PLANO

Bid No. 2006-13-B

(9) Dump Trucks

Bid Recap

Bid opening Date/Time:	11/1/05 @ 3:00 PM
Number of Vendors Notified:	621
Vendors Submitting "NO BIDS":	3
Vendors Non-Responsive to Specification:	Philpott Motors (Item 1)

Responsive Bidders	**Item 1**
Southwest International Trucks Inc.	**$197,860.00**
Graff Chevrolet Company	$200,600.00
Southwest International Trucks Inc. (2)	$201,268.00
Santex Truck Center	$202,092.56
Friendly Chevrolet	$205,024.00
Baby Jack II Automotive LTD	$206,300.00
Westway Ford	$225,088.00
Dallas Freightliner	$236,748.00
Grande Truck Center	$242,776.00
Metro Ford Truck Sales, Inc.	$247,380.00
Metro Ford Truck Sales, Inc. (2)	$252,784.00

January M. Cook

January M. Cook, CPPB
Senior Buyer
Purchasing Division

11/15/2005

Date

E-2

CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☒ Yes	☐ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☒ Yes	☐ Not Applicable
Council Meeting Date:	11/28/05	Reviewed by Legal	☐ Yes	☒ Not Applicable
Department:	Purchasing Division		Initials	Date
Department Head	Mike Ryan	Executive Director		11-10-05
Dept Signature:	Mike Ryan	City Manager		11.17.05
Agenda Coordinator (include phone #):	January Cook X7376			

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

CAPTION

Award/Rejection of Bid/Proposal for Bid No. 2006-12-B for (1) Heavy Duty Skid Steer Loader with Rubber Tracks from Bobcat of McKinney in the amount of $35,246.81.

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☒ OPERATING EXPENSE ☐ REVENUE ☐ CIP

FISCAL YEAR: 05/06	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	55,000	0	**55,000**
Encumbered/Expended Amount	0	0	0	**0**
This Item	0	-35,247	0	**-35,247**
BALANCE	0	19,753	0	**19,753**

FUND(S): EQUIPMENT REPLACEMENT FUND

COMMENTS: Funds are included in the FY 2005-06 adopted budget for the replacement purchase of (1) Skid Loader for Municipal Drainage Operations. The balance of funds will be used for other equipment replacement purchases.

STRATEGIC PLAN GOAL: Equipment replacement relates to the City's goal of "Service Excellence".

SUMMARY OF ITEM

Staff recommends bid of Bobcat of McKinney in the amount of $35,246.81 be accepted as the lowest responsive responsible bid meeting specifications for the purchase of (1) Heavy Duty Skid Steer Loader with Rubber Tracks. This unit is an approved scheduled replacement of unit #01502 funded by Municipal Drainage Operations (471).

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

CITY OF PLANO

Bid No. 2006-12-B

(1) Heavy Duty Skid Steer Loader with Rubber Tracks

Bid Recap

Bid opening Date/Time:	10/31/05 @ 3:30 PM
Number of Vendors Notified:	424
Vendors Submitting "NO BIDS":	3
Vendors Non-Responsive to Specification:	AG Power Inc.

Responsive Bidders

Bobcat of McKinney	**$35,246.81**
Landmark Equipment	$41,088.00
Nations Rent	$43,901.00
Four Brothers Outdoor Power	$44,770.00
ESS Corporation	$46,819.00
Luber Brothers Inc.	$47,087.00

January M. Cook

11/14/2005

January M. Cook, CPPB
Senior Buyer
Purchasing Division

Date

f-2

CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☒ Yes	☐ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☒ Yes	☐ Not Applicable
Council Meeting Date:	11/28/05	Reviewed by Legal	☐ Yes	☒ Not Applicable
Department:	Equipment Services		Initials	Date
Department Head	Karl Henry	Jim Foster — Executive Director		11-18-05
Dept Signature:		City Manager		11.18.05
Agenda Coordinator (include phone #):	Linda M. Robinson x4180			

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

CAPTION

Purchase from Existing Contract/Agreement to authorize the purchase of twelve (12) Chevrolet ½-Ton Extended Cab Hybrid Pickups in the amount of $248,617.00 from Caldwell Country Chevrolet through the Texas Building and Procurement Commission contract and authorizing the City Manager or his designee to execute all necessary documents. (TBPC #070-A1)

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☒ OPERATING EXPENSE ☐ REVENUE ☐ CIP

FISCAL YEAR: 05/06	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	366,000	0	**366,000**
Encumbered/Expended Amount	0	0	0	**0**
This Item	0	-248,617	0	**-248,617**
BALANCE	0	**117,383**	**0**	**117,383**

FUND(S): EQUIPMENT REPLACEMENT FUND & ENVIRONMENTAL WASTE SERVICES FUND

COMMENTS: Funds are included in the FY 2005-06 approved budget for (10) replacement units and (2) new additions to the fleet. The balance of funds will be used for other rolling stock purchases.

STRATEGIC PLAN GOAL: Vehicle replacements and additions relate to the City's Goal of "Service Excellence".

SUMMARY OF ITEM

Equipment Services request the purchase of twelve Chevrolet ½-Ton Extended Cab Hybrid Pickups through the Texas Building and Procurement Commission, Contract #070-A1 awarded to Caldwell Country Chevrolet,

These units will be utilized in various City Departments and itemized as follows: **1:** (1)-New Addition Dept 763/Utility District #2, Acct 41-763-8421, Supp #763001. **2:** (1)-New Addition Dept 766/Utility District #1, Acct 41-766-8421, Supp #766001. **3:** (4)-Replacements #00322; #34013; #98160 and #98161 for Dept 742/Utility District #3, Acct 01-742-8421, Supp #00071001. **4:** (1)-Replacement #33212 for Dept 422/Utility Services, Acct 41-422-8421; Supp #00071001 plus upgrade Acct 71-7422-8421; Supp #71422004. **5:** (2)-Replacements #00300 and #32652 for Dept 552/Fire, Acct 01-552-8421; Supp #00071001. **6:** (3)-Replacements #01323; #98163 and #99324 for Dept 748/Environmental Waste Services, Acct 45-748-8421; Supp 00071001.

The City is authorized to purchase from the State Contract list pursuant to Chapter 271, Subchapter D of the

CITY OF PLANO
COUNCIL AGENDA ITEM

Tex.Loc.Govt.Code and by doing so satisfies any State Law requiring local governments to seek competitive bids for items. (Contract #070-A1)

Total purchase price of all 12 units is $248,617.00.

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

G-2

Linda Robinson

From: January Cook
Sent: Thursday, November 17, 2005 8:49 AM
To: Linda Robinson
Cc: Reid Choate; Diane Palmer
Subject: RE: 12-Hybrid P/U's

This has been approved by Mike Ryan. Please move forward with your process.

Thank You

January M. Cook, CPPB
Senior Buyer/Purchasing Div.
Voice: (972) 941-7376
Fax: (972) 461-6879
januaryc@plano.gov

From: Linda Robinson
Sent: Monday, November 14, 2005 2:56 PM
To: January Cook
Subject: 12-Hybrid P/U's

Thanks for catching the error.

Linda M. Robinson
Senior Admin. Assistant
Equipment Services Division
(972) 769-4180 | (972) 769-4259 Fax
lindaro@plano.gov

G-3

Plano
All-America City
1994

MEMORANDUM

Date: November 14, 2005

To: January Cook, Senior Buyer

From: Reid Choate, Technical Coordinator

Subject: Request to purchase twelve (12) Chevrolet ½-Ton Extended Cab Hybrid Pickups (Series 640ATL) through the Texas Building and Procurement Contract #070-A1; awarded to Caldwell Country Chevrolet as the following:

ITEM-1:

Base Price:	$19,697.00 x 7 =	$137,879.00
Published Options:	$ 219.00 x 7 =	$ 1,533.00
TOTAL PURCHASE PRICE:		**$139,412.00**

(1) - New Addition Dept 763/Utility Dist #2, Acct: 41-763-8421; Supp #763001; Budget=**$27,000.00**.
(1) - New Addition Dept 766/Utility Dist #1, Acct: 41-766-8421; Supp #766001; Budget=**$27,000.00**.
(4) - Replacements for Dept 742/Street are as follows: #00322 Budget=$30,000.00; #34013 Budget=$35,000.00; #98160 Budget=$34,000.00 and #98161 Budget=$34,000.00 Acct: 01-742-8421; Supp #00071001 Total Budgeted Amount for 4 = **$133,000.00**.
(1) – Replacement for Dept 422/Utility Svcs; #33212 - Acct: 41-422-8421; Supp #00071001; Budget=$21,000.00 Upgrade to extended cab: Acct: 71-422-8421; Supp #71422004; Budget=$6,000.00 (TOTAL = **$27,000.00**)

ITEM-2:

Base Price:	$19,697.00 x 3 =	$ 59,091.00
Published Options:	$ 219.00 x 3 =	$ 657.00
Unpublished Options:	$ 2,195.00 x 3 =	$ 6,585.00
TOTAL PURCHASE PRICE:		**$ 66,333.00**

(3) – Replacements for Dept 748/Environmental Waste Svcs, are as follows: #01323 Budget=$24,000.00; #98163 Budget= $35,000.00 and #99324 Budget=$26,000.00. Acct. 45-748-8421; Supp #00071001 Total Budgeted Amount for 3 units = **$85,000.00**

ITEM-3:

Base Price:	$19,697.00 x 2 =	$ 39,394.00
Published Options:	$ 219.00 x 2 =	$ 438.00
Unpublished Options:	$ 1,520.00 x 2 =	$ 3,040.00
TOTAL PURCHASE PRICE:		**$ 42,872.00**

8-4

(2) – Replacements for Dept 552/Fire are as follows: #00300 Budget=$30,000; #32652 Budget=$37,000 Acct. 01-552-8421; Supp #00071001; Total Budgeted Amount for 2 units = **$67,000.00**

NOTE: All of the above Departments are approved per fiscal year 05/06. Please reference C.R.O. **358764** .

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

Cc: Jimmy Foster
Karl Henry
Nancy Nevil
Mike Rapplean
Kirk Owen
David Goodson
Harry Shearouse
Bill Zimmerman
Johnny Kemp
Diane Palmer
Mike Ryan
Stephen Teiper

CONTRACT PRICING WORKSHEET

End User: City of Plano	Contractor: Baby Jack Auto Group
Contact Name: Reid Choate	Caldwell Country Chevrolet
Email: reidc@plano.gov	Prepared By: Averyt Knapp/Adrienne Gattis
Phone #: 972-769-4182	Email: aknapp@caldwellcountry.com
Fax #: 972-461-9349	Asst Email: agattis@caldwellcountry.com
Location City & State Plano, Tx	Phone #: 800-299-7283 or 979-567-6116
Date Prepared: Nov 10, 2005	Fax #: 979-567-0853

Product Description: 2006 Silverado Hybrid Ext. Cab 1862 ATL-TBPG CONTRACT# 070-A1

A Base Price: 070-15-08001-8 — A: 19,697.

B Published Options

Code	Description	Cost	Code	Description	Cost
00024-6	Batterys	N/C	08107-3	Spare Tire	N/C
00029-9	HD Step Bumper	N/C	08133-9	tow Pkg	28.
00048-9	Daytime lights	N/C			
00059-6	Fuel Tank	N/C			
00075-2	TOW Mirrors	191.			
00101-6	Keyless Entry	N/C			

Subtotal B: 219.

C Unpublished Options

Code	Description	Cost	Code	Description	Cost

Subtotal C:

D Other Price Adjustments (Installation, Delivery, Etc...)

Delivery

Subtotal D: N/C

E Unit Cost Before Fee & Non-Equipment Charges(A+B+C+D): 19,916.

Quantity Ordered: X 7

Subtotal E: 139,412

Subtotal F:

G Non-Equipment Charges (Trade-In, Warranty, Etc...)

H Total Purchase Price (E+H+G): 139,412

Estimated Delivery Date: 120

9-6

CONTRACT PRICING WORKSHEET

End User: City of Plano	Contractor: Baby Jack Auto Group
Contact Name: Reid Choate	Caldwell Country Chevrolet
Email: reidc@plano.gov	Prepared By: Averyt Knapp/Adrienne Gattis
Phone #: 972-769-4182	Email: aknapp@caldwellcountry.com
Fax #: 972-461-9349	Asst Email: agattis@caldwellcountry.com
Location City & State Plano, Tx	Phone #: 800-299-7283 or 979-567-6116
Date Prepared: Nov 10, 2005	Fax #: 979-567-0853

Product Description: 2006 Silverado Hybrid 4WT. CAB (862AT1-TBPC CONTRACT # 070-A1

A Base Price: 070-15-00001-0 — A 19,697.

B Published Options

Code	Description	Cost	Code	Description	Cost
D0021-6	Batterys	N/C	D0107-3	Spare tire	N/C
D0024-9	HD Step Bumper	N/C	D0133-9	Tow Pkg	28.
D0048-9	Daytime lights	N/C			
D0054-6	Fuel Tank	N/C			
D0075-2	Tow mirrors	191.			
D0101-6	Keyless Entry	N/C			

Subtotal B: 219.

C Unpublished Options

Code	Description	Cost	Code	Description	Cost
TG	Tommy Gate	2045.			
2P	2 piece extenovan	150.			

Subtotal C: 2195.

D Other Price Adjustments (Installation, Delivery, Etc...)

Delivery

Subtotal D: N/C

E Unit Cost Before Fee & Non-Equipment Charges (A+B+C+D): 22111.

Quantity Ordered: X 3

Subtotal E: 66,333.

Subtotal F:

G Non-Equipment Charges (Trade-In, Warranty, Etc...)

H Total Purchase Price (E+H+G): 66,333.

Estimated Delivery Date: 120

CONTRACT PRICING WORKSHEET

End User: City of Plano	Contractor: Baby Jack Auto Group
Contact Name: Reid Choate	Caldwell Country Chevrolet
Email: reidc@plano.gov	Prepared By: Averyt Knapp/Adrienne Gattis
Phone #: 972-769-4182	Email: aknapp@caldwellcountry.com
Fax #: 972-461-9349	Asst Email: agattis@caldwellcountry.com
Location City & State Plano, Tx	Phone #: 800-299-7283 or 979-567-6116
Date Prepared: Nov 10, 2005	Fax #: 979-567-0853

Product Description: 2006 Silverado Hybrid Ext. Cab (862 ATL - TBPC, CONTRACT # 070-A1

A Base Price: 070-15-08001-0 — A 19,697.

B Published Options

Code	Description	Cost	Code	Description	Cost
08021-6	Batterys	N/C	08107-3	Spare tire	N/C
08029-9	HD Step Bumper	N/C	08133-4	Tow Pkg	28.
08048-4	Daytime lights	N/C			
08054-6	Fuel Tank	N/C			
08075-2	Tow mirrors	191.			
08101-6	Keyless Entry	N/C			

Subtotal B 219.

C Unpublished Options

Code	Description	Cost	Code	Description	Cost
UC	Undercover tray	645.			
TC	Tonneau Cover	875.			

Subtotal C 1520.

D Other Price Adjustments (Installation, Delivery, Etc...)

Delivery

Subtotal D N/C

E Unit Cost Before Fee & Non-Equipment Charges (A+B+C+D) 21,436.

Quantity Ordered X 2

Subtotal E 42872.

Subtotal F —

G Non-Equipment Charges (Trade-In, Warranty, Etc...)

H Total Purchase Price (E+H+G) 42,872

Estimated Delivery Date: 120

8-8

CITY OF PLANO

11/17/05
Page - 1

P.O. Number 358764 OC
Cost Center 071

Supplier BABY JACK II AUTOMOTIVE LTD
CALDWELL COUNTRY CHEVROLET-PONTIAC
P O BOX 27
CALDWELL TX 77836

Ship To CITY OF PLANO
FLEET & EQUIPMENT SERVICES DIVISION
4200 W PLANO PARKWAY
PLANO TX 75093

Ordered 11/17/05 Freight
Requested 11/17/05 Order Taken By
Delivery

Description	Ordered	UOM	Unit Price	Extended Price	Request Date
CHEV. 1/2T. EXT. CAB HYBRID PU	7	EA	19,697.0000	137,879.00	11/17/05

INVOICE TO FOLLOW

REQUEST TO PURCHASE TWELVE (12) CHEVROLET 1/2 TON EXTENDED CAB HYBRID PICKUPS (SERIES 640 ATL) THROUGH THE TEXAS BUILDING AND PROCUREMENT CONTRACT #070-A1; AWARDED TO CALDWELL COUNTRY CHEVROLET.

ITEM 1.

(1) - NEW ADDITION. DEPT. 763/UTIL DIST. #2.
ACCOUNT # 471-763-8421. SUPPLEMENT # 763001.
DOLLAR AMOUNT BUDGETED $27,000.00.

(1) - NEW ADDITION. DEPT. 766/UTIL. DIST. #1.
ACCOUNT # 41-766-8421. SUPPLEMENT # 766001.
DOLLAR AMOUNT BUDGETED $27,000.00.

(4) - REPLACEMENTS FOR DEPT. 742/STREETS ARE AS FOLLOWS:
UNIT 00322; DOLLAR AMOUNT BUDGETED $30,000.00.
UNIT 34013; DOLLAR AMOUNT BUDGETED $35,000.00.
UNIT 98160; DOLLAR AMOUNT BUDGETED $34,000.00.
UNIT 98161; DOLLAR AMOUNT BUDGETED $34,000.00.
ACCOUNT # 01-742-8421. SUPPLEMENT # 00071001.
TOTAL AMOUNT BUDGETED FOR ALL FOUR (4) UNITS: $133,000.00.

(1) - REPLACEMENT FOR DEPT. 422/ UTILITY SERVICES.
REPLACING UNIT 33212.
ACCOUNT # 41-422-8421. SUPPLEMENT # 00071001.
DOLLAR AMOUNT BUDGETED $21,000.00.
UPGRADE TO EXTENDED CAB: ACCOUNT # 71-742-8421.
SUPPLEMENT # 71422004.
DOLLAR AMOUNT BUDGETED $6,000.00.

P.O. Number 358764 OC

Description	Ordered	UOM	Unit Price	Extended Price	Request Date
(TOTAL $27,000.00). NOTE: ALL OF THE ABOVE DEPARTMENTS ARE APPROVED PER FY05/06. CRO REQUESTED BY REID CHOATE.					
PUBLISHED OPTIONS INVOICE TO FOLLOW	7	EA	219.0000	1,533.00	11/17/05
CHEV. 1/2T. EXT. CAB HYBRID PU INVOICE TO FOLLOW ITEM 2. (3) - REPLACEMENTS FOR DEPT. 748/ ENVIRONMENTAL WASTE SERVICES ARE AS FOLLOWS: UNIT 01323; DOLLAR AMOUNT BUDGETED $24,000.00. UNIT 98163; DOLLAR AMOUNT BUDGETED $35,000.00. UNIT 99324; DOLLAR AMOUNT BUDGETED $26,000.00. ACCOUNT # 45-748-8421. SUPPLEMENT # 00071001. TOTAL DOLLAR AMOUNT BUDGETED FOR (3) UNITS: $85,000.00.	3	EA	19,697.0000	59,091.00	11/17/05
PUBLISHED OPTIONS INVOICE TO FOLLOW	3	EA	219.0000	657.00	11/17/05
UNPUBLISHED OPTIONS INVOICE TO FOLLOW	3	EA	2,195.0000	6,585.00	11/17/05
CHEV. 1/2T. EXT. CAB HYBRID PU INVOICE TO FOLLOW (2) - REPLACEMENTS FOR DEPT. 552/FIRE ARE AS FOLLOWS: UNIT 00300; DOLLAR AMOUNT BUDGETED $30,000.00. UNIT 32652; DOLLAR AMOUNT BUDGETED $37,000.00. ACCOUNT # 01-552-8421. SUPPLEMENT # 00071001. TOTAL BUDGETED AMOUNT FOR (2) UNITS: $67,000.00.	2	EA	19,697.0000	39,394.00	11/17/05
PUBLISHED OPTIONS INVOICE TO FOLLOW	2	EA	219.0000	438.00	11/17/05
UNPUBLISHED OPTIONS INVOICE TO FOLLOW	2	EA	1,520.0000	3,040.00	11/17/05

Description	Ordered	UOM	Unit Price	P.O. Number Extended Price	Request Date
				Total Order	
TermNet 30 Days				248,617.00	

CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☒ Yes	☐ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☒ Yes	☐ Not Applicable
Council Meeting Date:	11/28/05	Reviewed by Legal	☒ Yes	☐ Not Applicable
Department:	Engineering		Initials	Date
Department Head	Alan L. Upchurch	Executive Director		11/21/05
Dept Signature:	Alan L Upchurch	City Manager		11/21/05
Agenda Coordinator (include phone #):	Pegues (7198)		(Project No. 5633)	

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

CAPTION

Approval of contract to approve the terms and conditions of an engineering services contract by and between the City and Huitt-Zollars, Inc. in the amount of $212,500 for Wyatt North Addition Paving and Water Project and authorizing the City Manager or his designee to execute all necessary documents.

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☒ CIP

FISCAL YEAR: 2005-06	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	229,000	1,913,000	**2,142,000**
Encumbered/Expended Amount	0	0	0	**0**
This Item	0	-212,500	0	**-212,500**
BALANCE	0	16,500	1,913,000	**1,929,500**

FUND(S): STREET IMPROVEMENT CIP AND WATER CIP

COMMENTS: Funds are included in the 2005-06 Street Improvement CIP AND Water CIP. This item, in the amount of $212,500, will leave a current year balance of $16,500 for the Wyatt North Addition Paving and Water project.

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

SUMMARY OF ITEM

This agreement with Huitt-Zollars, Inc. is for the engineering design for the Wyatt North Addition Paving and Water Project to include reconstruction of water and paving.

The contract fee is for $212,500 and is detailed as follows:

Design Survey	$ 35,000
Preliminary Design	$102,000
Final Design	$ 63,000
Bid Phase Services	$ 3,000
Printing and other reimbursables	$ 2,000
Construction Phase Services (including control staking)	$ 5,000
Right of Way/Easement Metes & Bounds	$ 2,500
TOTAL	$212,500

Funding is available from the Street Improvement and Water Community Investment Programs. Staff feels the fee is reasonable for this project estimated to cost $2,120,000.

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
Engineering Services Agreement Location Map	N/A

WYATT NORTH ADDITION PAVING AND WATER

PROJECT NO. 5633

ENGINEERING SERVICES AGREEMENT

THIS AGREEMENT is made and entered by and between the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, hereinafter referred to as "City", and **HUITT-ZOLLARS, INC.**, a **TEXAS** Corporation, hereinafter referred to as "Engineer", to be effective from and after the date as provided herein.

W I T N E S S E T H:

WHEREAS, the City desires to engage the services of the Engineer to prepare construction plans, specifications, details and special provisions and to perform other related engineering services in connection with the **WYATT NORTH ADDITION PAVING AND WATER** project located in the City of Plano, Collin County, Texas, hereinafter referred to as the "Project"; and

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

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

I. Employment of the Engineer

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

II. Scope of Services

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

III. Schedule of Work

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

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

IV. Compensation and Method of Payment

The parties agree that Engineer shall be compensated for all services provided pursuant to this Agreement in the amount and manner described and set forth in the Payment Schedule attached hereto and incorporated herein as Exhibit "C". The contract amount specified in Exhibit "C" shall not be exceeded without the written permission of the City.

V. Information to be Provided by the City

The City agrees to furnish, prior to commencement of work, all that information requested by Engineer and available in City's files.

VI. Insurance

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

VII. Indemnity

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

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

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

VIII. Independent Contractor

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

IX. Assignment and Subletting

The Engineer agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of the City. The Engineer further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the Engineer from its full obligations to the City as provided by this Agreement.

X. Audits and Records/Prohibited Interest

The Engineer agrees that at any time during normal business hours and as often as City may deem necessary, Engineer shall make available to representatives of the City for examination all of its records with respect to all matters covered by this Agreement, and will permit such representatives of the City to audit, examine, copy and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement, all for a period of one (1) year from the date of final settlement of this Agreement or for such other or longer period, if any, as may be required by applicable statute or other lawful requirement.

The Engineer agrees that it is aware of the prohibited interest requirements of the City Charter and Code of Conduct and will abide by the same. Further, a lawful representative of Engineer shall execute the affidavit shown in Exhibit "E". Engineer understands and agrees that the existence of a prohibited interest during the term of this contract will render the contract voidable.

XI. Contract Termination

The parties agree that City shall have the right to terminate this Agreement with or without cause upon thirty (30) days written notice to Engineer. In the event of such termination, Engineer shall deliver to City all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items prepared by Engineer in connection with this Agreement. Engineer shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to termination.

XII. Engineer's Opinion of Probable Construction Costs

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

XIII. Ownership of Documents

Original drawings and specifications are the property of the Engineer; however, the Project is the property of the City and Engineer may not use the drawings and specifications therefor for any purpose not relating to the Project without City's consent. City shall be furnished with such reproductions of drawings and specifications as City may reasonably require. Upon completion of the work or any earlier termination of this Agreement under Article XI, Engineer will revise drawings to reflect changes made during construction and he will promptly furnish the City with one (1) complete set of reproducible record prints. Prints shall be furnished, as an additional service, at any other time requested by City. All such reproductions shall be the property of the City who may use them without Engineer's permission for any proper purpose including, but not limited to, additions to or completion of the Project. However, use of the documents for other than their intended purpose shall be at the sole risk of the City.

XIV. Complete Contract

This Agreement, including the Exhibits lettered "A" through "E", constitute the entire agreement by and between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous written or oral understandings. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument.

XV. Mailing of Notices

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

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

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

Huitt-Zollars, Inc.
Kenneth A. Roberts, P.E.
3131 McKinney Avenue #600
Dallas TX 75204

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

XVI. Miscellaneous

A. Paragraph Headings:

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

B. Contract Interpretation:

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

C. Venue/Governing Law:

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

D. Successors and Assigns:

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

E. Severability:

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

F. Effective Date:

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

SIGNED on the date indicated below.

HUITT-ZOLLARS, INC.
A Texas Corporation

DATE: _____ BY: _____
AUBREY C. ABCOCK, JR.
SR. VICE PRESIDENT

CITY OF PLANO, TEXAS

DATE: _____ BY: _____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM:

_____
Diane C. Wetherbee
CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS §
§
COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of _____, _____, by **AUBREY C. ABCOCK, JR., SR. VICE PRESIDENT,** of **HUITT-ZOLLARS, INC.**, a **TEXAS** corporation, on behalf of said corporation.

_____
Notary Public, State of Texas

STATE OF TEXAS §
§
COUNTY OF COLLIN §

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

_____
Notary Public, State of Texas

EXHIBIT 'A' - SCOPE OF SERVICES

NEW PAVEMENT
WYATT NORTH ADDITION IMPROVEMENTS
PLANO, TEXAS
Project No. 5633
CIP NUMBERS

PROJECT DESCRIPTION:
The project consists of the preparation of construction plans and bid documents for the reconstruction of the streets and water lines in the Wyatt North Addition of Plano, Texas. The existing streets in the addition will be reconstructed matching the existing street widths as reinforced concrete pavement. The streets to be reconstructed are: N Avenue from Lilac Lane to East Parker Road approximately 700 feet, Lucas Terrace from Francis Lane to Felix Drive approximately 2,030 feet, Francis Lane from Felix Drive to P Avenue approximately 1,400 feet, and Felix Drive from N Avenue to Lucas Terrace approximately 1,780 feet. The existing sidewalks, driveway approaches, water mains, services and appurtenances will be replaced with the street reconstruction. Services will include field survey work for the design and establishment of existing right-of-way; production of street and water main construction documents; and coordination with the City of Plano.

BASIC SERVICES:

A. Research and Data Collection –

1. Meet with City of Plano engineering staff and obtain design criteria, pertinent utility plans, street plans, plats and right-of-way maps, existing easement information, and other information available for the project area.
2. Meet with the City of Plano project manager and conduct an on-site review and walk through.

B. Design Survey –

1. Establish a horizontal and vertical control network and project control baseline for the project areas. The network and baseline are to be tied into the existing City of Plano control network.
2. Establish horizontal and vertical project control monumentation.
3. Tie right-of-way lines and corners, property lines and corners, buildings, fence lines, trees 4-inches in diameter and larger, edges of pavements and all other visible surface features to the project control baseline. Existing utility structures shall be located and referenced by utility name (i.e. T.U. Elec., GTE Telephone, Lone Star Gas, Etc.).

4. Vertical topographic information tying pavement, drives, walls, manholes (top and inverts), storm drain inlets (top and inverts), and other improvements as needed within the project areas for the design.
5. Survey roadway cross-sections at a fifty foot (50') interval relative to the project baseline and extended to a point 25' beyond the existing back of curb. Cross sections are for project design review and quantity takeoffs and may not be a part of the final construction plan set.
6. When underground utilities are exposed, tie to project control baseline.
7. Identify the street address of all adjacent properties to the proposed construction and show on drawings.

C. Right-of-Way and Easement Requirements –

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

D. Preliminary Design –

1. Prepare preliminary construction plans. Prepare the following sheets at the engineering scale indicated:
   - Cover sheet.
   - Project layout control sheet(s). Scale 1"= 100'.
   - Quantity sheet.
   - Typical sections and detail sheets.
   - Construction phasing and temporary traffic control sheets. Scale 1"= 20'.
   - Paving plan & profile sheets for street improvements. Scale 1"= 20' Horizontal and 1"=2' Vertical.
   - Water plan & profile sheets for water improvements. Scale 1"= 20' Horizontal and 1"=2'.
   - Drainage area map and run-off calculations. Scale 1"=100'
   - SWPPP Erosion Control Plans meeting EPA and City of Plano requirements. Scale 1"= 40'.
   - Roadway cross-sections drawn at 25 foot intervals. Scale 1"=5' Horizontal and 1"=2' Vertical

   Information required can be combined on sheets if the information can be clearly shown and is approved by the City of Plano project manager.
2. Check inlet design capacity at the intersections that intersect Avenue 'P' and make design changes if necessary.
3. Coordinate with affected utilities such as water, gas, telephone, cable TV and electric to obtain accurate information for the location of their facilities.

4. Prepare outline of any special technical specifications needed for the project (if any).
5. Prepare an estimate of construction quantities and develop the preliminary statement of probable construction cost.
6. Submit four sets of preliminary plans, outline of special technical specifications and preliminary statement of probable construction cost to the City for review.
7. Meet with City of Plano staff to discuss City comments on preliminary plans, specifications and cost estimates.
8. Distribute the preliminary plans and proposed schedule for bidding and start of construction to local utility companies to obtain information regarding impacts to their facilities.

E. Final Design –

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

F. Bid Phase Services –

1. Assist the City staff in advertising for bids.
2. Furnish plans and specifications for bidding. Cost for these to be recouped by non-refundable deposit from contractors. Maintain a list of plan holders.
3. Furnish plans and bid documents for up to four plan review rooms to be determined by the City. These documents are to be furnished at no cost to the plan review rooms.
4. Assist City staff in conducting a pre-bid conference, if required.
5. Prepare and distribute addenda to bid documents as necessary.
6. Assist City staff as required in bid opening. Submit list of plan holders to the City, 48-hours prior to the bid letting.

7. Provide bid tabulation to the City of Plano within four working days of the bid letting.
8. Evaluate the low and second low bidders. Prepare letter of recommendation to the City of Plano for awarding a contract to the lowest responsible bidder within four working days of the bid letting.
9. Assist City staff in a pre-construction conference.
10. Furnish thirteen sets of final construction plans and three sets of the contract documents manual to the City for construction.

G. Construction Administration –

1. Provide periodic site visits by the design engineer with a written inspection report submitted to the City for each visit.
2. Provide written responses to requests for information or clarifications.
3. Prepare and process change orders in accordance with City of Plano format.
4. Prepare construction "Record Drawings" based upon mark-ups and information provided by the construction contractor(s). Submit one blackline set to the City and a CD-ROM disk containing scanned images of the 24" x 36" final "as constructed" blackline drawings (with "record drawing stamps" bearing the signature of the Engineer and the date). The drawings shall be scanned 1 to 1 as Group 4 TIF files at a minimum resolution of 200 dots per inch and a maximum resolution of 400 dots per inch. The TIF files shall be legible and shall include any post processing that may be required to enhance image quality (e.g., de-speckling, de-shading, de-skewing, etc.). Each file shall be named in numeric order.

H. Construction Control Survey –

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

Services not include in Basic Services for this contract: Storm drainage design, sanitary sewer design, street cross-sections, inspection services.

SPECIAL SERVICES:

Services not include in Special Services for this contract: Geotechnical Investigation.

END OF EXHIBIT 'A'

EXHIBIT 'B' - SCHEDULE

WYATT NORTH ADDITION IMPROVEMENTS

Activity	Completion Date From N.T.P.
Notice-To-Proceed	-
Surveying for Design	6 Weeks
Preliminary Design Submittal	12 Weeks
Preliminary City Review Complete	14 Weeks
Pre-Final Design Submittal	18 Weeks
Final City Review Complete	20 Weeks
Final Plans Complete	22 Weeks
Receive Bids	24 Weeks
Contract Award	26 Weeks
Surveying for Construction	28 Weeks
Begin Construction	28 Weeks
Complete Construction	60 Weeks
Record Drawings	62 Weeks

END OF EXHIBIT 'B'

EXHIBIT C to Agreement Between the City of Plano, Texas (City and Huitt-Zollars, Inc. (Engineer) for Professional Services.

EXHIBIT "C" – Compensation and Method of Payment

For all professional engineering services included in EXHIBIT "A", Scope of Services, the CITY agrees to pay the ENGINEER on a reimbursable basis. The total amount of Contract shall not be exceeded without a modification to this agreement; however, any task may be exceeded as long as the PROJECT total is not exceeded. We recommend that the CITY budget the following:

Basic Services	
Design Survey	**$ 35,000.00**
Preliminary Design	**$102,000.00**
Final Design	**$ 63,000.00**
Bid Phase Services	**$ 3,000.00**
Printing & Other Direct Expenses	**$ 2,000.00**
Construction Phase Services	**$ 5,000.00**
Total Not to Exceed	**$210,000.00**
Special Services	
Geotechnical Report (Not in Contract)	**-0-**
Right-of-way/Easement Metes & Bounds, Exhibit, Surveying, Deed Research (includes 2 easements)	**$ 2,500.00**
Total Special Services	**$ 2,500.00**
Total Contract	**$212,500.00**

The CITY shall compensate the ENGINEER for the various items listed above on a reimbursable basis, where the total contract amount may not be exceeded without an amendment, task budget may be exceeded with any notification of the CITY.

Monthly statements for reimbursable services will be based upon time directly chargeable to the project by the various types of individuals employed by the ENGINEER in accordance with the rate schedule in effect at the time of the

h-14

services. ENGINEER may revise the rate schedule on January 1 of each year. The current rate schedule is attached.

Monthly statements for reimbursable services performed by subconsultants will be based upon the actual cost to the ENGINEER plus fifteen percent (15%).

Direct reimbursable expenses for services such as express mail, fees, out-of town mileage (trips in excess of 100 miles) and other direct expenses that are incurred during the progress of the project will be billed at 1.15 times the ENGINEER'S cost.

An amount equal to six percent (6%) of the ENGINEER'S labor fee will be added to each invoice to cover certain other direct expenses such as in-house duplicating and blueprinting, facsimile, local mileage, telephone, postage, and word processing computer time.

END OF EXHIBIT 'C'

EXHIBIT "D"

ENGINEERING

INSURANCE

INSURANCE: (Review this section carefully with your insurance agent prior to bid or proposal submission. See "Insurance Checklist" on the last page or specific coverages applicable to this contract).

1. **General Insurance Requirements:**

1.1 The Engineer (hereinafter called "Engineer") shall not start work under this contract until the Engineer has obtained at his own expense all of the insurance called for here under and such insurance has been approved by the City. Approval of insurance required of the Engineer will be granted only after submission to the Purchasing Agent of original, signed certificates of insurance or, alternately, at the City's request, certified copies of the required insurance policies.

1.2 All insurance policies required hereunder shall be endorsed to include the following provision: "It is agreed that this policy is not subject to cancellation, non-renewal, material change, or reduction in coverage without first providing the Risk Manager, City of Plano, at least ten (10) days prior written notice."

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

1.3 No acceptance and/or approval of any insurance by the City shall be construed as relieving or excusing the Engineer from any liability or obligation imposed upon the provisions of the Contract.

1.4 The City of Plano (including its elected and appointed officials, agents, volunteers, and employees) is to be named as an additional insured under Engineer's General Liability Policy, and the certificate of insurance, or the certified policy, if requested, must so state. Coverage afforded under this paragraph shall be primary as respects the City, its elected and appointed officials, agents and employees.

1.4.1 The following definition of the term "City" applies to all policies issued under the contract:

The City Council of the City of Plano and any affiliated or subsidiary Board, Commission Authority, Committee, or Independent Agency (including those newly constituted), provided that such affiliated or subsidiary Board Commission, Authority, Committee, or Independent Agency is either a Body Politic created by the City Council of the City of Plano, or one in which controlling interest is vested in the City of Plano; and City of Plano Constitutional Officers.

1.5 The Engineer shall provide insurance as specified in the "Insurance Checklist" (Checklist) found on the last page of the bid or proposal form. Full limits of insurance required in the

h-16

Checklist of this agreement shall be available for claims arising out of this agreement with the City of Plano.

1.6 Engineer agrees to defend and indemnify the City of Plano, its officers, agents and employees as provided in Paragraph VII. of this contract.

1.7 Insurance coverage required in these specifications shall be in force throughout the Contract Term. Should the Engineer fail to provide acceptable evidence of current insurance within seven (7) days of written notice at any time during the Contract Term, the City shall have the absolute right to terminate the Contract without any further obligation to the Engineer, and the Engineer shall be liable to the City for the entire additional cost of procuring performance and the cost of performing the incomplete portion of the Contract at time of termination.

1.8 Written requests for consideration of alternate coverages must be received by the City Purchasing Manager at least ten (10) working days prior to the date set for receipt of bids or proposals. If the City denies the request for alternative coverages, the specified coverages will be required to be submitted.

1.9 All required insurance coverages must be acquired from insurers authorized to do business in the State of Texas and acceptable to the City. The City prefers that all insurers also have a policyholder's rating of "A-" or better, and a financial size of "Class VI" or better in the latest edition of A.M. Best, or A or better by Standard and Poors, unless the City grants specific approval for an exception.

1.10 Any deductibles shall be disclosed in the Checklist and all deductibles will be assumed by the Engineer. Engineer may be required to provide proof of financial ability to cover deductibles, or may be required to post a bond to cover deductibles.

2. <u>Engineer's Insurance - "Occurrence" Basis:</u>

2.1 The Engineer shall purchase the following insurance coverages, including the terms, provisions and limits shown in the Checklist.

2.1.1 Commercial General Liability - Such Commercial General Liability policy shall include any or all of the following as indicated on the Checklist:

i. General aggregate limit is to apply per project;

ii. Premises/Operations;

iii. Actions of Independent Contractors;

iv. Contractual Liability including protection for the Engineer from claims arising out of liability assumed under this contract;

v. Personal Injury Liability including coverage for offenses related to employment;

vi. Explosion, Collapse, or Underground (XCU) hazards; if applicable. This coverage required for any and all work involving drilling, excavation, etc.

2.1.2 Business Automobile Liability including coverage for any owned, hired, or non-owned motor vehicles and automobile contractual liability.

2.1.3 Workers' Compensation - statutory benefits as required by the State of Texas, or other laws as required by labor union agreements, including Employers' Liability coverage.

2.2 Professional Errors and Omissions

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

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

h-18

ENGINEERING

City of Plano - Insurance Checklist

("X" means the coverage is required.)

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

___ 18. Garagekeepers' Legal $_____- Comprehensive
$_____- Collision

___ 19. Owners Protective Liability $500,000 Combined single limits

_X_ 20. City named as additional insured on General Liability policy.. This coverage is primary to all other coverages the City may possess.

___ 21. City provided with Waiver of Subrogation on Workers' Compensation or Alternative program if applicable.

_X_ 22. Ten (10) days notice of cancellation, non-renewal, material change or coverage reduction endorsement required. The words "endeavor to" and "but failure" (to end of sentence) are to be eliminated from the Notice of Cancellation provision on standard ACORD certificates.

_X_ 23. The City of Plano prefers an A.M. Best's Guide Rating of "A-", "VI" or better or Standard and Poors Rating AA or better; Authorized to do business in the State of Texas (not applicable for workers' compensation assigned through pool or alternative compensation programs).

_X_ 24. The Certificate must state project title and project number.

_X_ 25. Other Insurance Required:

INSURANCE AGENT'S STATEMENT

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

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

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

_X_ 27. Liability policies are (indicate):

OCCURRENCE [ ] CLAIMS MADE [ ]

_____ _____
Signature Date

_____
Insurance Agent (Print)

_____
Name of Insured

_____
Date

h-20

EXHIBIT "E"

AFFIDAVIT OF NO PROHIBITED INTEREST

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

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

_____
Name of Engineering Firm

By:_____
Signature

_____
(Print Name)

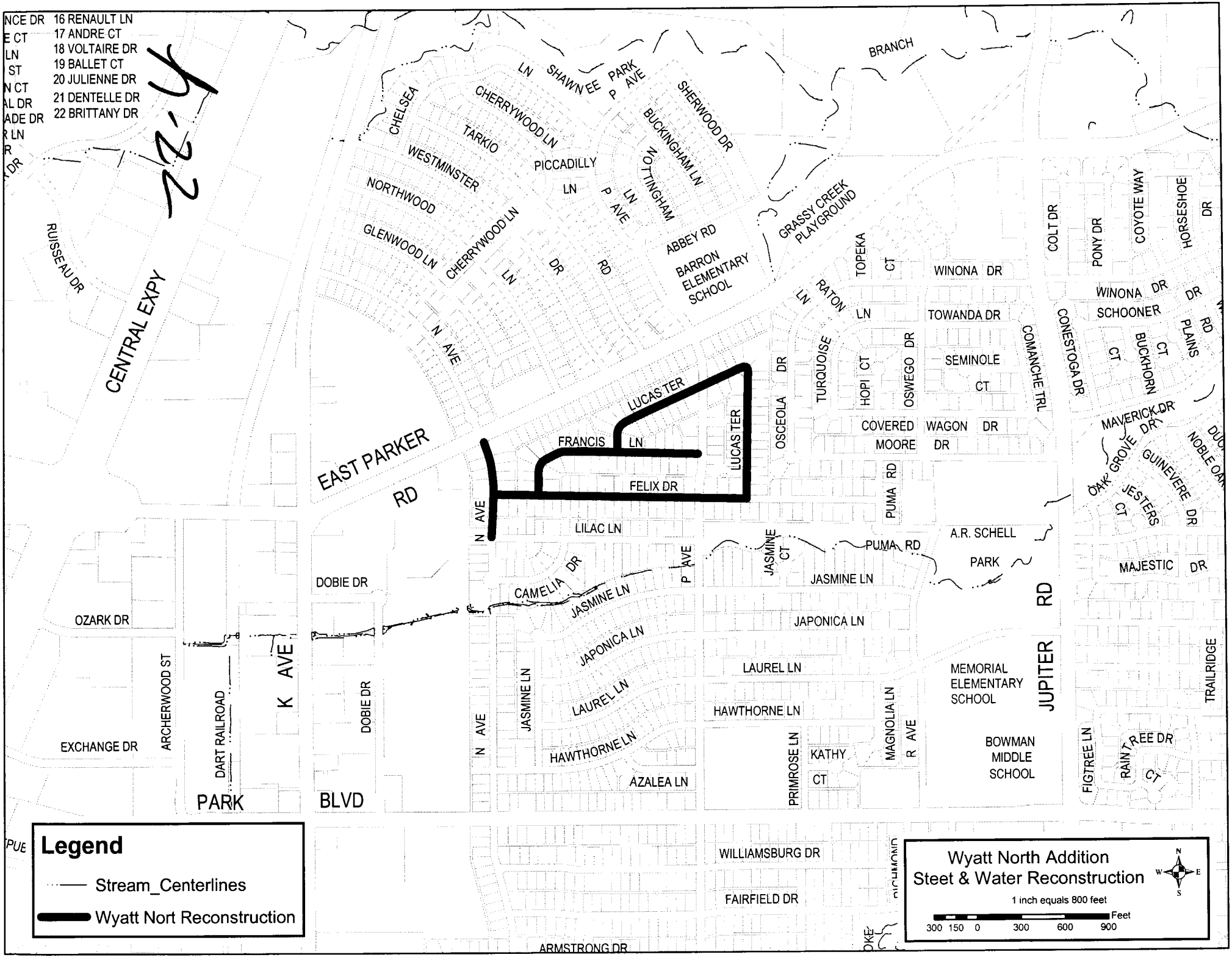
_____
Title

_____
Date

STATE OF TEXAS §
§
COUNTY OF _____ §

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

_____
Notary Public, State of Texas


16 RENAULT LN
17 ANDRE CT
18 VOLTAIRE DR
19 BALLET CT
20 JULIENNE DR
21 DENTELLE DR
22 BRITTANY DR
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CENTRAL EXPY
RUISSEAU DR
CHELSEA
CHERRYWOOD LN
TARKIO
WESTMINSTER
NORTHWOOD
GLENWOOD LN
SHAWNEE PARK
SHERWOOD DR
BUCKINGHAM LN
NOTTINGHAM
PICCADILLY
ABBEY RD
BARRON ELEMENTARY SCHOOL
GRASSY CREEK PLAYGROUND
BRANCH
TOPEKA CT
RATON LN
WINONA DR
COLT DR
PONY DR
COYOTE WAY
HORSESHOE DR
SCHOONER
PLAINS RD
BUCKHORN CT
CONESTOGA DR
COMANCHE TRL
TOWANDA DR
SEMINOLE CT
TURQUOISE DR
HOPI CT
OSWEGO DR
OSCEOLA DR
COVERED WAGON DR
MOORE DR
MAVERICK DR
OAK GROVE DR
GUINEVERE DR
NOBLE OAK
JESTERS CT
LUCAS TER
FRANCIS LN
FELIX DR
EAST PARKER RD
N AVE
LILAC LN
PUMA RD
A.R. SCHELL PARK
MAJESTIC DR
JASMINE CT
JASMINE LN
CAMELIA DR
P AVE
DOBIE DR
OZARK DR
JAPONICA LN
LAUREL LN
HAWTHORNE LN
AZALEA LN
JUPITER RD
MEMORIAL ELEMENTARY SCHOOL
TRAILRIDGE
BOWMAN MIDDLE SCHOOL
FIGTREE LN
RAINTREE DR CT
MAGNOLIA LN
R AVE
PRIMROSE LN
KATHY CT
ARCHERWOOD ST
DART RAILROAD
K AVE
EXCHANGE DR
PARK BLVD
WILLIAMSBURG DR
FAIRFIELD DR
ARMSTRONG DR
Legend
Stream_Centerlines
Wyatt Nort Reconstruction
Wyatt North Addition
Steet & Water Reconstruction
1 inch equals 800 feet
Feet
300 150 0 300 600 900
N
W
E
S

CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☒ Yes	☐ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☒ Yes	☐ Not Applicable
Council Meeting Date:	11/28/05	Reviewed by Legal	☒ Yes	☐ Not Applicable
Department:	Technology Services		Initials	Date
Department Head	David Stephens	Executive Director		11-18-05
Dept Signature:		City Manager		11.19.05
Agenda Coordinator (include phone #):	Kathy Kargol, ext 7342			

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

CAPTION

Purchase from existing Contract/Agreement to authorize the purchase of a service contract for network infrastructure switches in the amount of $140,531.83 from Internetwork Experts through a Department of Information Resources (DIR) Contract, and authorizing the City Manager or his designee to execute all necessary documents. (DIR-BUSOP-012)

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☒ OPERATING EXPENSE ☐ REVENUE ☐ CIP

FISCAL YEAR: 2005-06	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	2,102,470	0	**2,102,470**
Encumbered/Expended Amount	0	-498,274	0	**-498,274**
This Item	0	-140,532	0	**-140,532**
BALANCE	0	1,463,664	0	**1,463,664**

FUND(S): TECHNOLOGY SERVICES FUND

COMMENTS: Funds are included in the 2005-06 Technology Services budget. The remaining balance will be used throughout the year for other maintenance agreements.

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

SUMMARY OF ITEM

Technology Services recommends Council approve an expenditure of $140,531.83 to Internetwork Experts through the Department of Information Resources (DIR) for a maintenance support contract on network infrastructure switches. The City is authorized to purchase from the State Contract List pursuant to Section 271 Subchapter D of the Local Government Code, and by doing so satisfies any State Law requiring the local government to seek competitive bids for the items. (DIR-BUSOP-178)

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

Memorandum

To: David Stephens, Director of Technology Services

CC:

From: Chester M. Helt, Infrastructure Manager

Date: 11/11/2005

Re: Cisco Switch Service Agreement

Technology Services recommends Council approve an expenditure to Internetwork Experts in the total amount of $140,531.83 for the annual service contract for all of our Cisco switching equipment. This year we have added additional switches and security equipment resulting in the increase of this year's contract. We have two basic categories, 24/7 and business day. All of the critical network equipment is on the premium contract. We have also obtained this quote from a vendor with a DIR contract and are purchasing this off of a State Contract.

This will provide us with our expected Cisco service and centralize our maintenance for our equipment. We recommend ordering this maintenance from Internetwork Experts.

i-2

CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☐ Yes	☒ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☒ Yes	☐ Not Applicable
Council Meeting Date:	11/28/05	Reviewed by Legal	☒ Yes	☐ Not Applicable
Department:	Development Business Center		Initials	Date
Department Head	Frank F. Turner	Executive Director		11/21/05
Dept Signature:		City Manager		11/21/05
Agenda Coordinator (include phone #):	**Sherry Noles Ext. 7122**			

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

CAPTION

Approval of an Agreement for Professional Services by and between the City of Plano, Texas and the Bellsnyder Group for Legislative Services.

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☒ OPERATING EXPENSE ☐ REVENUE ☐ CIP

FISCAL YEAR: 2005-2006	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	**0**
Encumbered/Expended Amount	0	0	0	**0**
This Item	0	30,000	0	**30,000**
BALANCE	0	30,000	0	**30,000**

FUND(S): 01.215.6312

COMMENTS:

SUMMARY OF ITEM

Legislative services to perform lobbyist legislative liaison representation services regarding issues of interest to City of Plano for a monthly fee of $3,000. per month when the Legislature is not in session and $5,000. per month during a regular or special session.

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

J-1

REV 08/98

MEMORANDUM

DATE: November 21, 2005

TO: Frank Turner, Executive Director

FROM: Lynne Jones, Sr. Legal Secretary

SUBJECT: **Professional Services Agreement by and between The City of Plano and Bellsnyder Group**

Attached are two (2) copies of the Professional Services Agreement By and Between the City of Plano and Bellsnyder Group for Legislative Services. Please have Bellsnyder execute and notarize both copies of the Agreement as well as both copies of the Affidavit of No Prohibited Interest attached as Exhibit "A." After Bellsnyder has executed the Agreement, please return both copies to me for execution by the City. A fully executed copy will then be returned to you to forward to Bellsnyder.

If you have any questions, please call me.

Attachment

J-2

PROFESSIONAL SERVICES AGREEMENT
BY AND BETWEEN THE CITY OF PLANO, TEXAS AND
THE BELLSNYDER GROUP
FOR LEGISLATIVE SERVICES

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 **THE BELLSNYDER GROUP,** a _____, hereinafter referred to as "Professional" to be effective from and after the date as provided herein.

W I T N E S S E T H:

WHEREAS, the City desires to engage the services of Professional to provide legislative services hereinafter referred to as the "Project"; and

WHEREAS, Professional desires to render such 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. Engagement

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

II. Scope of Services

The parties agree that Professional shall perform lobbyist legislative liaison representation services regarding issues of interest to City. These services include, but are not limited to: meeting with and advocating to elected and appointed officials, agencies, boards and commissions regarding issues of interest to the City. Professional will also report to and receive direction from the City Manager or his designee concerning legislative matters. The parties understand and agree that deviations or modifications in the Scope of Services may be authorized from time to time by the City, but must be made in writing. Professional agrees not to contract with another municipality or county government to perform similar services during the term of this Agreement without receiving prior written permission of the City.

J-3

III. Term of Agreement

The Term of this Agreement shall be a period of twenty-four (24) months beginning December 1, 2005 and ending on November 30, 2007, subject to early termination as provided in Section X.

IV. Compensation/Expenses

In consideration for the services to be rendered under this Agreement during the term of this Agreement, the Professional shall be paid **THREE THOUSAND AND 00/100 DOLLARS ($3,000.00)** per month when the Legislature is not in session and **FIVE THOUSAND AND 00/100 DOLLARS ($5,000.00)** per month during a regular or special session. Fees shall be prorated for portions of a month the Legislature is in session.

Professional shall be responsible for travel and other expenses it may incur for trips made by him to Plano. Other than the monthly fee, no other charges, expenses or fees shall be paid by City for the services under this Agreement unless expressly approved in advance by City. Professional shall invoice City on a monthly basis.

V. Indemnity

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

In the event the City is a named party to a suit arising out of the subject matter of this Agreement, the City shall have reasonable input into the selection of defense counsel to be retained by Professional in fulfilling its obligation hereunder to defend and indemnify City. City reserves the right to provide a portion or all of its own defense; however, City is under no obligation to do so. Any such action by City is not to be construed as a waiver of Professional's obligation to defend City or as a waiver of Professional's obligation to indemnify City pursuant to this Agreement. Professional shall retain defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If Professional fails to retain counsel

J-4

within such time period, City shall have the right to retain defense counsel on its own behalf, and Professional shall be liable for all costs incurred by City.

The obligations of this section shall survive the termination of this Agreement.

VI. Independent Contractor

Professional covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City; that Professional shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between City and Professional its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Professional. Professional represents that it has met all state requirements pertaining to performing work required under this Agreement associated with representation of public entities as required by law.

VII. Assignment and Subletting

Professional 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. Professional further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the Professional from its full obligations to the City as provided by this Agreement.

VIII. Audits and Records

Professional agrees that at any time during normal business hours and as often as City may deem necessary, Professional 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 three (3) years or for such other or longer period, if any, as may be required by applicable statute or other lawful requirement.

J-5

IX. Prohibited Interest

Professional agrees that it is aware of the prohibited interest requirements of the City Charter and Code of Conduct and will abide by the same. Further, a lawful representative of Professional shall execute the affidavit shown in Exhibit "A". Professional understands and agrees that the existence of a prohibited interest during the term of this Agreement will render the Agreement voidable.

X. Contract Termination

The parties agree that either party shall have the right to terminate this Agreement with or without cause upon thirty (30) days written notice to the other prior to the expiration of the term. Professional shall be entitled to compensation for any and all work completed to the satisfaction of City prior to termination.

XI. Ownership of Documents

Upon termination of this Agreement, Professional shall transfer, assign and make available to City, or its representatives, all property and materials in its possession or control belonging to the City and paid for by the City. In the event that the material, which is the subject of this Agreement, is copyrightable subject matter, Professional and City agree that for the purposes of this order the material shall be a work made for hire and the property of the City. In the event that the material which is the subject of this Agreement is not copyrightable subject matter, or for any reason is determined not to be a work made for hire, then and in such event Professional hereby assigns all right, title and interest to said material to City for the fees specified herein.

XII. Complete Agreement

This Agreement constitutes 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.

XIII. Mailing of Notices

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

J-6

City of Plano, Texas
Attn: Frank Turner
Executive Director
P.O. Box 860358
Plano, TX 75086-0358

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

The Bellsnyder Group
Attn: Luke Bellsnyder
1122 Colorado, Suite 106
Austin, Texas 78701

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.

XIV. Miscellaneous

A. Paragraph Headings:

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

B. Agreement Interpretation:

This is a negotiated Agreement, should any part be in dispute, the parties agree that the terms of the Agreement shall not be construed more favorably for either party.

C. Venue/Governing Law:

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

D. Successors and Assigns:

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

J-7

E. Severability:

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

F. Effective Date:

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

SIGNED on the dates indicated below.

THE BELLSNYDER GROUP

BY: _____
Name: _____
Title: _____

Date: _____

CITY OF PLANO, TEXAS

Date: _____

BY: _____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM

_____
Diane C. Wetherbee, CITY ATTORNEY

J-8

ACKNOWLEDGMENTS

STATE OF TEXAS §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 20____, by **LUKE BELLSNYDER,** _____ of **THE BELLSNYDER GROUP** a _____, on behalf of said _____.

_____
Notary Public, State of Texas

STATE OF TEXAS §
§
COUNTY OF COLLIN §

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

_____
Notary Public, State of Texas

J-9

EXHIBIT "A"

AFFIDAVIT OF NO PROHIBITED INTEREST

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

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

THE BELLSNYDER GROUP

By: _____
Name: _____
Title: _____

Date: _____

STATE OF TEXAS §
§
COUNTY OF _____ §

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2005.

_____
Notary Public, State of Texas

J-10

CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☒ Yes	☐ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☒ Yes	☐ Not Applicable
Council Meeting Date:	11/28/05	Reviewed by Legal	☐ Yes	☒ Not Applicable
Department:	Engineering Department		Initials	Date
Department Head	Alan L. Upchurch	Executive Director		11/21/05
Dept Signature:	Alan L. Upchurch	City Manager		11/21/05
Agenda Coordinator (include phone #):	Irene Pegues (7198)			(Project No. 5384)

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

CAPTION

To JRJ Paving, L.P., increasing the contract by $96,766.55 for Hedgcoxe Widening and Improvements, Change Order No. 3. (Original Bid #B104-05)

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☒ CIP

FISCAL YEAR: 2005-06	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	897,883	292,117	0	**1,190,000**
Encumbered/Expended Amount	-897,883	0	0	**-897,883**
This Item	0	-96,767	0	**-96,767**
BALANCE	**0**	**195,350**	**0**	**195,350**

FUND(S): STREET IMPROVEMENT CIP

COMMENTS: Funds are included in the 2005-06 Street Improvement CIP. This change order, in the amount of $96,767, will leave a current year balance of $195,350 for the Hedgcoxe Widening and Improvements Project.

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

SUMMARY OF ITEM

This change order is for pavement repair to Hedgcoxe Road from Iola Drive to Alma Drive that is needed so Plano can transfer maintenance responsibility to City of Allen.

Staff recommends approval of Change Order No. 3. The contract total will be $1,098,876.55, which includes change orders of 9.66% of the original contract amount of $1,002,110.00.

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
Change Order No. 3	N/A
Location Map	

LS\AGENDA:1128HedgcoxeWidenImpr

k-1

CHANGE ORDER NO. 3

HEDGCOXE WIDENING AND IMPROVEMENTS
PROJECT NO. 5384
PURCHASE ORDER NO. 102794
CIP NO. 33-31387
BID NO. B104-05

A. INTENT OF CHANGE ORDER

The intent of this change order is to modify the provisions of the contract entered into by the **CITY OF PLANO, TEXAS,** and **JRJ Paving, L.P.,** for the Hedgcoxe Widening and Improvements Project, dated April 11, 2005.

B. DESCRIPTION OF CHANGE

The change order is for pavement repair on Hedgcoxe between Iola and Alma.

C. EFFECT OF CHANGE

This change order will have the following effect on the cost of this project:

ITEM NO.	ITEM DESCRIPTION	ORIGINAL QUANTITY	REVISED QUANTITY	UNIT	UNIT PRICE	AMOUNT OF CHANGE
5A	Additional Traffic Control with Arrow Board	0	1	LS	$ 5,000.00	$ 5,000.00
	Remove Existing Pavement	0	688.7	SY	$ 13.80	$ 9,504.06
7	Recycle Existing Concrete	165	853.7	SY	$ 2.25	$ 1,549.58
15	Street Header	160	449	LF	$ 25.00	$ 7,225.00
	Full Depth Sawcut and Vacuum Saw Water	0	1131	LF	$ 4.00	$ 4,524.00
	Longitudinal Butt Joint	0	815	LF	$ 10.00	$ 8,150.00
45	10" Reinforced Concrete Pavement 5000 psi	480	1168.7	SY	$ 65.14	$ 44,861.92
	6" Curb	0	488	LF	$ 4.00	$ 1,952.00
	Buttons	0	1	LS	$ 4,000.00	$ 4,000.00
	Curb and Gutter	0	100	LF	$ 50.00	$ 5,000.00
	Route and Seal Cracks	0	1	LS	$ 5,000.00	$ 5,000.00
	TOTAL:					**$96,766.55**

Original Contract Amount	$	1,002,110.00
Contract Amount (Including Previous Change Orders)	$	1,002,110.00
Amount, Change Order No. 3	**$**	**96,766.55**
Revised Contract Amount	**$**	**1,098,876.55**
Total Percent Increase Including Previous Change Orders		**9.66%**

K-2

D. EFFECT OF CHANGE ON CONTRACT TIME

The work required under this change order will add 30 day(s) to this project:

Original Contract Time	120 working days
Amount (Including Previous Change Orders)	120 working days
Amount, Change Order No. 3	**30** working days
Revised Contract Time	**150** working days
Total Percent Increase Including Previous Change Orders	**25.00%**

E. AGREEMENT

By the signatures below, duly authorized agents of the City of Plano, Texas and JRJ Paving, L.P., do hereby agree to append this Change Order No. 3 to the original contract between themselves, dated April 11, 2005.

OWNER: CITY OF PLANO

By: _____
(signature)
Print Name: Thomas H. Muehlenbeck
Print Title: City Manager
Date: _____

JRJ PAVING, L.P.
A Texas limited partnership
By: JRMJ HOLDINGS, L.L.C.
A Texas limited partnership
Its General Partner

By: _____
(signature)
Print Name: _____
Print Title: _____
Date: _____

APPROVED AS TO FORM:

By: _____
Diane C. Wetherbee, City Attorney

ACKNOWLEDGMENTS

STATE OF TEXAS §
§
COUNTY OF _____ §

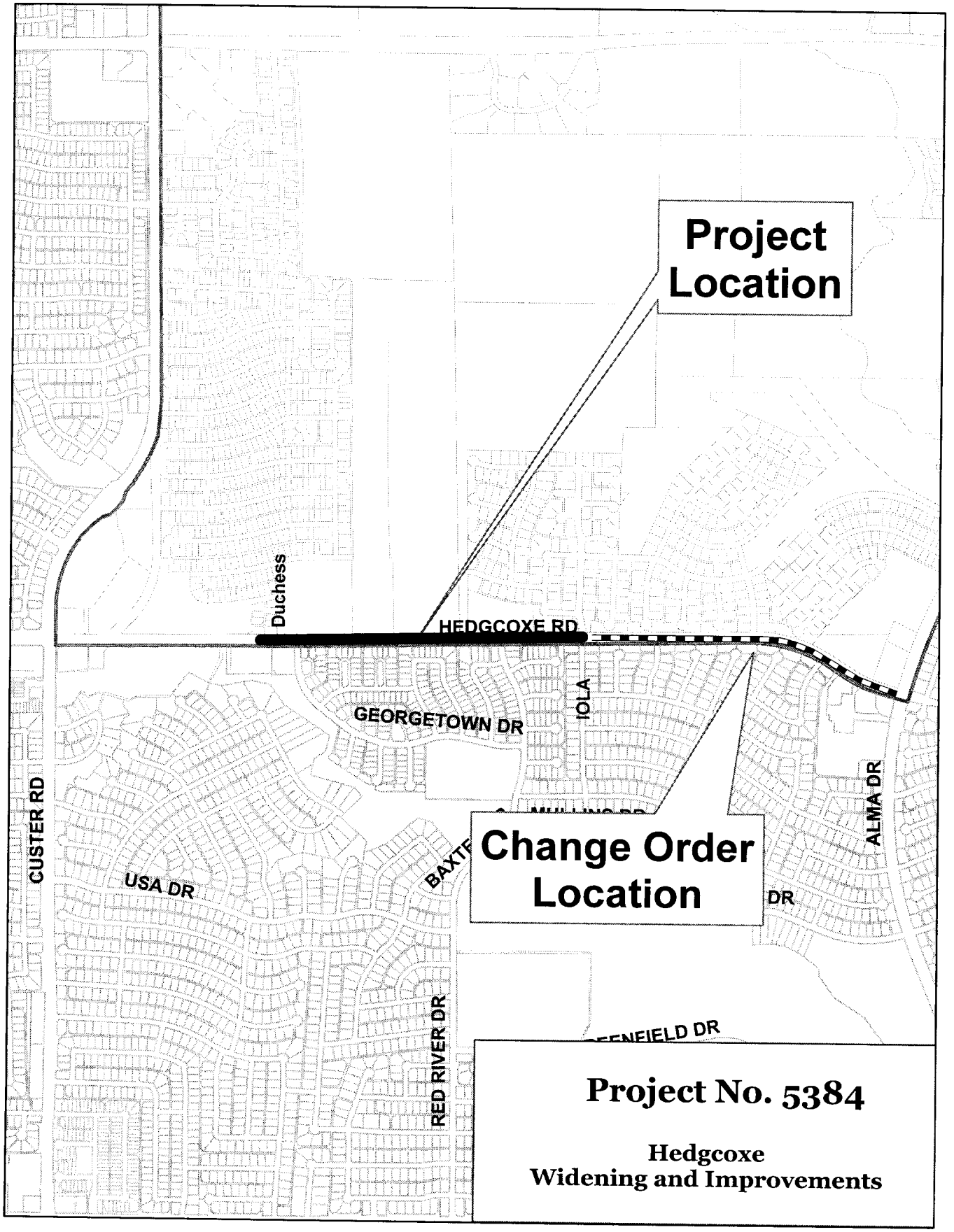
This instrument was acknowledged before me on the _____ day of _____, 200__, by _____, _____ of _____, a **Texas** corporation, on behalf of said corporation.

_____
Notary Public, State of Texas

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2005, by **THOMAS H. MUEHLENBECK, CITY MANAGER** of the **CITY OF PLANO, TEXAS,** a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

_____
Notary Public, State of Texas


Project Location
Change Order Location
Duchess
HEDGCOXE RD
GEORGETOWN DR
IOLA
ALMA DR
CUSTER RD
USA DR
RED RIVER DR
Project No. 5384
Hedgcoxe
Widening and Improvements

k-5

CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☐ Yes	☒ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☐ Yes	☒ Not Applicable
Council Meeting Date:	11/28/05	Reviewed by Legal	☒ Yes	☐ Not Applicable
Department:	Planning		Initials	Date
Department Head	Phyllis Jarrell	Executive Director		11/18/05
Dept Signature:	P. Jarrell	City Manager		11/18/05
Agenda Coordinator (include phone #):	**Marcus Watson, x 5343**			

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

CAPTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, STATING ITS INTENT TO APPLY FOR DESIGNATION OF THE CITY AS A "PRESERVE AMERICA" COMMUNITY AND TO COMMIT TO PROTECTING AND CELEBRATING HERITAGE ASSETS.

FINANCIAL SUMMARY

☒ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☐ CIP

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

FUND(S):

COMMENTS:

SUMMARY OF ITEM

"Preserve America" is a White House initiative developed in cooperation with the Advisory Council on Historic Preservation and the U.S. Departments of the Interior, Commerce, Agriculture, and Housing and Urban Development. It highlights the efforts of the President and Mrs. Bush to preserve our national heritage. It has several components, one of which is the designation of "Preserve America" Communities.

"Preserve America" Community designation will be granted to communities that meet three general criteria:

1. The community has recently supported a historic or cultural preservation project that promotes heritage tourism or otherwise fosters economic vitality, and involves a public-private partnership between government entities and at least one civic association, nonprofit, and/or business enterprise.

2. The governing body of the community has adopted a resolution indicating its commitment to the preservation of its heritage assets.

3. The community meets at least five criteria specified in three broad categories: discovering heritage through historic places, protecting historic resources, and promoting historic assets.

This designation is an honorary designation that confirms our commitment to heritage preservation and does not involve any obligations.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, STATING ITS INTENT TO APPLY FOR DESIGNATION OF THE CITY AS A *PRESERVE AMERICA* COMMUNITY AND TO COMMIT TO PROTECTING AND CELEBRATING HERITAGE ASSETS.

WHEREAS, *Preserve America* is a White House initiative developed in cooperation with the Advisory Council on Historic Preservation, the U.S. Department of the Interior, and the U.S. Department of Commerce; and

WHEREAS, the goals of this initiative include a greater shared knowledge about our Nation's past, strengthened regional identities and local prod, increased local participation in preserving the country's irreplaceable cultural and natural heritage assets, and support for the economic vitality of communities; and

WHEREAS, this initiative is compatible with our community's interests and goals related to historic preservation; and

WHEREAS, designation as a *Preserve America* Community will improve our community's ability to protect and promote its historical resources;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, that the City of Plano will apply for the designation of Plano as a *Preserve America* Community; and be it further

RESOLVED, that the City of Plano will protect and celebrate our heritage, use our historic assets for economic development and community revitalization, and encourage people to experience and appreciate local historic resources through education and heritage tourism programs.

PASSED AND APPROVED THIS _____ DAY OF _____, 2005.

_____
Pat Evans, MAYOR

ATTEST:

_____
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

l-2

PRESERVE AMERICA

COMMUNITIES PROGRAM: 2005 COMMUNITY APPLICATION

Application Form

1. GENERAL INSTRUCTIONS

Communities must consult with their State Historic Preservation Officer (SHPO) during development of this application and send a copy of the completed application to the SHPO when it is submitted. (Not required for tribal submissions.)

☑ **Check this box to signify that you have done so.**

SHPO names and addresses can be found at www.ncshpo.org or by calling (202) 624-5465.

Applications must be submitted in hard copy and will not be returned. **Please provide two original copies of all materials and three to five related images as described on page 4.** Model application documents are available at www.PreserveAmerica.gov/communities.html. Submission well in advance of one of the quarterly **deadlines (March 1, June 1, September 1, December 1)** will facilitate timely review.

Submit applications to:
Preserve America Communities
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue, NW, Suite 809
Washington, DC 20004

Sources of additional information:
Office of Preservation Initiatives
Advisory Council on Historic Preservation
(202) 606-8503
Web site: www.PreserveAmerica.gov

2. COMMUNITY INFORMATION

All communities, incorporated or unincorporated, and federally recognized Indian tribes are eligible to seek designation as *Preserve America* Communities.

City Plano County Collin Congressional District 3

State Texas Indian tribe _____ Zip 75074 - _____

3. APPLICANT INFORMATION

Application for designation can only be submitted by one of the following:

- Mayor or equivalent elected governing official of an incorporated community;
- County executive or equivalent elected governing official of the appropriate jurisdiction of an unincorporated community; or
- Tribal governing official.

Applicant's Name Pat Evans Title Mayor

Mailing Address P.O. Box 860358

City Plano State Texas Zip 75086-0358

Phone 972-941-7121 Fax 972-423-9587 E-mail pate@plano.gov

Shipping Address *(if different than mailing address)* 1520 K Avenue, Ste. 300

City Plano State Texas Zip 75074

Attn Mayor Pat Evans Phone 972-941-7121 E-mail pate@plano.gov

For more information, contact Marcus Watson Title Heritage Preservation Off.

Phone 972-941-7152 Fax 972-941-7397 E-mail marcusw@plano.gov

l-3

4. DESIGNATION CRITERIA AND REQUIRED DOCUMENTATION

A community will qualify for designation as a *Preserve America* Community if:

A. The community has supported (within the last three years) a historic or cultural preservation project that promotes heritage tourism or otherwise fosters economic vitality. The project must have involved a public-private partnership between government entities and at least one civic association, non-profit organization, or business enterprise. ***(Please provide a written description of a specific project, documenting how it fulfills these requirements. Do not exceed 500 words.)***

B. The governing body of the community has recently adopted a resolution indicating its commitment to the preservation of its heritage assets. ***(Please include a signed and dated copy of the resolution.)***

C. The community meets at least five of the criteria outlined below (with at least one from each specified category). ***(Please check the criteria below under which you are seeking Preserve America Community designation. For each criterion, please provide a written description of no more than 250 words explaining how your community meets the criterion.)***

Category 1: Discovering Heritage Through Historic Places

- ☑ An ongoing, publicly available inventory of historic properties.
- ☑ A community-supported museum, interpretive facility, archive, or local history records collection (private or public).
- ☑ Active citizen volunteer involvement, such as a docent or guide program for interpretation of local history and culture, or volunteer participation in improving the condition of heritage assets within the community.
- ☑ Opportunities for children to learn about local heritage in the schools, through either established curriculum or special outreach activities.

Category 2: Protecting Historic Resources

- ☑ A local governmental body, such as a board or a commission, charged with leading historic preservation activities within the community.
- ☑ An adopted community-wide historic preservation plan that is being implemented.
- ☑ A historic preservation review ordinance and volunteer or professional staff to implement it.

Category 3: Promoting Historic Assets

- ☑ A local heritage tourism program or active participation in a regional program, with such promotional material as a walking/driving trail or tour itinerary, map of historic resources, etc.
- ☑ A regularly scheduled heritage observance or event.
- ☑ A historic preservation awards or recognition program.

D. Submit three to five images that show people using and enjoying your historic cultural and natural resources (CD with digital images with a resolution of 300 dpi or greater, 4" x 6" color photographs, or slides) and provide caption and credit information for each.

l-4

4. DESIGNATION CRITERIA AND REQUIRED DOCUMENTATION

A. The City of Plano's historic preservation program is truly a public-private partnership. The City's Heritage Commission (HC) deals primarily with the regulatory side of preservation (along with some awareness and education programs) while the advocacy, education and awareness roles are covered by several partner nonprofit organizations: The Heritage Farmstead Association, The Plano Conservancy for Historic Preservation, the ArtCentre of Plano, the Douglass Community Arts Advisory Committee and the Plano African American Museum, to name a few. The City of Plano supports these organizations by giving approximately $500,000 in grants each year. In a city with a population of approximately 240,000 people but with only a small historic area, historic preservation is alive and well, strong and active.

In the past several years, the greatest testament to this preservation partnership has been the Blackland Prairie Festival. Now in its third year, the festival has brought approximately 8,000-10,000 people into historic downtown Plano each of its two previous years. Scheduled for the last Sunday of each April, the festival was about four years in the making. All of the organizations above came together to build an event of which all could be proud.

The Blackland Prairie Festival is a true history event as the steering committee has placed top priority on historically accurate and appropriate activities. The goal of the committee is to give the visitor a sense of coming to town for a small fair or trade day sometime in the late 1890's or early 1900's. The event is primarily funded by a grant from the City of Plano. Admission is free, and donations are requested for only a few activities.

Children Enjoy Traditional Crafts
Credit: BPF Steering Committee

This year, almost 100 volunteers participated in the festival. Many in period costume, these volunteers did everything from operated an information booth and history exhibit to give tours of two of our neighborhoods and four of our houses to acting in historical reenactments. This dynamic event abounds with family fun, entertainment, arts, and a taste of Plano's historic beginnings. Historic downtown's brick streets fill with costumed performers, artists, food, and fun for all ages. Visitors experience life as "Granny" did, reaching out to farm animals, quilts, soaps, dipping candles, learning dances, feeling the heat of the blacksmith's iron, or judging jellies as in the early 1900's. Mom and Dad find shop owners showing off their wares and artists displaying their skills. Musical performers and actors entrance all age groups while street performers surprise and enhance the feel of yesteryear.

The historic preservation program in Plano has been gaining momentum and strength for over 20 years and is, today, one of the strongest and most active programs in our state. The program has many strong attributes including an effective Heritage Commission, a substantial grant program, an unprecedented tax exemption program and active private partners. The Blackland Prairie Festival has proven to be the successful culmination of all of our efforts.

B. Please see attached resolution.

C1. Discovering Heritage Through Historic Places

a. As part of the planning process for each Preservation Plan update, the City updates and maintains an inventory of the city's historic resources. The inventory is available to the public in the Heritage Preservation Officer's office in a series of binders and is summarized in each Preservation Plan update. Plano's first inventory was taken in 1980 and was updated in 1986, 1990-92 and 2000. The next survey update will take place in 2009-10. The City's inventory includes architectural information about each resource and photographs. It also includes some historical information if known. While many buildings have been surveyed over the years, several have unfortunately been lost or substantially altered over time (without the protection of local historic designation). The current inventory contains approximately 220 resources, most of which are within a small area.

b. Owned by the City of Plano and operated by the Heritage Farmstead Association, the Heritage Farmstead Museum opened in 1986 after a $960,000 renovation of the four acre site that includes a fourteen room Victorian farmhouse, windmill, cisterns, historic gardens, barns, blacksmith shop, hen house, country store and orientation center. Volunteers interpret farm life on the Texas Prairie from 1890 to 1925. Last year, the museum provided over 20,000 visitors from nearly every state and seventeen countries with programs that emphasize the contributions to society of our nation's rural heritage. In addition to the listing in the National Register of Historic Places, the complex has a State of Texas Historical marker and is fully accredited by the American Association of Museums.

Children Learn How to Rope a Saddle at the Heritage Farmstead Museum
Credit: Heritage Farmstead Museum

The Interurban Railway Museum contains the story of the electric railway system of North Texas in use during the first half of the twentieth century. The museum contains interactive displays that depict the function of converting alternating current (AC) to direct current (DC) which was used to power the rail cars, a model train display illustrating the use of a single track system with sidings, and Car 360, the only remaining example of a Rail Post Office/Passenger car used on the Texas Electric Railway. The museum is owned by the City of Plano and operated by the Plano Conservancy for Historic Preservation.

Learning About Rail Transportation at the Interurban Railway Museum
Credit: Plano Conservancy for Historic Preservation

A third museum, the Plano African American Museum, is currently being developed with assistance from the Heritage Farmstead Museum, which has extensive experience in museum administration and development. Public funds are and will continue to be part of the process.

c. In addition to the approximate 100 volunteers for the Blackland Prairie Festival and the 25 year-round volunteers helping at the Interurban Railway Museum, the program that uses the most volunteers is the Heritage Farmstead Museum. During twelve weeks in the fall, over 4,300 Plano Independent School District students from 42 elementary schools visit the Heritage Farmstead Museum. Approximately seventy volunteer docent tour guides per week are needed for school tours alone (the Museum conducts six weekly public tours during this time as well). Volunteer docents are vital to accomplishing this challenge of providing a quality learning experience to so many children in a short three-month time frame. Additionally, the museum has a highly trained group of volunteer curatorial aids, which assist in changing out the museum's exhibits four times a year. The museum's grounds volunteers are divided into two components. One maintains the historically accurate landscaping of the four acre site and the other maintains a year round turn of the century kitchen garden. Combined with donations of professional services and the usual non profit professional services and the unusual donations of crafters such as quilters, blacksmiths and the like, the museum accounts for a total volunteer base of over 400 volunteers donating over 17,000 hours of service each year.

d. The field trip to the Heritage Farmstead Museum is a mandated component of the third grade social studies curriculum in Plano ISD. During their first six weeks in school, students learn about their community and its history. Not only do they tour the buildings and learn about farm life in the late 1800's and early 1900's, students also handle antique toys like stilts and hoops and try out old chores like corn grinding and washing clothes on a washboard. Such an immediate experience, according to teachers, reinforces concepts taught in the classroom. The program has been recognized for its educational quality on local, state, and national levels.

A professionally written fourth grade field trip based on Texas Essential Knowledge and Skills (TEKS) criteria is the centerpiece of the educational programs offered through the Interurban Railway Museum. During their visit to the museum, students tour the original passenger depot and electric substation and the Texas Electric Railcar built in 1911, and they participate in a walking tour of the adjacent historic district. Social studies concepts are reinforced through panels containing both text and photographs in the history room. Science concepts are presented in the substation area, focusing on the early electrical technology that made the railway system possible. Additional tours are tailored to a variety of age groups, including senior citizens, scouting troops, and pre-school and home schooled children.

C2. Protecting Historic Resources

a. The Heritage Commission (HC), a seven-member board appointed by the Mayor and City Council, was created by the City's preservation ordinance. In an effort to protect the city's rich, unique, cultural and architectural heritage, the HC recommends properties for designation and reviews any major proposed exterior alterations, demolition or new construction affecting designated resources or districts in accordance with criteria in the resource or district's Design Guidelines and the Secretary of the Interior's Standards for the Rehabilitation of Historic Buildings.

Heritage Commission and Friends in Period Costume
Credit: BPF Steering Committee

The Heritage Commission also administers a partial property tax exemption for designated properties in the program that is maintained to a minimum standard set by the commission. Staff and commissioners visually inspect each property in the program every year to ensure conformance. The community's commitment to historic preservation is evidenced by the fact that all four taxing entities participate in the tax exemption.

Finally, the Heritage Commission has also been given the duty to review and evaluate applications for annual historic preservation grants from non-profit organizations involved in preservation projects and programming. The commission makes its recommendations to City Council for final budget approval.

b. The Heritage Preservation Plan identifies buildings, sites, and areas that have played a role in Plano's development and proposes procedures to protect them by way of legal recognition, financial incentives, and public education.

Three earlier historic preservation plans have been adopted for the City of Plano, and the latest one (adopted in 2001) builds on each of them. The original 1981 plan called for designation of 33 buildings. Today, we have 31 individual designations and 2 district designations, made up of approximately 100 properties.

The plan was updated for the following reasons:

- An up-to-date inventory is essential.
- The downtown area of Plano has been undergoing major revitalization that is carefully planned to enhance and preserve the historic character of the area.
- The arrival of the new century has underscored the fact that the houses and other buildings constructed just after World War II have entered the time period recognized as historic.
- New dimensions can enhance the current preservation endeavors. In the first 20 years of preservation activity in Plano, the groundwork was laid for a solid program including adopting an ordinance, designating the obvious properties,

and educating the public about the preservation mission. Now, historic preservation in Plano has matured and is ready to proceed to more advanced techniques and tackle more difficult issues.

c. The City of Plano's preservation ordinance was first adopted in 1979 and was rewritten in 1998. At that time, the City was granted Certified Local Government (CLG) status. Consequently, the new ordinance is a state-of-the-art ordinance based on a national model accepted by the National Park Service and the Texas Historical Commission. A copy is enclosed.

As a result of the 1998 ordinance, the City's first Heritage Preservation Officer position was created. This position has been filled by the same person since that time. It is a full-time position with two part-time support personnel.

C3. Promoting Historic Assets

a. Heritage tourism has become the fastest growing segment of this industry. A newly developed tour brochure focusing on the rich history of the original downtown area and surrounding historic districts includes a brief overview of over 30 properties bearing historic designation within the city of Plano. A second aspect features a series of granite markers placed on location of the site where significant events occurred or "lost" structures once stood. Graphic images, when available, provide a *tangible* connection to the information these markers convey. Upon completion of the tour, participants will have a better feel for the spirit and understanding of the pride on which our community was founded.

Plano is part of the Preserve America Award-winning program, the Texas Heritage Trails Program. Located in the Lakes Trails Region, Plano's Heritage Farmstead Museum and Interurban Railway Museum are featured in the regional tour brochure. Plano has also been featured on a three-city rack card related to the program.

Additionally, the City of Plano has worked with the City Centre Association (our downtown merchants' association) to promote tourism and shopping in historic Downtown Plano, including advertisements in prominent Texas tourism publications such as *Texas Highways* magazine.

b. Each year, the City of Plano and its preservation partners observe National Historic Preservation Month in May. We now kick off the month with the Blackland Prairie Festival the last weekend in April and celebrate throughout the month with other events such as the annual preservation awards, lectures, tours, book signings, and receptions. We pass a resolution, put up banners in the downtown area and send out press releases. Several years ago, the City of Plano Heritage Commission and the Plano Television Network produced a 30-minute video on the history of Plano, which won a Cable Ace Award and was nominated for an Emmy. It has become an annual preservation week tradition on our City television station as well.

c. Every year, the Plano Heritage Commission hosts a preservation awards ceremony and reception. Awards given annually are:

Property Owners Accept Award from Mayor Evans
Credit: BPF Steering Committee

1. Certificate of Appreciation (Certificate)

   Awarded to any person or organization that has:

   a. Made a contribution or an achievement that has promoted or furthered preservation in Plano in the last year.
   b. Has made a significant effort to maintain an historic property, as evidenced by a tax exemption program participant that has had no #1 or #2 ratings for the previous and current inspections.

   In 2005, certificates were awarded to two Eagle Scouts for cemetery clean-ups, to the Plano Fire Department for efforts in protection of downtown and to downtown Plano's neighborhood police officer.

2. Award of Excellence in Preservation (Plaque)

   Awarded to a person or organization that has completed a significant and successful preservation project in the past year. This may include a restoration (residential and/or commercial) and/or new construction in an historic district.

   In 2005, Awards of Excellence in Preservation were given to EDS Corporation for renovation and protection of a cemetery and to the Blackland Prairie Festival Steering Committee.

4. The Preservation Partner Award (Plaque)

   Awarded to a person or organization (historic property owner or not) that has contributed significantly and repeatedly to preservation efforts over several years and has demonstrated ongoing efforts above-and-beyond expectations. In 2005, the awards went to the Heritage Farmstead Association and the Plano Conservancy for Historic Preservation.

D. Please see enclosed CD-ROM for photos.

Photo 1: Children Enjoy Traditional Crafts at the Blackland Prairie Festival
Credit: BPF Steering Committee

Photo 2: Children Learn How to Rope a Saddle at the Heritage Farmstead Museum
Credit: Heritage Farmstead Museum

Photo 3: Learning About Rail Transportation at the Interurban Railway Museum
Credit: Plano Conservancy for Historic Preservation

Photo 4: Heritage Commissioners in Period Costume
Credit: BPF Steering Committee

Photo 5: Property Owners Accept Award from Mayor Evans
Credit: BPF Steering Committee

5. ADDITIONAL SUPPORTING MATERIAL

Written endorsements by preservation organizations, civic organizations, members of Congress, and other elected officials are encouraged. ***(Please provide copies of any letters of endorsement.)***

Documenting participation in other nationwide preservation programs is encouraged. ***(Please let us know if your community is a Certified Local Government, a Main Street Community, a recipient of funds under the Save America's Treasures program, a recipient of Transportation Enhancements funding for historic preservation, etc.)***

(Brochures, additional photos, reports, publications, etc. may be appended if desired.)

6. RELEASE AUTHORIZATION

The undersigned gives the ACHP and the *Preserve America* Communities program absolute right to use, in whole and in part, all material submitted in furtherance of this application. All submitted materials become the property of *Preserve America*. Materials may be used in program activities, including publications and Web sites. *Preserve America* is given permission to make any editorial changes and/or additions to the subject material. The undersigned guarantees to have on file all necessary individual agreements and signatures to ensure *Preserve America* unencumbered use of all associated material.

7. SIGNATURE OF APPLICANT

The elected governing official of the community must sign and date this form.
Signatures must be original and in ink.

Signature _____ **Date** _____

e-11

Please visit our website.....

CAPITOL:
P.O. Box 12068, Room 3E.2
Austin, Texas 78711
(512) 463-0108
(512) 463-7579 (Fax)
Dial 711 for Relay Calls

DISTRICT:
5000 Legacy Drive
Suite 494
Plano, Texas 75024
(972) 403-3404
(972) 403-3405 (Fax)

FLORENCE SHAPIRO
Texas State Senator
District 8

COMMITTEES:
Education, Chair
Finance
Administration
Transportation and
Homeland Security

President Pro Tempore
2005

November 1, 2005

Preserve America Communities
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue, NW Suite 809
Washington, DC 20004

Dear Sir or Madame:

As a lifelong resident of Collin County, I am pleased to endorse the City of Plano's bid to be recognized as a Preserve America Community.

As one of the oldest communities in Collin County and the fastest growing, I believe Plano is a perfect candidate for this recognition. The city values its history and heritage, while looking to the future for growth and development. I'd like to share with you some of Plano's initiatives that I believe qualify them for this award.

- The community has recently supported a historic or cultural preservation project that promotes heritage tourism or otherwise fosters economic vitality, and involves a public-private partnership between government entities and at least one civic association, nonprofit, and/or business enterprise.
- The governing body of the community has adopted a resolution indication its commitment to the preservation of its heritage.
- The community meets at least five criteria specified in three broad categories: discovering heritage through historic places, protecting historic resources, and promoting historic assets.

Plano holds an annual heritage festival, the Blackland Prairie Festival, every April with attendance around 8,000. The city also boasts two history museums--the Heritage Farmstead Museum and the Inner Urban Railway Museum, and the Plano African American Museum will be opening soon.

For these reasons and more, I fully endorse the City of Plano for this recognition. Thank you for your time and most favorable consideration.

Sincerely,

Florence Shapiro

l-13

THE PLANO CONSERVANCY FOR HISTORIC PRESERVATION

P.O. Box 861810
Plano, TX 75086-1810
972-941-2117
Fax 972-941-2656
planoconservancy@earthlink.net
www.planoconservancy.org
Located in: The INTERURBAN MUSEUM on E. 15th Street

August 17, 2005

Advisory Council on Historic Preservation
Preserve America Selection Committee
1100 Pennsylvania Avenue, NW, Suite 809
Washington, D.C. 20004

Dear Selection Committee:

The Plano Conservancy for Historic Preservation, Inc. is a non profit organization whose mission is to promote civic pride in the past, to increase preservation awareness through education and public outreach, and to provide financial assistance to protect and preserve the heritage resources of Plano, TX for this and future generations.

We feel immense pleasure in voicing our support of the ongoing efforts by the City of Plano to pursue designation of our city as a *Preserve America Community*. A longstanding goal held by the City of Plano and by the citizens served by this government entity is to maintain the unique identity of the people, places and events that originally shaped our present way of life.

Numerous projects throughout the community emphasize the ongoing commitment to this effort. Several of these include the operation of two museum sites whose missions are focused on the early agrarian economy and the electric rail transportation system both of which are tied directly into the local school system via third and fourth grade field trips. An oral history program is underway capturing memories of longstanding residents, as well as an annual festival held in the historic downtown which is jointly sponsored by various preservation groups, the City Council, arts groups and downtown merchants.

Revitalization of the old downtown is underway spearheaded by projects cooperatively sponsored by the City and private enterprise. Components include arrival of light rail transportation, new housing within walking distance to the station, new small businesses, community theater, and public arts program. The renewed energy pulsing through the neighborhood is directly linked to the pride of the past.

We believe Plano embodies all the intentions of the Preserve America distinction and urge you to include our community in this prestigious program.

Respectfully submitted,

Maggie Sprague
Co Director

Russell C. Kissick
Co Director

l-14

Heritage Farmstead Museum
1900 W. 15th Street
Plano, Texas 75075
972.881.0140

A State of Texas Historic Landmark
Listed in the National Register of Historic Places
Accredited by the American Association of Museums

tpeters@heritagefarmstead.org

Ted H. Peters
Executive Director

August 17, 2005

Advisory Council on Historic Preservation
Preserve America Selection Committee
Washington, D. C.

Our museum endorses the City of Plano for Preserve America Community status.

Since it's beginning in 1974 the Heritage Farmstead Museum has received strong support both financial and in kind from the City of Plano. The City is always ready, willing and able to lend any support needed to make historic preservation a major objective:

We have consistently received major funding from the City.

We have received strong in kind support from the City Parks Department.

We have received strong in kind support from the City Convention and Business Bureau.

We have received strong support in every way from the City Heritage Commission.

The Heritage Farmstead urges your Council to select the City of Plano as a Preserve America Community.

Sincerely,

Ted Peters
Director

l-15

Tourism Contacts

Plano Convention and Visitors Bureau
Mark Thompson
2000 E. Spring Creek Pkwy
Plano, TX 75074
Phone: 800-81-PLANO
Fax: 972-424-0002

Julie Chase
Director, Market Texas Tourism
Office of the Governor, Economic Development and Tourism
P.O. Box 12428
Austin, TX 78711
512-936-0091

CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☐ Yes	☒ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget CS	☒ Yes	☐ Not Applicable
Council Meeting Date:	11/28/05	Reviewed by Legal	☒ Yes	☐ Not Applicable
Department:	Customer & Utility Services		Initials	Date
Department Head	Linda Keylon	Executive Director		11-4-05
Dept Signature:	Linda Keylon (JK)	City Manager		11/16/05
Agenda Coordinator (include phone #):	Becky Rodgers x5105			

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

CAPTION

Approve Interlocal Property Tax Collection agreement with Collin County.

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☒ OPERATING EXPENSE ☐ REVENUE ☐ CIP

FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	62,751	0	**62,751**
Encumbered/Expended Amount	0	0	0	**0**
This Item	0	-61,790	0	**-61,790**
BALANCE	0	961	0	**961**

FUND(S): **GENERAL FUND**

COMMENTS: Funds are included in the 2005-06 Budget for the collection of City ad valorem taxes, penalties, interest, and attorney's fees, including mailing tax statements to Plano accounts, providing monthly collection reports, developing and maintaining tax rolls, and meeting all applicable requirements of the TEXAS PROPERTY TAX CODE. This agreement covers a period of five (5) fiscal years with three (3) additional twelve (12) month renewal periods.

STRATEGIC PLAN GOAL: Collection of property taxes by the county relates to the City's goal of "Service Excellence".

SUMMARY OF ITEM

This Interlocal Agreement renews authorization for Collin County to collect property tax on behalf of the City at a cost of $0.75 per account.

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
Exhibit "A" Interlocal Agreement Exhibit "B" City of Plano Insurance Requirements and Agreement	

M-1

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN INTERLOCAL COOPERATION AGREEMENT BY AND BETWEEN THE CITY OF PLANO AND COLLIN COUNTY, TEXAS, PROVIDING TERMS AND CONDITIONS CONCERNING THE COLLECTION OF PROPERTY TAXES, AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR, IN HIS ABSENCE, AN EXECUTIVE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE.

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

WHEREAS, Section 6.22(c) of the Texas Tax Code provides in part that the governing body of a taxing unit, such as the City of Plano, may require the County to assess and collect the property taxes the unit imposes in the County; and

WHEREAS, the City Council has been presented a proposed Interlocal Cooperation Agreement by and between the City of Plano, Texas, and Collin County, Texas concerning the assessing and collecting of property taxes, a substantial copy of which is attached hereto as **Exhibit "A"** and incorporated herein by reference (hereinafter called "Agreement"); and

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

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

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

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

M-2

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

DULY PASSED AND APPROVED the _____ day of _____, 2005.

_____
Pat Evans, MAYOR

ATTEST:

_____
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

M-3

INTERLOCAL AGREEMENT BETWEEN
COLLIN COUNTY AND THE CITY OF PLANO
FOR TAX COLLECTIONS

THIS AGREEMENT is made and entered into by and between **COLLIN COUNTY, TEXAS**, a political subdivision of the State of Texas, hereinafter referred to as "County" and the **CITY OF PLANO, TEXAS** a home rule municipal corporation, hereafter referred to as "Plano."

WITNESSETH:

WHEREAS, this Agreement is made pursuant to the Interlocal Cooperation Act, V.T.C.A., GOVERNMENT CODE, Chapter 791 (the "Act"); and

WHEREAS, County and Plano are local governments as defined by the Act engaged in the provision of governmental services to their respective citizens; and

WHEREAS, Plano has a need for the collection service of certain tax accounts and County is equipped to provide the same.

WHEREAS, In accordance with Section 6.24 of the TEXAS PROPERTY TAX CODE, Plano has authority to authorize the County to act as tax collector for Plano and County has the authority to so act;

WHEREAS, Plano has current funds available to compensate County for the services provided pursuant to this Agreement.

NOW THEREFORE, County and Plano for the mutual consideration stated herein, agree as follows:

I.
EFFECTIVE DATE

This Agreement shall be effective upon the date that the last party executes the Agreement.

II.
TERM

The initial term of this Agreement shall be for a period beginning October 1, 2005 and ending September 30, 2010. Thereafter, this Agreement shall automatically renew for three (3) additional twelve (12) month periods beginning October 1st and ending September 30th each year unless terminated earlier by either County or Plano.

III.
TERMINATION

The parties agree that Plano may terminate this Agreement at any time and for any reason by giving ninety (90) days written notice to the County. The County may terminate this Agreement at any time and for any reason by giving Plano eighteen (18) months advance notice of their intent to terminate the Agreement.

M-4

IV.
OBLIGATIONS OF PARTIES

A. County Obligations

For the purpose and consideration herein stated and contemplated, County shall provide the following services to Plano relating to the collection of property tax accounts located within the City of Plano, Collin County and Denton County, Texas.

1. General

a. The County, through its duly elected Tax Assessor Collector, shall serve as tax collector for Plano for ad valorem taxes, including penalties, interest and attorney's fees for the period set forth in Article II above, for the collection of taxes owed Plano in Collin and Denton Counties. County agrees to perform for Plano all necessary duties hereby authorized, and Plano does hereby expressly authorize County to do and perform all acts necessary and proper to collect taxes for Plano.

County agrees Plano shall retain tax assessor authority and responsibilities which Plano may delegate to the County or to other third parties as it deems appropriate.

b. County shall prepare and mail all tax statements to Plano accounts, provide monthly collection reports to Plano, prepare tax certificates, develop and maintain both current and delinquent tax rolls, and meet all the applicable requirements of the TEXAS PROPERTY TAX CODE, as the same may be amended from time to time, and develop and maintain such other records and forms as are necessary or required by law.

c. County shall escrow a copy of the source code for the property tax collection software it uses to protect Plano against non-performance by the software vendor.

d. When so directed by Plano, County shall, calculate the effective tax rates and rollback tax rates for Plano, and shall publish information concerning the effective and rollback tax rates in the form prescribed by the Comptroller of Public Accounts of the State of Texas and as required by the TEXAS TAX CODE.

e. Upon request, County shall provide Plano with procedures and forms for posting notices of required hearings and quarter page notices as required by law.

f. County shall prepare and deliver the delinquent tax roll to Plano by February 15th of each year of the Agreement.

g. County shall collect all penalties and interest lawfully due on Plano tax accounts with no exceptions.

h. Any refunds due a Plano taxpayer account shall be issued by County in compliance with TEXAS PROPERTY TAX CODE requirements. County shall advise Plano of all refunds. The refunds shall be timely issued to avoid imposition of interest. Any interest accrued shall be at the County's expense.

M-5

Information required for each refund shall include the account number, property owner, payee, amount of tax refunded, amount of penalty and interest refunded, and the reason for the refund.

i. County agrees that it must have written approval from the Plano City Council to transfer any Plano account from the active roll to the uncollectible roll.

j. County shall respond immediately to routine inquiries from Plano's taxpayers regarding their tax account. Routine inquiries shall include but not be limited to inquiries regarding readily available information not requiring additional research. Non-routine inquiries shall be responded to not later than three (3) business days. In the event non-routine items cannot be responded to within three (3) days, then the parameters for response time shall be in conformity with the provisions of the Texas Public Information Act.

k. If any tax lien on any property in Plano is extinguished due to the negligent or wrongful act or omission of the County tax office, the County assumes responsibility for the payment of the tax and any penalty or interest that may have accrued.

l. County agrees that David McCall, III, or designated attorneys with his law firm shall collect delinquent taxes and shall represent Plano in matters related to the collection of delinquent taxes. County shall give Plano no less than one hundred and eighty (180) days prior notice and must obtain written approval from the Plano City Manager, or his authorized designee, before using any other attorneys to collect delinquent tax accounts for Plano.

m. Neither the County, nor its officials, officers or employees, including the County Tax Assessor Collector, shall hold themselves out to be officials, officers or employees of the City of Plano.

n. County shall obtain a fidelity bond for the County Tax Assessor Collector and all employees working for the County Tax Assessor Collector; such bond to be conditioned on the faithful performance of their lawful duties, payable to and in an amount determined by the City of Plano. The City shall be named as the sole obligee/beneficiary on this fidelity bond.

2. Deposit of Funds

a. County shall remit by wire transfer to Plano's designated depository, all taxes, penalties and interest collected on Plano's behalf, segregated into proper Maintenance and Operation, and Interest and Sinking accounts. County shall notify Plano by telephone or e-mail prior to 9:00 a.m. of the amount of deposit for that business day. In the event Plano uses the same depository as the County, the transfers shall be by intrabank transfer.

b. For all funds received on behalf of Plano, County shall maintain the original post marked envelopes which contained the payments and the corresponding tax statements. These shall be maintained for three (3) years following receipt.

c. Payments received by County on behalf of more than one taxing entity which are less than the total amount due shall be pro-rated between the taxing entities, based upon their respective percentage of total amount due. Plano must be

M-6

advised in writing if exceptions to this distribution occur and the reason for the exception.

d. Any voluntary duplicate payments received will be refunded to the taxpayer or placed in an escrow account maintained by the County on behalf of the taxpayer.

e. All funds received by the County on behalf of Plano in excess of Ten Thousand Dollars ($10,000.00) on any business day shall be posted and deposited in the County's depository on the same business day. For all funds received in any business day which are less than Ten Thousand Dollars ($10,000.00), funds may be posted and deposited in County's depository on the following business day.

Funds received on Plano's behalf shall be wire transferred to the City's depository as soon as said funds are cleared and by 10:00 a.m. on the day the funds are made available.

The receipt of funds in a business day shall mean any funds received that day at County's offices, mail room, and post office box or any other location authorized or customarily receiving mail on behalf of County. It is intended by the parties that this provision be interpreted as broadly as possible.

f. All taxes, payments, penalties and interest due and owing to Plano upon termination of this Agreement shall survive termination of the Agreement.

3. Database

County shall provide remote "Inquiry Only" electronic access to dataset records by Plano 24 hours/day, 7 days/week. County will notify Plano as far in advance as possible of interruption to remote electronic access due to system upgrades or maintenance. County will notify Plano as soon as possible when there is an emergency outage.

County agrees to update the tax data no less frequently than weekly and will provide Plano access to the updates in order for Plano to transfer the updates to the Plano's computer systems electronically.

4. Tax Rolls and Tax Statements

a. Current year tax roll

County shall provide the current year tax roll to Plano prior to mailing current year tax statements. A totals page for the tax roll shall be provided to Plano within seven (7) business days of the date the Plano City Council passes the property tax rate.

b. Current year tax statements

County shall prepare the current year tax statements for Plano tax accounts and mail them by October 15th of each year in accordance with the requirements of the TEXAS PROPERTY TAX CODE. This schedule shall not be impacted by the failure of any other tax unit for whom the County collects taxes to pass a tax rate in a timely manner as prescribed by the TEXAS PROPERTY TAX CODE.

M-7

c. February delinquent statements

By February 15th of each year County shall mail delinquent tax statements with outstanding delinquent balances to property owners and other interested parties as delineated in the TEXAS PROPERTY TAX CODE.

d. May delinquent statements

Between May 1st and June 1st of each year, County shall mail a delinquent tax statement to all property owners and other interested parties whose taxes remain delinquent in accordance with the TEXAS PROPERTY TAX CODE requirements.

e. Late mailing of tax statements

Failure to mail tax statements in accordance with the schedule printed above shall result in a daily penalty to the County of $200.00 per account until the bills are mailed.

5. Reports

a. The County shall prepare and deliver monthly reconciliation reports to Plano by the tenth (10th) business day of the following month. The report shall contain a minimum of the following: listing of current taxes collected, including percentages; delinquent taxes, including penalties and interest; Maintenance and Operation, Interest and Sinking, collection reports; monthly recap reports, and monthly attorney's fee collection reports.

b. Upon request by Plano, County shall provide special reports. If the information required for a special report is readily available to County, the report shall be prepared at no cost to Plano. Otherwise, the parties shall agree on the cost of the report prior to any work being performed and the cost shall not exceed the guidelines established by the General Services Commission for charges under the Public Information Act.

c. Failure to respond to requests from Plano for documents and information within ten (10) business days of the request shall result in a penalty against the County of $200.00 per day until the requested documents or information are provided, or a valid reason is given for the delay and a mutually acceptable alternative deadline is established.

6. Audit

a. County agrees to allow Plano's designated representative to audit the property tax records and any other records required to be kept pursuant to state law and the terms of this Agreement. The audit shall be conducted on the County's premises during normal working hours with at least forty-eight (48) hours advance written notice to County. Records required for the audit may be required in hard copy or electronic format. The expense of any and all such audit(s) shall be paid for solely by Plano. Upon request, a copy of any and all such audit(s) shall be furnished to County.

In the event the audit indicates there have been any underpayments remitted to Plano, County shall be liable for such deficiencies including interest payable at the average thirteen (13) week United States Treasury Bill yield for that period. In the event there are any overpayments remitted to Plano, Plano shall be liable for such

M-8

amounts including interest at the average thirteen week United States Treasury Bill yield for that period.

b. During regular business hours Plano or its designated representative may perform operation audits of the services provided by County under this Agreement. County and its employees will cooperate in any operational audit. The cost of the audit shall be the expense of Plano. County agrees that it shall not make or assess any charge or expense to Plano for its participation in the audit.

c. County is obligated to maintain an annual collection rate of at least ninety-nine percent (99%) of the current Plano levy as reported on the standard monthly report provided to Plano by the County. The actual percentage shall be determined on June 30th of each year for the previous year's accounts. For purposes of determining the collection rate, collections are considered to be the tax levy collected, non-inclusive of penalty, interest, or other fees that may also be collected. The tax levy is based on the original certified tax roll, including Supplement 1, which is the basis of the original billing to taxpayers. In the event such obligation is not met, County shall, by August 1st, provide Plano in writing an explanation for the deficiency.

7. Records

Upon termination of this Agreement, County shall provide Plano with copies of all records used by County for the assessment and collection of taxes for Plano. These records shall be provided in both electronic and paper form to the City along with all necessary programs or codes to utilize said information. The records shall be delivered to Plano in prompt fashion, but in no event later than thirty (30) days following receipt of notice.

B. Plano Obligations

1. Plano agrees to promptly deliver to County by October 1st of each year a copy of the City Council ordinance adopting the tax rate for the year.

2. By virtue of this Agreement, Plano authorizes County to continue to collect all taxes incurred prior to 2005; however, this permission shall not preclude or otherwise limit Plano from collecting the same.

3. The Collin County Appraisal District shall determine values on all Plano properties. County agrees not to change any appraised value without written authorization from the Collin County Appraisal District or a court of competent jurisdiction. Within thirty (30) days, County shall notify Plano of all adjustments to the certified tax roll.

V.
COMPENSATION

For the services provided under this Agreement, Plano agrees to pay the County seventy five cents ($.75) per tax account in the corporate city limits of Plano, Texas. This fee is inclusive of all services, expenses or charges incurred under this Agreement. In the event the County should charge any other taxing entity which it serves a fee less than seventy-five cents ($.75) per account, the County hereby agrees that this Agreement shall automatically be amended to provide that the City shall pay said lesser fee for the services provided by County. Further, the parties agree that the fee shall not be due until the mailing of current year tax statements is completed each year. In any

event, the fees owed County shall be paid not later than December 31st of each year of the Agreement.

VI.
INDEMNIFICATION

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

In the event the City is a named party to a suit arising out of the subject matter of this Agreement, the City shall have reasonable input into the selection of defense counsel to be retained by County in fulfilling its obligation hereunder to defend and indemnify City. City reserves the right to provide a portion or all of its own defense; however, City is under no obligation to do so. Any such action by City is not to be construed as a waiver of County's obligation to defend City or as a waiver of County's obligation to indemnify City pursuant to this Agreement. County 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 County fails to retain counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and County shall be liable for all reasonable costs incurred by City.

VII.
INSURANCE

County shall procure and maintain for the duration of this Agreement insurance coverage as set forth in the Insurance Requirements marked **Exhibit "B"** attached hereto and incorporated herein by reference.

VIII.
FUNDING

County and Plano agree that all fees and expenses due or payable under this Agreement shall be paid from current revenues legally available to the party paying same.

M-10

IX.
BINDING AGREEMENT/NON-ASSIGNABILITY

The terms and conditions of this Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, legal representatives, and permitted successors and assigns. Except as otherwise specifically provided herein, this Contract may not be assigned by County without the prior written consent of the City, which consent may be withheld in City's sole discretion.

X.
VENUE

The validity of this Agreement and 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. Further, this Agreement shall be performable in Collin County, Texas and the parties agree that excusive venue shall lie in Collin County, Texas.

XI.
SEVERABILITY

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

XII.
NONWAIVER

A waiver by either party of a breach of the other party of any covenant or condition of this Agreement shall not impair the right of the party not in default to avail itself of any remedy in response to a subsequent breach thereof. Leniency, delay or failure of either party to insist upon strict performance of any agreement, covenant or condition of this Agreement, or to exercise any right under this Agreement, shall not be construed as a waiver of relinquishment of any such agreement, covenant, condition or right.

XIII.
AUTHORITY

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, and each party hereby certifies to the other that any necessary resolutions or minute orders extending said authority have been duly passed and are now in full force and effect.

XIV.
ENTIRE AGREEMENT

This Agreement represents the entire agreement between County and Plano and supersedes all prior negotiations, representations and/or agreements, either written or oral. This Agreement may be amended only by written instrument signed by the governing bodies of both County and Plano or those authorized to sign on behalf of those governing bodies.

SIGNED AND EXECUTED on the dates specified below:

CITY OF PLANO, TEXAS, a Home Rule Municipal Corporation

Date: _____

By: _____
THOMAS H. MUEHLENBECK
City Manager

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, City Attorney

M-12

COLLIN COUNTY, TEXAS, a Political Subdivision of the State of Texas

By: _____
RON HARRIS
County Judge

Executed on this _____ day of _____, 2005, by the County of Collin, pursuant to Commissioners' Court Order No. _____

COLLIN COUNTY, TEXAS, a Political Subdivision of the State of Texas

By: _____
KENNETH MAUN
County Tax Assessor Collector

APPROVED AS TO FORM:

_____
Name: _____
Title: _____

11-13

ACKNOWLEDGMENTS

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me on the ___ day of _____, 2005, by **THOMAS H. MUEHLENBECK**, City Manger of the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, on behalf of said corporation.

_____
Notary Public, State of Texas

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me on the ___ day of _____, 2005, by **RON HARRIS**, County Judge of the **COUNTY OF COLLIN, TEXAS**, a political subdivision of the State of Texas, on behalf of said corporation.

_____
Notary Public, State of Texas

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me on the ___ day of _____, 2005, by **KENNETH MAUN**, Tax Assessor Collector, of the **COUNTY OF COLLIN, TEXAS**, a political subdivision of the State of Texas, on behalf of said corporation.

_____
Notary Public, State of Texas

M-14

EXHIBIT "B"

City of Plano
Contractor Insurance Requirements and Agreement

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

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

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

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

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

M-15

AGREEMENT

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

Project/Bid #:

_____

Company:

_____

Printed Name:_____Vendor # (if applicable)_____

Signature:_____

Date:_____

Return Signed Form to:_____

M-16

CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☒ Yes	☐ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☒ Yes	☐ Not Applicable
Council Meeting Date:	11/28/05	Reviewed by Legal	☒ Yes	☐ Not Applicable
Department:	Public Safety Communications		Initials	Date
Department Head	Ronald Timmons	Executive Director		
Dept Signature:	Ronald P. Timmons	City Manager		11/14/05
Agenda Coordinator (include phone #):	Susan Carr, Ext 7934			

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

CAPTION

A resolution of the City Council of the City of Plano, Texas, approving the purchase of SmartNet 800 MHz mobile, portable, and consolette radios from Motorola Communications and Electronics, Incorporated, a sole-source provider; authorizing the City Manager or his designee to take such action as necessary to effectuate the purchase; and providing an effective date.

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☒ OPERATING EXPENSE ☐ REVENUE ☐ CIP

FISCAL YEAR: 05/06	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	429,599	0	**429,599**
Encumbered/Expended Amount	0	0	0	**0**
This Item	0	-403,853	0	**-403,853**
BALANCE	0	25,746	0	**25,746**

FUND(S): GENERAL FUND, ENVIRONMENTAL WASTE SERVICES FUND, EQUIPMENT REPLACEMENT FUND

COMMENTS: Funds are included in the 2005-06 Approved Budget for the purchase of new and replacement radios. The balance of funds will be used for other equipment purchases.

STRATEGIC PLAN GOAL: Radio replacement relates to the City's Goal of "Service Excellence"

SUMMARY OF ITEM

Staff requests Council approval to purchase 29 SmartNet 800 MHz consolettes, 72 SmartNet 800 MHz portable radios, 12 SmartNet 800 MHz mobile radios, and 60 secure boards from Motorola Communications and Electronics, Incorporated, a sole source provider. This purchase represents the radios approved city-wide in the FY 05/06 budget process.

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
Quote; Sole Source Letter	

M-1

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE PURCHASE OF SMARTNET 800 MHz MOBILE, PORTABLE, AND CONSOLETTE RADIOS FROM MOTOROLA COMMUNICATIONS AND ELECTRONICS, INCORPORATED, A SOLE-SOURCE PROVIDER; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO TAKE SUCH ACTION AS NECESSARY TO EFFECTUATE THE PURCHASE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Motorola Communications and Electronics, Incorporated ("MCE") provided the City's 800 MHz Trunked Radio System, which requires the use of SmartNet-equipped 800 MHz radios and Motorola SmartNet proprietary software; and,

WHEREAS, MCE, the exclusive owner of the proprietary rights for the 800 MHz Trunked Radio System as well as the SmartNet software and equipment, is a sole source provider of such equipment; and,

WHEREAS, the City Council thus finds that the SmartNet-equipped 800MHz radios are available only from one source, MCE, and therefore are exempt from competitive bid as provided by Section 252.022(a)(7) of the Local Government Code; and,

WHEREAS, the City Council approves the purchase of SmartNet mobile and portable radios from MCE, and authorizes the City Manager or his designee to take such action and executes such documents as necessary to effectuate the purchases.

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

Section I. The City Council hereby finds that MCE has exclusive proprietary and distribution rights for SmartNet 800 MHz mobile and portable radios, thereby making MCE a sole source provider of the equipment the City of Plano wishes to purchase. Under Section 252.022(a)(7)(E) of the Texas Local Government Code, the City's purchase of the SmartNet 800 MHz mobile and portable radios is exempt from the competitive bid process. Accordingly, the City Council approve the purchase of the radios from MCE.

Section II. The City Council authorizes the City Manager or his designee to take such action and execute such documents as necessary to effectuate the purchase of the Motorola SmartNet 800 MHz mobile and portable radios, in an amount not to exceed $403,853.00.

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

DULY PASSED AND APPROVED this the 28th, day of November, 2005.

Pat Evans, MAYOR

ATTEST:

Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

Diane Wetherbee, CITY ATTORNEY

City of Plano
Radio Quote
November 7, 2005

Qty.	Model Number Pricing	Description
12	M20URS9PW1-N 1,273.00 each	XTL5000 Mobile Radio
12	G241 0 each	Astro Ready/Analog Operation
12	G50 1,020.00 each	SmartNet Software Package
12	G174 37.00 each	3db gain antenna
12	G444 0	Control Head Software
12	G442AB 432.00 each	"05" Control head
12	W635EN (-400.00) each	"05" pricing promotion
12	W22 62.00 each	Standard Palm Microphone
11	G66 297.00 each	(3)Remote Mount (8) Dash MountConfiguration
12	B18 51.00 each	Speaker

2,772.00 X 12 = $ 33,264.00

66	H18UCF9PW6-N 1,847.00 each	XTS5000, Level II Portable Radios
66	Q241 0	Analog Operation 3600 Baud
66	H37 1,020.00 each	SmartNet System Software Package

M-4

66 NTN1667 Rapid Rate 2 Hour Charger
85.00 each

2,952.00 X 66 = $194,832.00

60 Q625 DES-XL Encryption
510.00 each
60 Q159 UCM Hardware (required for encryption)
128.00 each

638.00 each X 60 = $38,280.00

4 H18UCF9PW6-N XTS5000, Level II Portables
1,847.00 each
4 Q241 Analog Operation 3600 Baud
0
4 H37 SmartNet System Software Package
1,020.00 each
4 H223RUGD Rugged Nicad FM Battery
47.00 each
4 H499 Ruggedized Housing
250.00 each
4 H64 Yellow Housing
25.00 each
4 NTN1667 Rapid Rate 2 Hour Charger
85.00 each

3,274.00 each X 4 = $13,096.00

2 H46UCF9PW6-N XTS2500, Level II Portable Radios
1,330.50 each
2 Q443 Analog Software 3600 Baud
1,071.00 each
2 NTN1167 Rapid Rate 2 Hour Charger
85.00 each

2.486/50 each X 2 = $4,973.00

29 L20OURS9PW1-N XTL5000 Consolette
2,193.00 each
29 G241 Analog Operation 3600 Baud
0

29	G50	SmartNet System Software Package
	1,020.00 each	
29	L146	Tone Remote Control
404.00 each		
29	G80	W-7 Control Head
500.50 each		

4,117.50 each X 29 = $119,407.50

	Total XTL Mobile Radio Pricing
$ 33,264.00	
	Total XTL(Police) Portable Radio Pricing
$194,832.00	
	Total XTL (Fire) Portable Radio Pricing
$ 13,096.00	
	Total Encryption Pricing
$ 38,280.00	
	Total XTS Portable Radio Pricing
$ 4,973.00	
	Total XTL Consolette Pricing
$119,407.50	

Total Proposal

$403,852.50

November 7, 2005

City of Plano, Texas
Attn: Jim Raney
925-22nd Street, #100-C
Plano, Texas, 75074

Jim,

The City of Plano utilizes a Motorola SmartNet Communications system. SmartNet is a Motorola trademark for the software development tailored to public safety agencies. This technology is available only through Motorola's Direct Distribution Channel. Dealers and other distribution channels cannot offer the SmartNet technology in the radio equipment they can sell to Public Safety agencies. For this reason, Motorola is a sole source provider for the City of Plano's portable and mobile radio communications needs.

If you should have any questions or require additional information, please do not hesitate to call me at (972)-977-8022.

Regards,

M O T O R O L A, Inc.

Becky Smartt
Account Manager

11-7

CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☒ Yes	☐ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☒ Yes	☐ Not Applicable
Council Meeting Date:	11/28/05	Reviewed by Legal	☒ Yes	☐ Not Applicable
Department:	Technology Services		Initials	Date
Department Head	David Stephens	Executive Director		11-18-05
Dept Signature:	David Stephens	City Manager		11.18.05
Agenda Coordinator (include phone #):	Kathy Kargol, ext 7342			

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

CAPTION

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

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☒ OPERATING EXPENSE ☐ REVENUE ☐ CIP

FISCAL YEAR: 2005-06	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	2,102,740	0	**2,102,740**
Encumbered/Expended Amount	0	-498,274	0	**-498,274**
This Item	0	-47,032	0	**-47,032**
BALANCE	0	1,557,434	0	**1,557,434**

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

COMMENTS: Funds are included in the 2005-06 Technology Services budget for this maintenance agreement in the amount of $47,032. The remaining balance will be used throughout the year for other maintenance agreements.

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

SUMMARY OF ITEM

Technology Services recommends Council approve an Agreement for software support services with CommVault Systems, Inc. for a sum of $47,032. Maintenance and support for the CommVault Galaxy Data Management Software applications is only available from one source, CommVault Systems, Inc. and therefore, is exempt from competitive bid as provided for in Section 252.022(a) (7) of the Texas Local Government Code.

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

Memorandum

To: David Stephens, Director of Technology Services

CC:

From: Chester M. Helt, Infrastructure Manager

Date: 11/17/2005

Re: Commvault Maintenance

We recommend purchasing software maintenance for our enterprise backup solution (Commvault) from Commvault Systems, Inc. for a not to exceed amount of $ 47,032.00. This will provide maintenance for the next year.

0-2

RESOLUTION NO. _____

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

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

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

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

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

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

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

DULY PASSED AND APPROVED this the _____ day of _____, 2005.

_____
Pat Evans, MAYOR

ATTEST:

_____
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

COMMVAULT SYSTEMS, INC.
SUPPORT AGREEMENT

Customer Name: City of Plano

Customer Address: 1520 Avenue K

Plano, TX 75074

Customer Contact: Gary Pederson

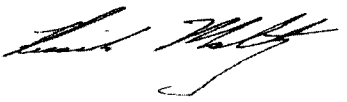
Agreement Number: CITY-GXY-PLA1

Term Dates: 12/28/2005 – 12/27/2006

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

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

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

Customer	CommVault Systems, Inc.
	
by	by
printed name	Ricardo Maltez printed name
title	Maintenance Contract Administrator title
date	9/30/2005 date

0-4

COMMVAULT SYSTEMS, INC.
SUPPORT AGREEMENT

SCHEDULE 1

Customer Name:
City of Plano CITY-GXY-PLA1

Supported Products and Charges

Start Date	Quantity	Description	CCID #	Annual Charge
12/28/2005	1	CommServe StorageMgr	F51C5	6,091.00
	6	DA-SQL		
	31	DA-Windows Server		
	1	Drive Management Software		
	1	Library Management Software		
	1	MediaAgent (Windows)		
	1	CommServe StorageMgr	F51C4	40,941.00
	4	CSS-CommVault Snapshot-Windows		
	1	DA-Active Directory		
	2	DA-Exch Mailbox		
	4	DA-Image (Windows)		
	30	DA-SQL		
	154	DA-Windows Server		
	1	Library Management Software		
	8	SAN MediaAgent (Windows)		
	1	Shared Library Mgmt Software		
	8	Shared Storage with iDDs		
	8	SNMP Extension		
	1	SNMP Integration		
	Total Items=264			**$47,032.00**

The initial term of the above services shall start on 12/28/2005 and end on 12/27/2006.

Total Annual Contract Charge = Total of All Pages	Total Amount Due: $47,032.00
	(Due upon receipt of invoice)
Out of Coverage Rates: $300.00 per Hour - *2-Hour Minimum*	

Customer Contact at Equipment Locations:

NAME/TITLE	PHONE , FAX, EMAIL	ADDRESS
Gary Pederson	972.941.7649 garyped@plano.gov	1520 Avenue K Plano, TX 75074

rev1

0-5

COMMVAULT SYSTEMS, INC.
SUPPORT AGREEMENT

SCHEDULE 2

Customer Name:
City of Plano CITY-GXY-PLA1

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

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

CommVault Contacts

Designated Support Center Address:	**All correspondence from customer in reference to this agreement shall be addressed to:**
CommVault Systems® 2 Crescent Place, Building D Oceanport, NJ 07757	CommVault Systems® 2 Crescent Place, Building D Oceanport, NJ 07757 Attention: Ricardo Maltez
Customer Call Center Telephone Number **(877) 780-3077**	**Email** **servicecontracts@commvault.com**
	Telephone Number **Fax Number** **(732) 870-4098** **(732) 870-4690**

Service Support Contacts

	Name	**Office Telephone Number**
Contract Manager	Ricardo Maltez	**(732) 870 – 4098**
License Manager	Rodney Pennella	**(732) 870 – 4051**

0-6

CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☐ Yes	☒ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☐ Yes	☒ Not Applicable
Council Meeting Date:	11/28/05	Reviewed by Legal CWH	☒ Yes	☐ Not Applicable
Department:	Legal		Initials	Date
Department Head	Diane Wetherbee	Executive Director		11/16/05
Dept Signature:	D. Wetherbee	City Manager		11/16/05
Agenda Coordinator (include phone #):	Lynne Jones - 7109			

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

CAPTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, FINDING MICHAEL RAPPLEAN, GARY KIRKWOOD AND TIM LOVE ARE ENTITLED TO DEFENSE REPRESENTATION PURSUANT TO CITY CODE OF ORDINANCES IN CONNECTION WITH THE MATTER OF PERCY BENNETT V. CITY OF PLANO, MICHAEL J. RAPPLEAN, GARY KIRKWOOD AND TIM LOVE; AND PROVIDING AN EFFECTIVE DATE.

FINANCIAL SUMMARY

☒ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☐ CIP

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

FUND(S):

COMMENTS:

SUMMARY OF ITEM

This Resolution provides for defense representation for Mike Rapplean, Gary Kirkwood and Tim Love pursuant to City Code of Ordinances Section 2-10.

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
n/a	n/a

P-1

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, FINDING MICHAEL RAPPLEAN, GARY KIRKWOOD AND TIM LOVE ARE ENTITLED TO DEFENSE REPRESENTATION PURSUANT TO CITY CODE OF ORDINANCES IN CONNECTION WITH THE MATTER OF PERCY BENNETT V. CITY OF PLANO, MICHAEL J. RAPPLEAN, GARY KIRKWOOD AND TIM LOVE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council has reviewed the matter entitled Percy Bennett v. City of Plano, Michael J. Rapplean, Gary Kirkwood and Tim Love and finds that defense representation is appropriate for Michael Rapplean, Public Works Operations Manager, Gary Kirkwood, Traffic Department Manager, and Tim Love, Signs and Marking Supervisor for the City of Plano when the events alleged in the above lawsuit occurred, pursuant to Section 2-10 of the City Code of Ordinances.

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

Section I. The City Council finds that based upon the pleadings in the above-referenced lawsuit and review by the City Attorney, the defense representation for Michael Rapplean, Gary Kirkwood and Tim Love is appropriate pursuant to the terms of City Code of Ordinances Section 2-10.

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

DULY PASSED AND APPROVED this the _____ day of _____, 2005.

_____
Pat Evans, MAYOR

ATTEST:

_____
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

P-2

CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☐ Yes	☒ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☒ Yes	☐ Not Applicable
Council Meeting Date:	11/28/05	Reviewed by Legal	☒ Yes	☐ Not Applicable
Department:	Customer & Utility Services/Tax Administration		Initials	Date
Department Head	Linda Keylon	Asst City Manager		11-17-05
Dept Signature:	Linda Keylon	City Manager		11/17/05
Agenda Coordinator (include phone #):	Becky Rodgers x5105			

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

CAPTION

Approving and authorizing refunds of property tax overpayments.

FINANCIAL SUMMARY

☒ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☐ CIP

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

FUND(S):

COMMENTS: Funds are disbursed by the Collin County Tax Office.

SUMMARY OF ITEM

Attached for your approval are property tax refunds totalling $918.40

List of Supporting Documents:
Refund request listing provided by Collin County Tax Office

Other Departments, Boards, Commissions or Agencies

Q-1

RESOLUTION NO._____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING AND AUTHORIZING REFUNDS OF PROPERTY TAX OVERPAYMENTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 31.11 of the Texas Property Tax Code authorizes refunds of certain payments of taxes upon application to the City; and

WHEREAS, under said Section 31.11 of the Texas Property Tax Code, refunds must be presented to the governing body of the taxing unit for approval; and

WHEREAS, the City Council has been presented a list of tax payments made, a copy of which is attached hereto, made a part hereof and marked Exhibit "A", which payments are requested to be refunded because such payments were erroneous or excessive; and

WHEREAS, upon full review and consideration of the above, and all matters attendant and related thereto, the City Council is of the opinion that the tax payments should be refunded,

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

Section I. The City Council of the City of Plano, Texas, finds and determines that the tax payments listed in Exhibit "A" were paid erroneously or were in excess of taxes due and shall be refunded in accordance with Section 31.11 of the Texas Property Tax Code.

Section II. The Director of Tax Collections for the City of Plano, Texas, or her designee, is hereby authorized to take the necessary action to effectuate the refunds approved under this Resolution.

Q-2

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

DULY PASSED AND APPROVED this _____ day of _____, 2005.

_____
Pat Evans, MAYOR

ATTEST:

_____
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

Q-3

Resolution No._____
Attachment "A" Page 1 of 1

Plano City - CPAP REFUNDS #1

FIDO	Account Number	Year	GF / Loan
347144	R-1606-019-0180-1	2004	

C-1 CAPITAL MARKETS LP
PO BOX 1061
DECATUR, TX 76234

23 City of Plano $918.40

Batch Total: $918.40

Q-4

CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☐ Yes	☒ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☐ Yes	☒ Not Applicable
Council Meeting Date:	11/28/05	Reviewed by Legal	☒ Yes	☐ Not Applicable
Department:	Parks and Recreation		Initials	Date
Department Head	Don Wendell	Executive Director		11-18-05
Dept Signature:	Don Wendell	City Manager		11/21/05
Agenda Coordinator (include phone #):	Linda Benoit (7255)			

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

CAPTION

Approving an access and parking easement agreement between the City of Plano and the Plano Independent School District providing for parking and access drives on Renner Middle School property for use associated with the Tom Muehlenbeck Center, authorizing execution of the access and parking easement agreement by the City Manager, or in his absence an Executive Director; and providing an effective date.

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☐ CIP

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

FUND(S):

COMMENTS:

SUMMARY OF ITEM

The City has requested an easement from PISD to allow the use of an existing drive at Renner Middle School to provide access to Tom Muehlenbeck Center. This City has also requested an easement from PISD to allow the City to construct a portion of a new drive and parking lot on Renner Middle School property to serve Tom Muehlenbeck Center.

The drives and parking will be constructed in conjunction with all other improvements at the Center.

The Access and Parking Easement Agreement was approved by the PISD School Board on October 18, 2005.

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
Location Map	
Site Plan	
Access and Parking Easement Agreement	

R-1

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO APPROVING AN ACCESS AND PARKING EASEMENT AGREEMENT BETWEEN THE CITY OF PLANO AND THE PLANO INDEPENDENT SCHOOL DISTRICT PROVIDING FOR PARKING AND ACCESS DRIVES ON RENNER MIDDLE SCHOOL PROPERTY, FOR USE ASSOCIATED WITH THE TOM MUEHLENBECK CENTER, AUTHORIZING EXECUTION OF THE ACCESS AND PARKING EASEMENT AGREEMENT BY THE CITY MANAGER, OR IN ABSENCE, AN EXECUTIVE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council has received a proposed Access and Parking Easement Agreement, in which the Plano Independent School District authorizes the use of a portion of Renner Middle School property by the City for parking, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter "Agreement"); and

WHEREAS, upon full review and consideration of the Access and Parking Easement Agreement, and all matters attendant and related thereto, the City Council finds that the Agreement is in the best interest of the citizens and the City of Plano.

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

Section I. The City Council hereby approves the Agreement attached hereto and incorporated herein as Exhibit "A."

Section II. The City Council authorizes the City Manager, or in his absence, an Executive Director, to execute the Agreement and all other documents in connection with the Agreement on behalf of the City of Plano.

Section III. This Resolution becomes effective from and after its adoption.

DULY PASSED AND APPROVED this the __ day of _____. 2005.

_____
Pat Evans, MAYOR

ATTEST:

_____
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

ACCESS AND PARKING EASEMENT AGREEMENT

THIS ACCESS AND PARKING EASEMENT AGREEMENT (the "Agreement") is by and between the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation ("Plano"), and **PLANO INDEPENDENT SCHOOL DISTRICT** ("PISD") as follows:

RECITALS:

WHEREAS, contemporaneously herewith pursuant to a certain Agreement by and between Plano and PISD, attached hereto as Exhibit "C" and made a part hereof for all purposes; and

WHEREAS, Plano and PISD each have, pursuant to said Agreement, agreed to grant and dedicate certain easements and rights of way as more particularly described and upon the terms, covenants, and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises, the parties hereto stipulate to the recitals above and grant, covenant and agree as follows:

Access Easement

1. **Grant and Dedication of Easement**. PISD grants to Plano and dedicates to the public's use forever, a non-exclusive easement and right of way upon and across the property described in Exhibit "A" and "B", the servient tenement. The property described in Exhibit "A" and "B" shall be referred to hereafter as the "Access Property."

2. **Purpose of Easement**. The easement shall be used for access across the existing driveway at the property described in Exhibit " A" Part A" and Exhibit "B" "Part A". The easement shall also be used for the limited purpose of providing to Plano the right to construct, reconstruct, maintain, and use a driveway, together with all incidental improvements and all necessary laterals in, upon, and across the Access Property at the property described in Exhibit "A" "Parts B and C" and Exhibit "B" "Parts B and C" . The use of the easement shall be limited to the specific uses identified herein.

3. **Duration of the Easement**. The easement shall be perpetual.

4. **Exclusiveness of the Easement**. The easement rights and privileges granted by this conveyance are non-exclusive, and Plano and PISD reserve and retain the right to use the Access property and the right to convey similar or dissimilar rights and easements to such other persons as either of them deem proper; provided that such use by Plano and/or PISD or other grant

R-4

to third parties shall be subordinate to and not interfere with Plano's and/or PISD's right of use as described herein.

5. **Construction**. Plano shall, within 36 months of the date hereof, improve the Access Property in accordance with plans which have been approved in writing by Plano and PISD prior to the commencement of construction. Approval by Plano and PISD shall not be unreasonably withheld. Such approved plans shall not be amended or modified without the prior written consent of both Plano and PISD.

6. **Construction Indemnity**. To the extent allowed by law, each party to this agreement shall hold harmless and defend and indemnify each other against any and all liabilities, claims, damages, causes of action, expenses and costs (including but not limited to reasonable attorney's fees) arising out of or related to the construction of improvements on the Access Property by each party respectively.

7. **Maintenance and Repairs**. Plano shall have the obligation to make reasonable and necessary repairs and to maintain improvements to the Access Property in good order and condition without reimbursement, liability, or offset from PISD

8. **Indemnity**. Prior to Plat Approval, each party to this agreement, to the extent allowed by law, shall hold each other harmless and defend and indemnify each other against any and all liabilities, claims, damages, causes of action, expenses and costs (including but not limited to reasonable attorneys' fees) arising out of the maintenance and use of the Access Property by each party respectively, its agents, employees, guests, and invitees. Following the Plat Approval, each party to this agreement, to the extent allowed by law, shall hold harmless and defend and indemnify each other against any and all liabilities, claims, damages, causes of action, expenses and costs (including but not limited to reasonable attorneys' fees) arising out of the maintenance and use of the Access Property by each party respectively, their respective agents, employees, guests, and invitees.

9. **Character of the Easement**. The easement is an easement in gross.

Parking Easement

1. **Grant and Dedication of Easement**. PISD grants to Plano and dedicates to the public's use forever, a non-exclusive easement and right of way upon and across the property described in Exhibit "A" "Part D and E", the servient tenement. The property described in Exhibit "B" "Part D and E"shall be referred to hereafter as the "Parking Property."

2. **Purpose of Easement**. The easement shall be used for the limited purpose of providing to Plano the right to construct, reconstruct, maintain, and use a parking lot, together with all incidental improvements and all necessary laterals in, upon, and across the Parking Property described in Exhibit "A" "Parts D and E" and Exhibit "B" "Part D and E". The use of the easement shall be limited to the specific uses identified herein.

3. **Duration of the Easement**. The easement shall be perpetual.

4. **Exclusiveness of the Easement**. The easement rights and privileges granted by this conveyance are non-exclusive, and Plano and PISD reserve and retain the right to use the Parking Property and the right to convey similar or dissimilar rights and easements to such other persons as either of them deem proper; provided that such use by Plano and/or PISD or other grant to third parties shall be subordinate to and not interfere with Plano's right of use as described herein

5. **Construction**. Plano shall, within 36 months of the date hereof, improve the Parking Property in accordance with plans which have been approved in writing by Plano and PISD prior to the commencement of construction. Approval by Plano and PISD shall not be unreasonably withheld. Such approved plans shall not be amended or modified without the prior written consent of both Plano and PISD.

6. **Construction Indemnity**. Each party to this agreement, to the extent allowed by law, shall hold harmless and defend and indemnify each other against any and all liabilities, claims, damages, causes of action, expenses and costs (including but not limited to reasonable attorney's fees) arising out of or related to the construction of improvements on the Parking Property by each party respectively..

7. **Maintenance and Repairs**. Plano shall have the obligation to make reasonable and necessary repairs and to maintain improvements to the Parking Property in good order and condition without reimbursement, liability, or offset from PISD unless or until PISD has obtained final Plat approval from Plano for any improvements to the Access Property or any part thereof ("Plat Approval"). Following Plat Approval, all repairs and maintenance of such improvements shall be borne by the owners of the Parking Property and the owners of the Parking Property in the proportion of their respective present fee interests in the Parking Property.

8. **Indemnity**. Prior to Plat Approval, each party to this agreement, to the extent allowed by law, shall hold each other harmless and defend and indemnify each other against any and all liabilities, claims, damages, causes of action, expenses and costs (including but not limited to reasonable attorneys' fees) arising out of the maintenance and use of the Parking Property by each of

R-6

them respectively, its agents, employees, guests, and invitees. Following the Plat Approval, each party to this agreement , to the extent allowed by law, shall hold harmless and defend and indemnify each other against any and all liabilities, claims, damages, causes of action, expenses and costs (including but not limited to reasonable attorneys' fees) arising out of the maintenance and use of the Parking Property by each party respectively, their respective agents, employees, guests, and invitees.

9. **Character of the Easement**. The easement is an easement in gross.

Miscellaneous

1. **Notices**. Any notices or other communications required or permitted hereunder shall be written and shall be sufficient if given or sent by first class mail, postage prepaid, or by overnight courier to the following addresses or such other addresses as shall be furnished in writing by any party to another party in accordance with this section. Each such notice or communication shall be deemed given as of the date upon which such notice or communication is first sent by telex, telecopier, or other means of instantaneous communication and simultaneously confirmed by mail in the manner specified above.

PLANO: City of Plano
Attention: City Manager
1520 Avenue K
P. O. Box 860358
Plano, TX 75086-0358

With Copy To: City of Plano
Parks & Recreation Director
P. O. Box 860358
Plano, TX 75086-0358

PISD: Richard Matkin
Associate Supterintendent Business Services
Plano Independent School District
2700 W. 15th Street
Plano, Texas 75075

With Copy to: Abernathy, Roeder, Boyd & Joplin, P.C.
1700 Redbud Blvd., Suite 300
McKinney, Texas 75069
Attention: Robert H. Roeder

2. **Attorneys' Fees, Remedies, and Venue**. This Agreement shall be construed in accordance with the laws of the State of Texas, venue in any action relating to this Agreement shall be in Collin County, Texas, and the prevailing party in any action on this Agreement shall be entitled to its reasonable attorneys' fees, expenses, and costs of court. The rights and obligations of the parties hereto may be enforced by an action for a specific performance in equity, it being agreed that remedies at law are inadequate and damages for breach of this Agreement may not be ascertainable. In the event that an action for specific performance is not available, the non-defaulting party may pursue any remedies available in law or in equity.

3. **Severability**. This Agreement contains the entire Agreement between the parties hereto relating to the subject matter hereof and may be amended only by writing, signed by each of the parties hereto, except that if any part hereof is illegal or unenforceable under present or future law, the remaining parts shall continue in full force and effect, and to that extent only, the Agreement shall be deemed severable.

4. **Assignability and Binding Effect**. This easement provided for herein shall not be assignable, except that same shall be deemed covenants running with the law, binding upon and inuring to the benefit of the parties hereto, their respective heirs, successors and assigns.

PLANO INDEPENDENT SCHOOL DISTRICT

DATED: 10/20/05

By: _____
Name: Richard Mathis
Title: Associate Superintendent

CITY OF PLANO, TEXAS

DATED: _____

By: _____
Thomas H. Muehlenbeck
City Manager

APPROVED AS TO FORM:

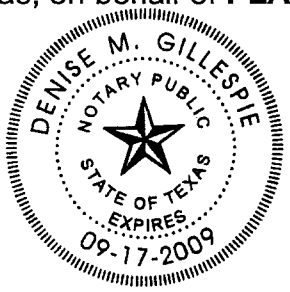
_____
Diane C. Wetherbee
City Attorney

R-8

ACKNOWLEDGMENTS

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me on the 20TH day of OCTOBER, 2005, by RICHARD MATKIN, ASST. SUPT. of **PLANO INDEPENDENT SCHOOL DISTRICT,** a political subdivision of the State of Texas, on behalf of **PLANO INDEPENDENT SCHOOL DISTRICT.**



Denise M. Gillespie
Notary Public, State of Texas

STATE OF TEXAS §
§
COUNTY OF _____ §

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

_____
Notary Public, State of Texas

2-9

EXHIBIT A
FIELD NOTES
Access Easement

Being a 0.237 acre tract of land (Part A), situated in the Samuel T. Noblett Survey, Abstract No. 667, located in the City of Plano, Collin County, Texas, and being a portion of Lot 2, Block A, Plano West Senior High Addition, as shown on plat recorded in Cabinet O, Page 347, Plat Records of Collin County, Texas. Said tracts of land being more particularly described by metes and bounds as follows:

"PART A"

Commencing at a 1/2 inch iron rod found at the southeast corner of Lot 1R, Block A, White Rock Creek Multi Purpose Complex, as shown on plat recorded in Cabinet O, Page 605, Plat Records of Collin County, Texas, same being at the northeast corner of Lot 2, Block A, and the northwest corner of Lot 3, Block A, White Rock Creek Multi Purpose Complex, as shown on plat recorded in Cabinet G, Page 691, Plat Records of Collin County, Texas;

Thence North 89°29'37" East, along the common line of said Lot 3, Block A and said Lot 2, Block A, a distance of 652.07 feet to a 1/2 inch iron rod found at the northeast corner of said Lot 3, Block A;

Thence departing said northeast corner, over and across said Lot 2, Block A, the following courses and distances:

South 13°30'07" East, a distance of 633.97 feet to the **Place of Beginning**;

South 84°34'51" East, a distance of 24.00 feet to a point and the beginning of a non-tangent curve to the left, having a radius of 238.00 feet, a central angle of 18°32'53", and a chord bearing of South 03°51'18" East, with a chord distance of 76.71 feet;

Southeasterly along said curve to the left, an arc length of 77.05 feet to a point;

South 13°07'44" East, a distance of 84.09 feet to a point and the beginning of a tangent curve to the right, having a radius of 412.00 feet, a central angle of 20°35'14", and a chord bearing of South 02°50'07" East, with a chord distance of 147.24 feet;

South 07°27'30" West, a distance of 121.44 feet to a point on the north right of way line of Parker Road (a 110 feet right of way) and the beginning of a non-tangent curve to the left, having a radius of 1555.00 feet, a central angle of 00°53'04", and a chord bearing of North 82°32'35" West, with a chord distance of 24.00 feet, from which the southeast corner of said Lot 3, Block A bears North 85°48'46" West, 153.42 feet;

Thence Northwesterly along said curve to the left, an arc length of 24.00 feet to a point;

Thence departing said north right of way line, over and across said Lot 2, Block A, the following courses and distances:

North 07°27'30" East, a distance of 121.44 feet to a point and the beginning of a tangent curve to the left, having a radius of 388.00 feet, a central angle of 20°35'14", and a chord bearing of North 02°50'07" West, with a chord distance of 138.67 feet;

Northwesterly along said curve to the left, an arc length of 139.41 feet to a point;

North 13°07'44" West, a distance of 84.09 feet to a point and the beginning of a tangent curve to the right, having a radius of 262.00 feet, a central angle of 18°32'53", and a chord bearing of North 03°51'18" West, with a chord distance of 84.45 feet;

Northwesterly along said curve to the right, an arc length of 84.82 feet to the **Place of Beginning** and containing 0.237 acre of land, more or less.

Prepared from a survey performed in the month of November 2004.

RICKY LYNN GENTRY, R.P.L.S. NO. 5519

DATE: 09/28/2005

STATE OF TEXAS REGISTERED RICKY L. GENTRY 5519 PROFESSIONAL LAND SURVEYOR

Bearings are based on the Texas State Plane Coordinate System, North Central Zone (NAD83).

See Sheets 7 of 9 for Exhibit B sketch.

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9/30/2005

R-11

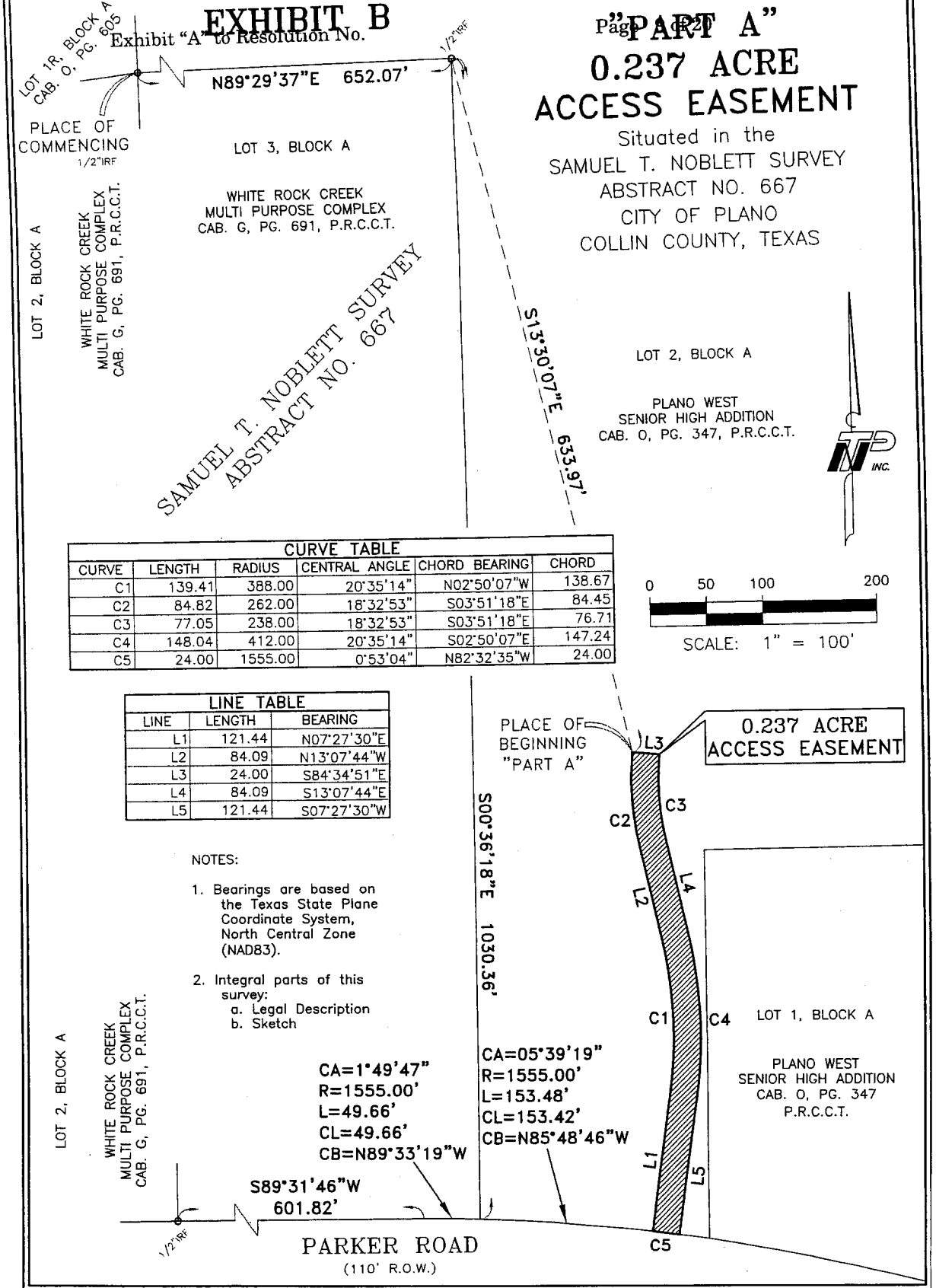
EXHIBIT B

Exhibit "A" to Resolution No. Page 2 of 2

"PART A"

0.237 ACRE ACCESS EASEMENT

Situated in the
SAMUEL T. NOBLETT SURVEY
ABSTRACT NO. 667
CITY OF PLANO
COLLIN COUNTY, TEXAS



CURVE TABLE					
CURVE	LENGTH	RADIUS	CENTRAL ANGLE	CHORD BEARING	CHORD
C1	139.41	388.00	20°35'14"	N02°50'07"W	138.67
C2	84.82	262.00	18°32'53"	S03°51'18"E	84.45
C3	77.05	238.00	18°32'53"	S03°51'18"E	76.71
C4	148.04	412.00	20°35'14"	S02°50'07"E	147.24
C5	24.00	1555.00	0°53'04"	N82°32'35"W	24.00

LINE TABLE		
LINE	LENGTH	BEARING
L1	121.44	N07°27'30"E
L2	84.09	N13°07'44"W
L3	24.00	S84°34'51"E
L4	84.09	S13°07'44"E
L5	121.44	S07°27'30"W

0 50 100 200

SCALE: 1" = 100'

NOTES:

1. Bearings are based on the Texas State Plane Coordinate System, North Central Zone (NAD83).
2. Integral parts of this survey:
   a. Legal Description
   b. Sketch

Prepared By:

September 28, 2005

Date: 12-12

STATE OF TEXAS
REGISTERED
RICKY L. GENTRY
5519
PROFESSIONAL
LAND SURVEYOR

TEAGUE NALL AND PERKINS
CONSULTING ENGINEERS
1100 Macon Street
Fort Worth, Texas 76102
(817) 336-5773

SHEET 7 OF 9 JOB NO. BRK 04258

EXHIBIT A
FIELD NOTES
Access Easement

Being a 0.100 acre tract of land (Part B) and a 0.081 acre tract of land (Part C), situated in the Samuel T. Noblett Survey, Abstract No. 667, located in the City of Plano, Collin County, Texas, and being a portion of Lot 2, Block A, Plano West Senior High Addition, as shown on plat recorded in Cabinet O, Page 347, Plat Records of Collin County, Texas. Said tracts of land being more particularly described by metes and bounds as follows:

"PART B"

Commencing at a 1/2 inch iron rod found at the southeast corner of Lot 1R, Block A, White Rock Creek Multi Purpose Complex, as shown on plat recorded in Cabinet O, Page 605, Plat Records of Collin County, Texas, same being at the northeast corner of Lot 2, Block A, and the northwest corner of Lot 3, Block A, White Rock Creek Multi Purpose Complex, as shown on plat recorded in Cabinet G, Page 691, Plat Records of Collin County, Texas, from which a 1/2 inch iron rod found at the northeast corner of said Lot 3, Block A, that bears North 89°29'37" East, 652.07 feet;

Thence North 89°29'37" East, along the common line of said Lot 3, Block A, and said Lot 2, Block A, a distance of 312.51 feet to the **Place of Beginning**, and the beginning of a non-tangent curve to the right, having a radius of 96.00 feet, a central angle of 55°54'49", and a chord bearing of North 62°22'50" East, with a chord distance of 90.01 feet;

Thence departing said common line, over and across said Lot 2, Block A, the following courses and distances:

> Northeasterly along said curve to the right, an arc length of 93.69 feet to a point for the beginning of a compound curve to the right, having a radius of 225.00 feet, a central angle of 34°16'08", and a chord bearing of South 72°28'54" East, with a chord distance of 132.58 feet;
>
> Southeasterly along said curve to the right, an arc length of 134.57 feet to a point on the north line of said Lot 3, Block A;

Thence South 89°29'37" West, along said north line, same being the south line of said Lot 2, Block A, a distance of 48.55 feet to a point at the beginning of a tangent curve to the left, having a radius of 201.00 feet, a central angle of 22°52'45", and a chord bearing of North 78°10'35" West, with a chord distance of 79.73 feet;

Thence departing said north line, over and across said Lot 2, Block A, the following courses and distances:

> Northwesterly along said curve to the left, an arc length of 80.26 feet to a point for the beginning of a compound curve to the left, having a radius of 72.00 feet, a central angle of 41°04'14", and a chord bearing of South 69°47'43" West, with a chord distance of 50.51t;
>
> Southwesterly along said curve to the left, an arc length of 51.61 feet to a point for corner on the north line of said Lot 3, Block A;

Thence South 89°29'37" West, along said north line, same being the south line of said Lot 2, Block A, a distance of 32.19 feet to the **Place of Beginning** and containing 0.100 acre of land, more or less.

"PART C"

Commencing at a 1/2 inch iron rod found at the southeast corner of Lot 1R, Block A, White Rock Creek Multi Purpose Complex, as shown on plat recorded in Cabinet O, Page 605, Plat Records of Collin County, Texas, same being at the northeast corner of Lot 2, Block A, and the northwest corner of Lot 3, Block A, White Rock Creek Multi Purpose Complex, as shown on plat recorded in Cabinet G, Page 691, Plat Records of Collin County, Texas;

Thence North 89°29'37" East, along the common line of said Lot 3, Block A and said Lot 2, Block A, a distance of 652.07 feet to a 1/2 inch iron rod found at the northeast corner of said Lot 3, Block A;

Thence South 00°36'18" East, continuing along said common line, a distance of 622.05 feet to the **Place of Beginning**, and the beginning of a non-tangent curve to the left, having a radius of 488.00 feet, a central angle of 13°06'47", and a chord bearing of South 83°12'49" East, with a chord distance of 111.44 feet;

Thence departing said common line, over and across said Lot 2, Block A, the following courses and distances:

Southeasterly along said curve to the left, an arc length of 111.69 feet to a point;

South 89°46'12" East, a distance of 9.82 feet to a point for the beginning of a tangent curve to the left, having a radius of 21.00 feet, a central angle of 84°09'37", and a chord bearing of North 48°08'59" East, with a chord distance of 28.15 feet;

Northeasterly along said curve to the left, an arc length of 30.85 feet to a point for the beginning of a non-tangent curve to the left, having a radius of 262.00 feet, a central angle of 13°18'03", and a chord bearing of South 01°13'53" East, with a chord distance of 60.68 feet;

Southeasterly along said curve to the left, an arc length of 60.82 feet to a point for the beginning of a non-tangent curve to the left, having a radius of 21.00 feet, a central angle of 81°14'24", and a chord bearing of North 49°09'01" West, with a chord distance of 27.34 feet;

Northwesterly along said curve to the left, an arc length of 29.78 feet to a point;

North 89°46'12" West, a distance of 11.50 feet to a point for the beginning of a tangent curve to the right, having a radius of 512.00 feet, a central angle of 12°26'49", and a chord bearing of North 83°32'48" West, with a chord distance of 111.01 feet;

Northwesterly along said curve to the right, an arc length of 111.23 feet to the **Place of Beginning** and containing 0.081 acre of land, more or less.

Prepared from a survey performed in the month of November 2004.

RICKY LYNN GENTRY, R.P.L.S. NO. 5519

DATE: 09/28/2005

Bearings are based on the Texas State Plane Coordinate System, North Central Zone (NAD83).

See Sheets 8 of 9 for Exhibit B sketch.

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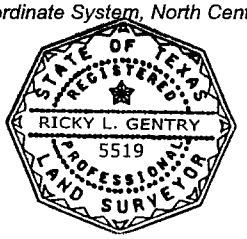
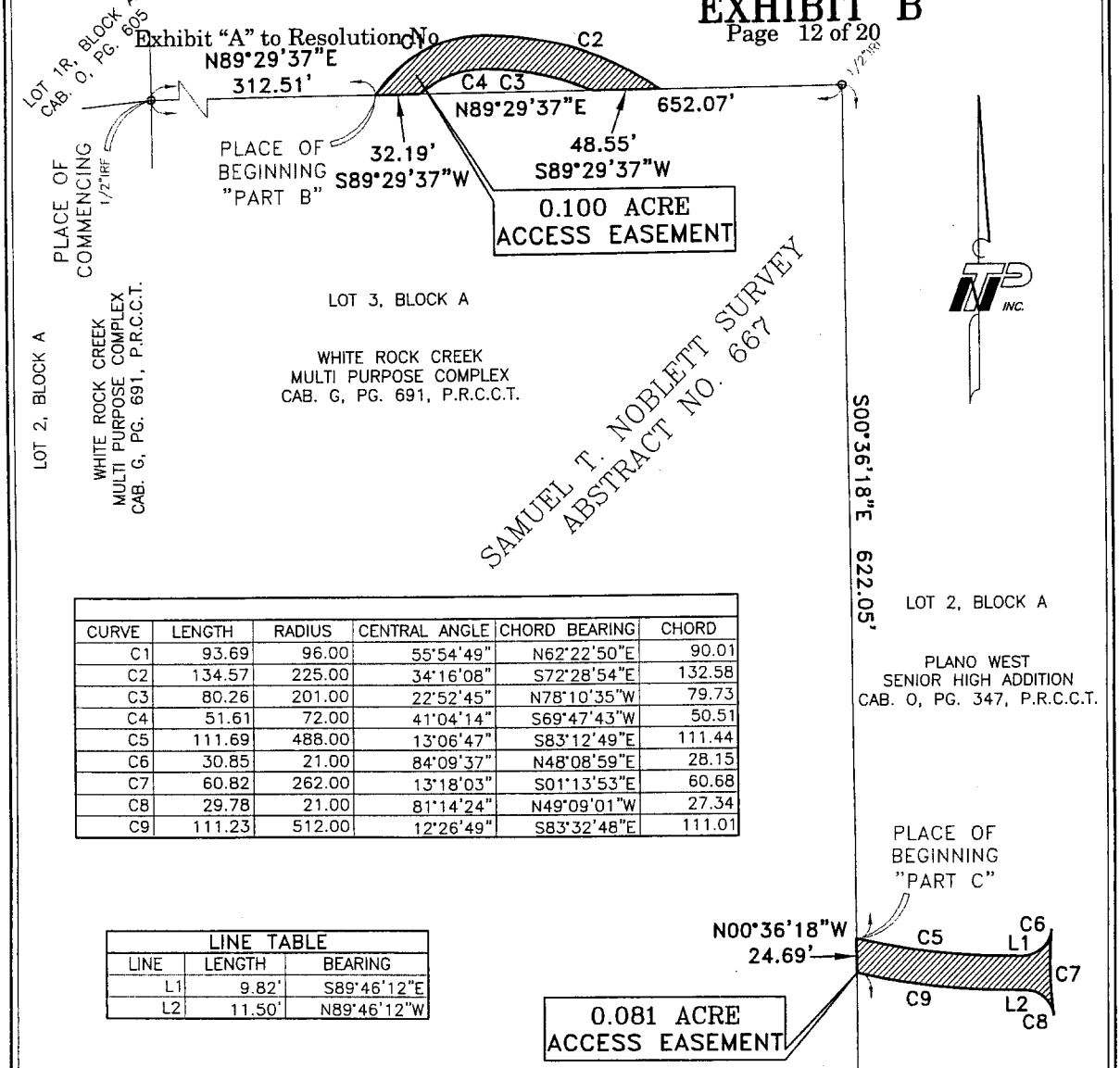
9/30/2005



12-14

EXHIBIT B



CURVE	LENGTH	RADIUS	CENTRAL ANGLE	CHORD BEARING	CHORD
C1	93.69	96.00	55°54'49"	N62°22'50"E	90.01
C2	134.57	225.00	34°16'08"	S72°28'54"E	132.58
C3	80.26	201.00	22°52'45"	N78°10'35"W	79.73
C4	51.61	72.00	41°04'14"	S69°47'43"W	50.51
C5	111.69	488.00	13°06'47"	S83°12'49"E	111.44
C6	30.85	21.00	84°09'37"	N48°08'59"E	28.15
C7	60.82	262.00	13°18'03"	S01°13'53"E	60.68
C8	29.78	21.00	81°14'24"	N49°09'01"W	27.34
C9	111.23	512.00	12°26'49"	S83°32'48"E	111.01

LINE TABLE		
LINE	LENGTH	BEARING
L1	9.82'	S89°46'12"E
L2	11.50'	N89°46'12"W

0 50 100 200

SCALE: 1" = 100'

NOTES:

1. Bearings are based on the Texas State Plane Coordinate System, North Central Zone (NAD83).
2. Integral parts of this survey:
   a. Legal Description
   b. Sketch

"PARTS B & C" ACCESS EASEMENT

Situated in the
SAMUEL T. NOBLETT SURVEY
ABSTRACT NO. 667
CITY OF PLANO
COLLIN COUNTY, TEXAS

PARKER ROAD
(110' R.O.W.)

Prepared By:

September 28, 2005
Date:

STATE OF TEXAS
REGISTERED
RICKY L. GENTRY
5519
PROFESSIONAL
LAND SURVEYOR

TEAGUE NALL AND PERKINS
CONSULTING ENGINEERS
1100 Macon Street
Fort Worth, Texas 76102
(817) 336-5773

SHEET 8 OF 9 JOB NO. BRK 04258

R-15

EXHIBIT A
FIELD NOTES
Parking Easement

Being a 0.121 acre tract of land (Part D) and a 0.033 acre tract of land (Part E), situated in the Samuel T. Noblett Survey, Abstract No. 667, located in the City of Plano, Collin County, Texas, and being a portion of Lot 2, Block A, Plano West Senior High Addition, as shown on plat recorded in Cabinet O, Page 347, Plat Records of Collin County, Texas. Said tracts of land being more particularly described by metes and bounds as follows:

"PART D"

Commencing at a 1/2 inch iron rod found at the southeast corner of Lot 1R, Block A, White Rock Creek Multi Purpose Complex, as shown on plat recorded in Cabinet O, Page 605, Plat Records of Collin County, Texas, same being at the northeast corner of Lot 2, Block A, and the northwest corner of Lot 3, Block A, White Rock Creek Multi Purpose Complex, as shown on plat recorded in Cabinet G, Page 691, Plat Records of Collin County, Texas, from which a 1/2 inch iron rod found at the northeast corner of said Lot 3, Block A, that bears North 89°29'37" East, 652.07 feet;

Thence North 89°29'37" East, along the common line of said Lot 3, Block A, and said Lot 2, Block A, a distance of 289.07 feet to the **Place of Beginning**, and the beginning of a non-tangent curve to the right, having a radius of 116.01 feet, a central angle of 62°38'00", and a chord bearing of North 59°05'46" East, with a chord distance of 120.60 feet;

Thence departing said common line, over and across said Lot 2, Block A, the following courses and distances:

Northeasterly along said curve to the left, an arc length of 126.82 feet to a point for the beginning of a compound curve to the right, having a radius of 245.00 feet, a central angle of 40°25'02", and a chord bearing of South 69°22'30" East, with a chord distance of 169.26 feet;

Southeasterly along said curve to the right, an arc length of 172.83 feet to a point on said common line;

Thence South 89°29'37" West, along said common line, a distance of 32.26 feet to a point and the beginning of a tangent curve to the left, having a radius of 225.00 feet, a central angle of 34°16'08", and a chord bearing of North 72°28'54" East, with a chord distance of 132.58 feet;

Thence departing said common line, over and across said Lot 2, Block A, the following courses and distances:

Northwesterly along said curve to the left, an arc length of 134.57 feet to a point and the beginning of a compound curve to the left, having a radius of 96.00 feet, a central angle of 55°54'49", and a chord bearing of South 62°22'50" West, with a chord distance of 90.01 feet;

Southwesterly along said curve to the left, an arc length of 93.69 feet to a point on said common line;

Thence South 89°29'37" West, along said common line, a distance of 23.45 to the **Place of Beginning** and containing 0.121 acre of land, more or less.

"PART E"

Commencing at a 1/2 inch iron rod found at the southeast corner of Lot 1R, Block A, White Rock Creek Multi Purpose Complex, as shown on plat recorded in Cabinet O, Page 605, Plat Records of Collin County, Texas, same being at the northeast corner of Lot 2, Block A, and the northwest corner of Lot 3, Block A, White Rock Creek Multi Purpose Complex, as shown on plat recorded in Cabinet G, Page 691, Plat Records of Collin County, Texas, from which a 1/2 inch iron rod found at the northeast corner of said Lot 3, Block A, that bears North 89°29'37" East, 652.07 feet;

Thence North 89°29'37" East, along the common line of said Lot 3, Block A, and said Lot 2, Block A, a distance of 344.71 feet to the **Place of Beginning**, and the beginning of a non-tangent curve to the right, having a radius of 72.00 feet, a central angle of 41°04'14", and a chord bearing of North 69°47'43" East, with a chord distance of 50.51 feet;

Thence departing said common line, over and across said Lot 2, Block A, the following courses and distances:

Northeasterly along said curve to the right, an arc length of 51.61 feet to a point for the beginning of a compound curve to the right, having a radius of 201.00 feet, a central angle of 22°52'45", and a chord bearing of South 78°10'35" East, with a chord distance of 79.73 feet;

Southeasterly along said curve to the right, an arc length of 80.26 feet to a point on said common line;

Thence South 89°29'37" West, along said common line, a distance of 125.45 feet to the **Place of Beginning** and containing 0.033 acre of land, more or less.

Prepared from a survey performed in the month of November 2004.

RICKY LYNN GENTRY, R.P.L.S. NO. 5519

DATE: 09/28/2005

STATE OF TEXAS
REGISTERED
RICKY L. GENTRY
5519
PROFESSIONAL
LAND SURVEYOR

Bearings are based on the Texas State Plane Coordinate System, North Central Zone (NAD83).

See Sheets 9 of 9 for Exhibit B sketch.

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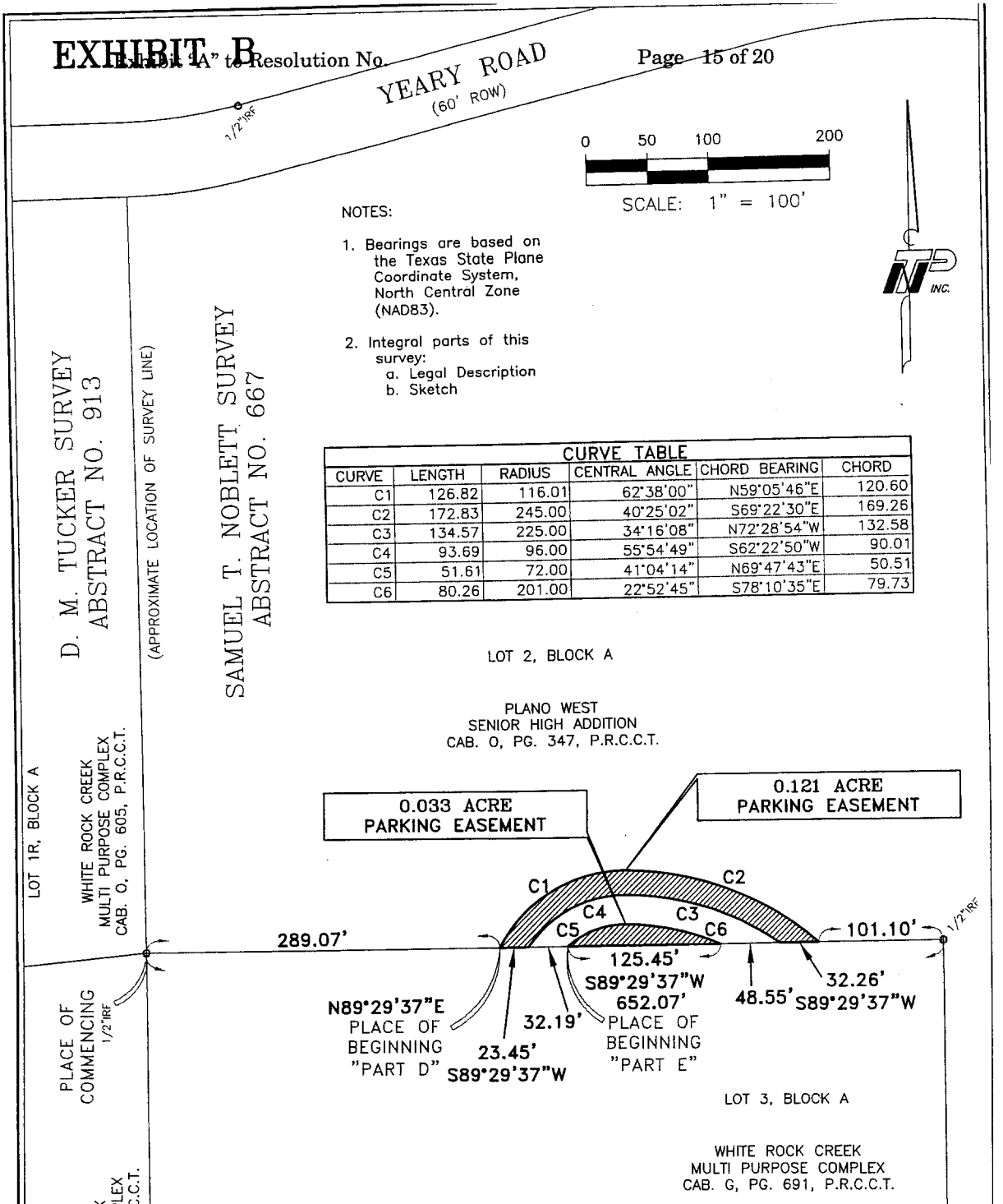
9/30/2005

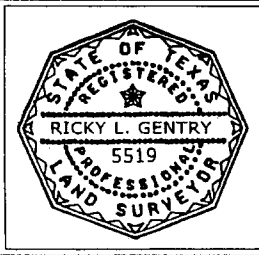


CURVE TABLE					
CURVE	LENGTH	RADIUS	CENTRAL ANGLE	CHORD BEARING	CHORD
C1	126.82	116.01	62°38'00"	N59°05'46"E	120.60
C2	172.83	245.00	40°25'02"	S69°22'30"E	169.26
C3	134.57	225.00	34°16'08"	N72°28'54"W	132.58
C4	93.69	96.00	55°54'49"	S62°22'50"W	90.01
C5	51.61	72.00	41°04'14"	N69°47'43"E	50.51
C6	80.26	201.00	22°52'45"	S78°10'35"E	79.73

"PARTS D & E"
PARKING EASEMENT

Situated in the
SAMUEL T. NOBLETT SURVEY, ABSTRACT NO. 667
CITY OF PLANO, COLLIN COUNTY, TEXAS

Prepared By:
September 28, 2005
Date:
12-18



TEAGUE NALL AND PERKINS
CONSULTING ENGINEERS
1100 Macon Street
Fort Worth, Texas 76102
(817) 336-5773

SHEET 9 OF 9 JOB NO. BRK 04258

EXHIBIT C

AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS AND THE PLANO INDEPENDENT SCHOOL DISTRICT PROVIDING TERMS AND CONDITIONS FOR THE CONSTRUCTION OF A DRIVE ENTRANCE AND PARKING SPACES FOR THE TOM MUEHLENBECK RECREATION CENTER ON RENNER MIDDLE SCHOOL PROPERTY

WHEREAS, the Plano Independent School District ("District") and the City of Plano, Texas ("City") desire to enter into an agreement concerning the construction of a drive entrance and parking spaces for the Tom Muehlenbeck Recreation Center on Renner Middle School property located at 5701 W. Parker Road, in Plano, Collin County, Texas (the "Property"); and

WHEREAS, the City has determined that it will need an access easement to enter through an existing school drive and continue on a new drive that will be constructed by the City; and

WHEREAS, the City and District have determined that the construction may be accomplished most economically by implementing this agreement.

NOW, THEREFORE, this agreement is made and entered into by the District and the City upon and for the mutual consideration stated herein.

WITNESSETH:

ARTICLE I.

The City shall arrange for the design and construction of a drive entrance and parking spaces on Renner Middle School property, hereinafter called the "Project". The Project will be designed to meet City standards.

2-19

Survey drawings and field note descriptions illustrating the proposed parking, drive and access easement locations are attached as Exhibits "A" and "B"..

ARTICLE II.

The City shall prepare plans and specifications for the improvements and submit the same to District for its approval, which shall not be unreasonably withheld. The City will enter into and administer both the design and construction contracts for the Project within 36 months of the date hereof. In all such activities, the City shall comply with all state statutory requirements. The City shall provide the District with a copy of the executed construction contracts for the Project.

The District will assign a staff member to represent the District throughout the construction of the Project. The City will include the District's representative in regular progress meetings throughout the construction of the Project. Progress meetings will take place no less frequently than every 60 days until the Project is complete. The Project is scheduled to be completed no later than 36 months of the date hereof.

ARTICLE III.

The District agrees to grant the City an access easement to enter through an existing school drive and to continue on the newly constructed drive and parking spaces to be constructed pursuant to the construction contract to be entered into by the City pursuant to this Agreement and described in Exhibits "A" and "B".

ARTICLE IV.

INDEMNIFICATION. To the extent allowed by law, each party agrees to release, defend, indemnify, and hold harmless the other (and its officers, agents, and employees) form and against all claims or causes of action for injuries (including death), property damages (including loss of use), and any other losses, demands, suits, judgments, and costs, including reasonable attorneys' fees and expenses, in any way arising out of, related to, or resulting from its performance under this agreement, or caused by its negligent acts or omissions (or those of its respective officers, agents,

12-20

employees, or any other third parties for whom it is legally responsible) in connection with performing this agreement.

ARTICLE V.

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

ARTICLE VI.

SEVERABILITY. The provisions of this agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this agreement is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation having the force and effect of the law, the remaining portions of the agreement shall be enforced as if the invalid provision had never been included.

ARTICLE VII.

ENTIRE AGREEMENT. This agreement embodies the entire agreement between the parties and may only be modified in writing executed by both parties.

ARTICLE VIII.

IMMUNITY. It is expressly understood and agreed that, in the execution of this agreement, neither party waives nor shall be deemed hereby to have waived any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this agreement, the parties do not create any obligations, express or implied, other than those set forth herein, and this agreement shall not create any rights in parties not signatories hereto.

ARTICLE IX.

TERM. This agreement shall be effective upon execution by both parties and shall continue in effect annually until final acceptance of the Project by the District and the City. This agreement shall automatically renew annually during this period.

R-21

APPROVED AS TO FORM:

By: _____
Name: _____
Title: _____
Date: _____

PLANO INDEPENDENT SCHOOL DISTRICT

By: Bill Matthews
Name: Richard Matthews
Title: Associate Superintendent
Date: 10/20/05

APPROVED AS TO FORM:

By: _____
Name: Diane C. Wetherbee
Title: City Attorney
Date: _____

CITY OF PLANO, TEXAS

By: _____
Name: Thomas H. Muehlenbeck
Title: City Manager
Date: _____

R-22

ACKNOWLEDGMENTS

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me on the 20th day of OCTOBER, 2005 by RICHARD MATICIN ASST. SUPERINTENDENT **PLANO INDEPENDENT SCHOOL DISTRICT**, on behalf of said entity.

Denise M. Gillespie
Notary Public in and for the
State of Texas

STATE OF TEXAS §
§
COUNTY OF COLLIN §

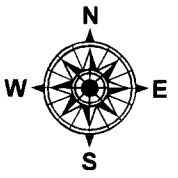
This instrument was acknowledged before me on the ___ day of _____, 200__ by **THOMAS H. MUEHLENBECK**, City Manager of the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, on behalf of said corporation.

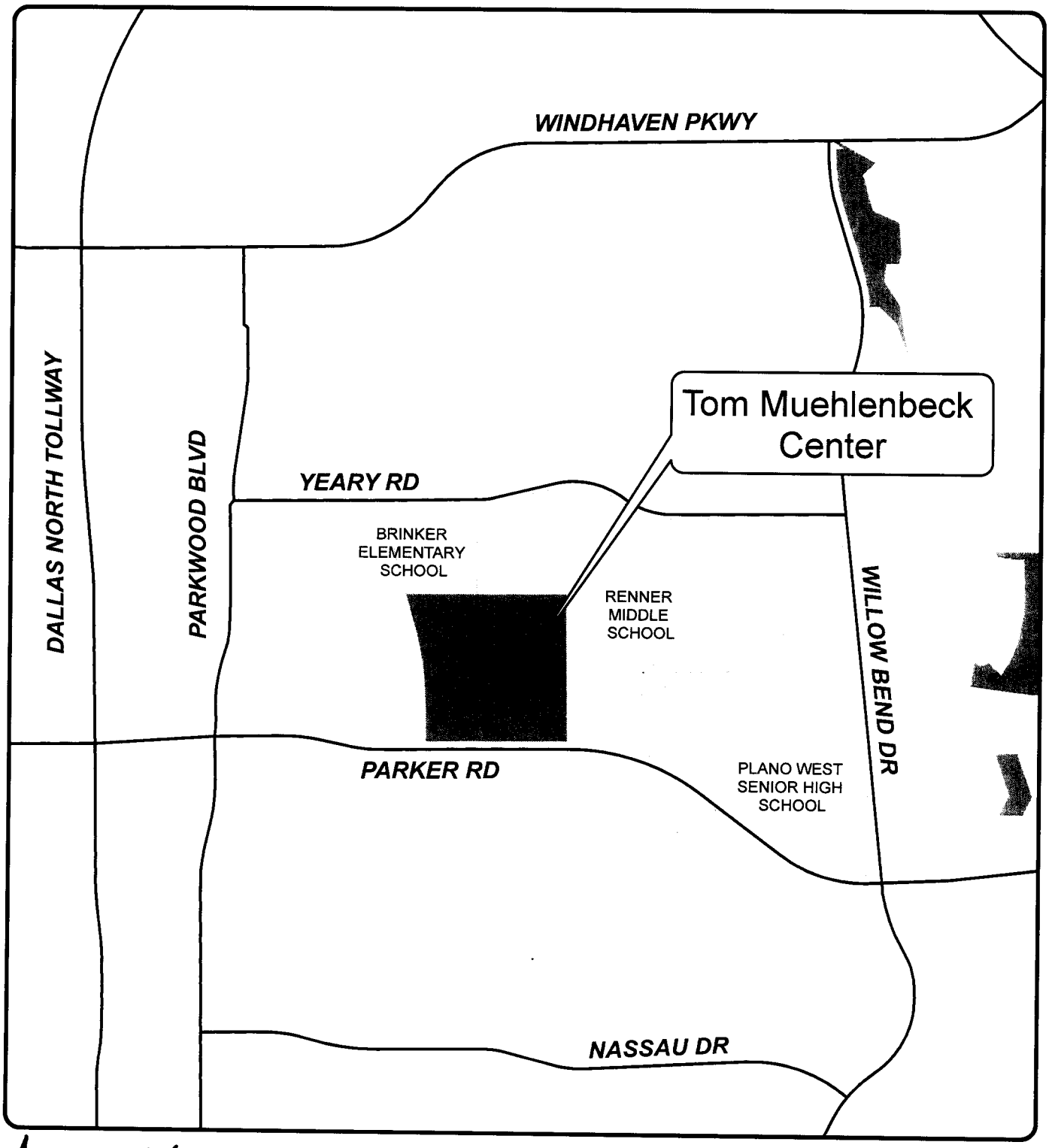
_____
Notary Public in and for the
State of Texas

A-23

Park Planning Division
City of Plano, Texas

Location Map





R-24

1,000 500 0 1,000 Feet

© 2015 Brinkley Sargent Architects, Inc.

GENERAL NOTES

REF. 'L' DRAWINGS FOR:
- PLANTING AND IRRIGATION
- FURTHER INFORMATION IN AREAS MARKED
- TRAIL EXTENSIONS TO NORTH OF MAIN AREA
- FLATWORK FINISHES
- BRIDGES
- ENTRY SIGN

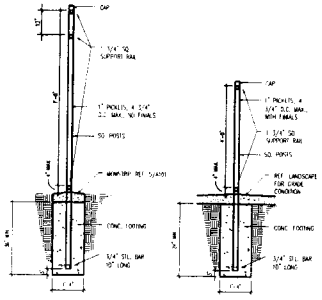
REF. 'C' DRAWINGS FOR:
- EROSION CONTROL AND WETLAND PROTECTION
- TREE PROTECTION
- HORIZONTAL CONTROL
- PAVING SECTIONS AND SUBGRADE PREPARATION
- GRADING & DRAINAGE
- UTILITIES
- SUBSURFACE DRAINAGE AT OUTDOOR POOL

REF. STRUCTURAL FOR:
- SUBGRADE PREPARATION FOR ALL STRUCTURES
- ALL FOUNDATIONS
- EXCLUDES WATERSLIDES, WHICH SHALL BE DESIGNED BY VENDOR. DESIGN AND INSTALLATION OF WATERSLIDES ARE IN CONTRACT. REF. POOL DOCUMENTS FOR FURTHER INFORMATION

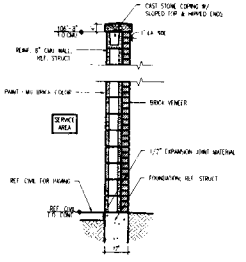
REF. PLUMBING FOR:
- SUBSURFACE DRAINAGE AT INDOOR POOLS

REF. 'SP' SHEETS FOR SWIMMING POOLS

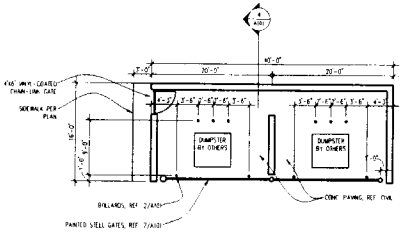
REF. SHEET A110 FOR BATHHOUSE



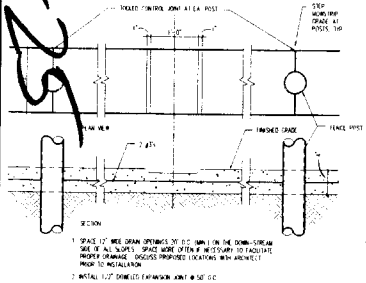
3 FENCE DETAILS
1/2"=1'-0"



4 DUMPSTER WALL SECTION
1/2"=1'-0"

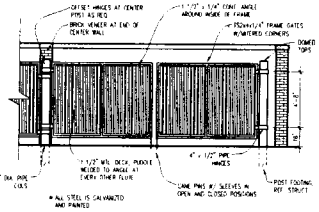


6 ENLARGED PLAN
1"=8'-0"



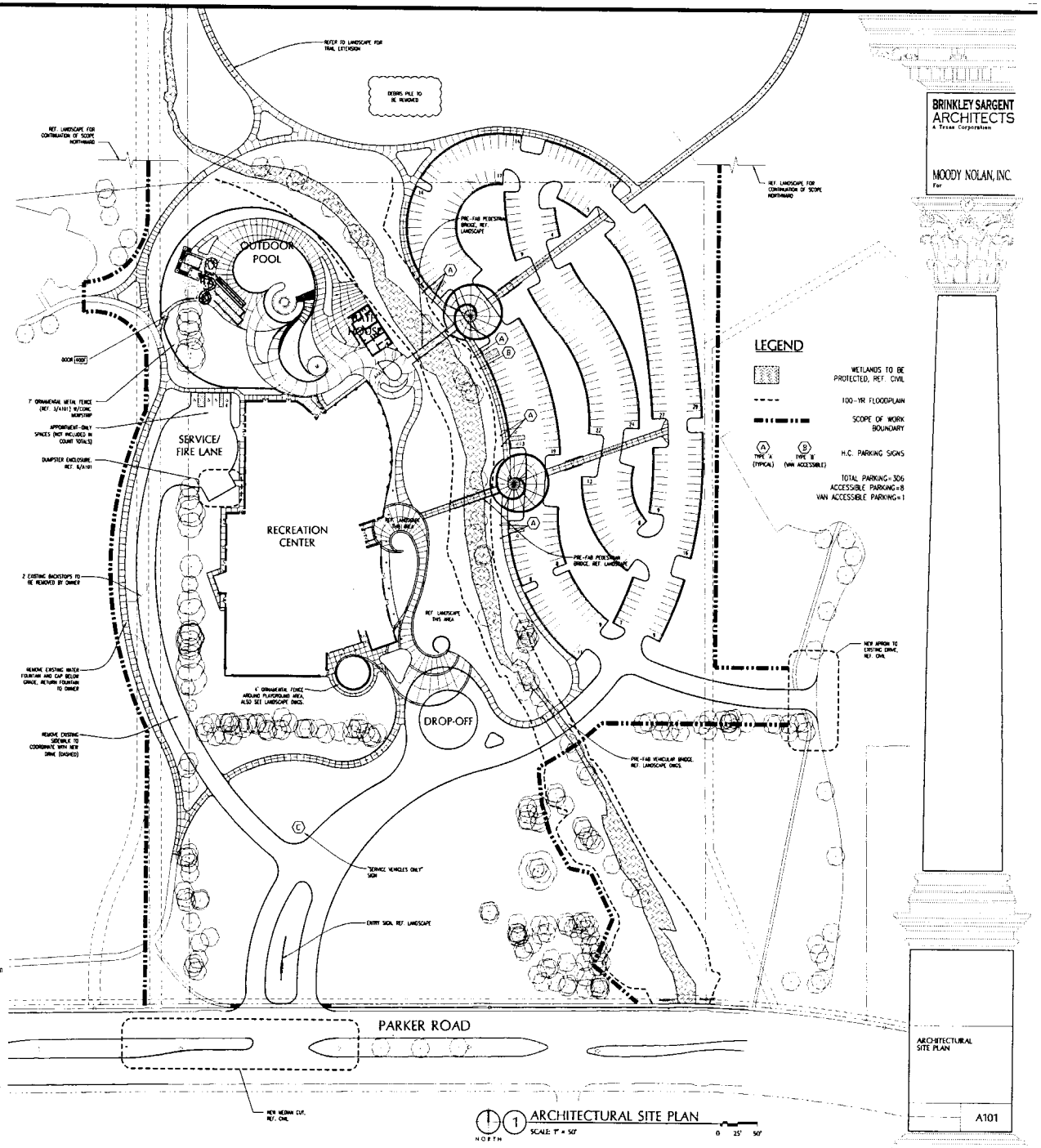
1. SPACE 10' WIDE DRAIN OPENINGS 30' O.C. MAX. ON THE DOWN-STREAM SIDE OF ALL SLOPES. SPACE MORE OFTEN IF NECESSARY TO FACILITATE PROPER DRAINAGE. DISCUSS PROPOSED LOCATIONS WITH ARCHITECT PRIOR TO INSTALLATION.
2. INSTALL 1/2" DOWELED EXPANSION JOINT @ 50' O.C.

5 MOW STRIP DETAIL
1" = 1'-0"



* ALL STEEL IS GALVANIZED AND PAINTED

7 ELEVATION
1"=8'-0"



1 ARCHITECTURAL SITE PLAN
SCALE: 1" = 50'
NORTH
0 25' 50'

BRINKLEY SARGENT ARCHITECTS
A Texas Corporation

MOODY NOLAN, INC.
For

ARCHITECTURAL SITE PLAN

A101

12-23-21

CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☒ Yes	☒ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☒ Yes	☐ Not Applicable
Council Meeting Date:	11/28/05	Reviewed by Legal	☒ Yes	☐ Not Applicable
Department:	Fire		Initials	Date
Department Head	William Peterson	Executive Director		11/21/05
Dept Signature:		City Manager		11/21/05
Agenda Coordinator (include phone #):	Frank Snidow x7318			

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

CAPTION

A RESOLUTION OF THE CITY COUNCIL OF THIS CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A SERVICE AGREEMENT BETWEEN THE CITY OF PLANO AND PHYSIO-CONTROL CORPORATION FOR INSPECTION AND MAINTENANCE SERVICES OF THE FIRE DEPARTMENT'S PHYSIO-CONTROL CORPORATION MANUFACTURED BIOMEDICAL EQUIPMENT; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR HIS DESIGNEE; AND PROVIDING AN EFFECTIVE DATE.

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☒ OPERATING EXPENSE ☐ REVENUE ☐ CIP

FISCAL YEAR: 2005-06, 2006-07, 2007-08, 2008-09, 2009-10	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	44,100	0	**44,100**
Encumbered/Expended Amount	0	0	0	**0**
This Item	0	-43,905	0	**-43,905**
BALANCE	0	195	0	**195**

FUND(S): GENERAL FUND

COMMENTS: Funds are included in the 2005-06 Fire Department Budget for the Biomedical Maintenance Agreement and related supplies. The balance of funds will be used for other maintenance agreements and contracts. This item approves an annual contract with four (4) additional one-year renewals.

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

SUMMARY OF ITEM

AUTHORIZATION TO APROVE BIOMEDICAL MAINTENANCE AGREEMENT AND RELATED SUPPLIES FOR THE DEPARTMENT'S DEFIBRILLATORS/MONITORS FOR A ONE-YEAR PERIOD WITH FOUR (4) ADDITIONAL ONE-YEAR RENEWALS.

A-1

REV 08/98

CITY OF PLANO
COUNCIL AGENDA ITEM

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

S-2

REV 08/98

City of PLANO TEXAS Fire Department

Memorandum

Date: November 18, 2005

To: Bruce Glasscock, Executive Director

From: William Peterson, Fire Chief

Subject: Council Agenda Item –
Maintenance Agreement For Defibrillators/Monitors

Attached is the agenda item to request authorization to continue the maintenance agreement for the Department's defibrillator/monitors from Physio-Control Corporation. The maintenance agreement is for a one-year period with four (4) additional one-year renewals. The agreement also provides stated discounts for related supplies.

All of the Department's cardiac equipment is currently manufactured and serviced by Physio-Control. Funding for the first year of the maintenance agreement is in the Department's FY 05-06 Budget.

If you have any questions, or if I may provide any additional information, please advise.

A-3

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A SERVICE AGREEMENT BETWEEN THE CITY OF PLANO AND PHYSIO-CONTROL CORPORATION FOR INSPECTION AND MAINTENANCE SERVICES OF THE FIRE DEPARTMENT'S PHYSIO-CONTROL CORPORATION MANUFACTURED BIOMEDICAL EQUIPMENT; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR HIS DESIGNEE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council has been presented a proposed Service Agreement with Physio-Control Corporation ("Physio-Control") for inspection and maintenance of certain Fire Department biomedical equipment, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (Hereinafter called "Agreement"); and

WHEREAS, all of the Fire Department's existing biomedical cardiac equipment is manufactured only by Physio-control; and

WHEREAS, the necessary inspection and maintenance services for the Physio-Control manufactured equipment are available from only one source and, therefore, exempt from competitive bid as provided for in V.T.C.A., Local Government Code, Section 252.022(a)(7)(A); 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 should be authorized to execute the Agreement on behalf of the City of Plano;

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

Section 1. The City Council of the City of Plano, Texas, hereby determines and finds that because all of the Fire Department's existing biomedical cardiac equipment is manufactured only by Physio-Control Corporation, the inspection and maintenance services necessary for such equipment are available from only one source, and therefore, are exempt from competitive bid as provided for in V.T.C.A., Local Government Code, Section 252.022(a)(7)(A).

Section II. 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 interest of the City of Plano and its citizens, are hereby in all things approved.

A-4

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

Section IV. The Agreement amount of $22,904.50 is for a one-year term beginning October 1, 2005 and expires on September 30, 2006, with four one-year options with the same terms, conditions, and price per unit.

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

DULY PASSED AND APPROVED this the _____ day of _____, 2005.

_____
Pat Evans, MAYOR

ATTEST:

_____
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

CUSTOMER COPY

TECHNICAL SERVICE SUPPORT AGREEMENT

Medtronic
PHYSIO-CONTROL

Contract Number:

End User # 07173101
CITY OF PLANO FIRE DEPT
FIRE ADMINISTRATION
1901 AVENUE K
PLANO, TX 75074

Bill To # 00397801
CITY OF PLANO
PO BOX 860358
PLANO, TX 75086

This Technical Service Support Agreement begins on 10/1/2005 and expires on 9/30/2006.

The designated Covered Equipment and/or Software is listed on Schedule A. This Technical Service Agreement is subject to the Terms and Conditions on the reverse side of this document and any Schedule B, if attached. If any Data Management Support and Upgrade Service is included on Schedule A then this Technical Service Support Agreement is also subject to Medtronic Physio-Control Corp.'s Data Management Support and Upgrade Service Terms and Conditions, rev 7/99-1.

Price of coverage specified on Schedule A is $22,904.50 per term, payable in Annual installments.

Special Terms

THIS AGREEMENT INCLUDES THE OPTION TO RENEW ANNUALLY OVER THE NEXT FOUR YEARS WITH THE SAME TERMS, CONDITIONS, AND PRICE PER UNIT IF AGREED UPON BY BOTH PARTIES.
10% DISCOUNT ON ACCESSORIES
15% DISCOUNT ON ALL ELECTRODES
17% DISCOUNT ON LP12 UPGRADES

Accepted: MEDTRONIC PHYSIO-CONTROL CORP.
By: Mark Radford
Title: Technical Services Rep.
Date: 10.27.05

Customer:
By:
Print:
Title:
Date:
Purchase Order Number:

Territory Rep: WECC56
Radford, Mark
Phone: 800-442-1142 x2848
FAX: 800-772-3340

Customer Contact:
KEN KLEIN
Phone: 972-941-7158
FAX: 972-578-7291

A-6

Reference Number: C56-1516
Printed: 10/27/2005

Renewal

 CUSTOMER COPY

MEDTRONIC PHYSIO-CONTROL CORP.
TECHNICAL SERVICE SUPPORT AGREEMENT
SCHEDULE A

Contract Number:

Servicing Rep: Radford, Mark, WECC56
District: SOUTHWEST
Phone: 800-442-1142 x2848
FAX: 800-772-3340

Equipment Location: CITY OF PLANO FIRE DEPT, 07173101
FIRE ADMINISTRATION
1901 AVENUE K
PLANO, TX 75074

Scope Of Service On Site Repair and 1 On Site Inspection per Year:M-F/8-5

Model	Part Number	Serial Number	Ref. Line	Effective Date	Expiration Date	Total Inspections
LIFEPAK® 12	VLP12-02-001353	12832943	18	10/1/2005	9/30/2006	1
LIFEPAK® 12	VLP12-02-000291	11766454	35	10/1/2005	9/30/2006	1
LIFEPAK® 12	VLP12-02-003493	14241491	36	10/1/2005	9/30/2006	1

Scope Of Service On Site Repair and 2 On Site Inspection per Year:M-F/8-5

Model	Part Number	Serial Number	Ref. Line	Effective Date	Expiration Date	Total Inspections
LIFEPAK® 10	804200-28	030335	33	10/1/2005	9/30/2006	2
LIFEPAK® 10	804200-28	030334	34	10/1/2005	9/30/2006	2
LIFEPAK® 10	804200-28	033255	1	10/1/2005	9/30/2006	2
LIFEPAK® 10	804200-28	036302	2	10/1/2005	9/30/2006	2
LIFEPAK® 10	804200-28	007270	3	10/1/2005	9/30/2006	2
LIFEPAK® 10	804200-28	007325	4	10/1/2005	9/30/2006	2
LIFEPAK® 10	804200-28	007340	5	10/1/2005	9/30/2006	2
LIFEPAK® 10	804200-28	036301	6	10/1/2005	9/30/2006	2
LIFEPAK® 10	804200-28	007355	7	10/1/2005	9/30/2006	2
LIFEPAK® 10	804200-28	030841	8	10/1/2005	9/30/2006	2
LIFEPAK® 10	804200-28	030843	9	10/1/2005	9/30/2006	2
LIFEPAK® 10	804200-28	030845	10	10/1/2005	9/30/2006	2
LIFEPAK® 10	804200-28	030850	11	10/1/2005	9/30/2006	2
LIFEPAK® 10	804200-28	040759	12	10/1/2005	9/30/2006	2
LIFEPAK® 10	804200-28	1574826	13	10/1/2005	9/30/2006	2

Scope Of Service On Site Repair Only: M-F/8-5

Model	Part Number	Serial Number	Ref. Line	Effective Date	Expiration Date	Total Inspections
BATTERY SUPPORT SYSTEM 2	VBSS2-02-000009	11426111	22	10/1/2005	9/30/2006	0
BATTERY SUPPORT SYSTEM 2	VBSS2-02-000009	11426107	23	10/1/2005	9/30/2006	0
BATTERY SUPPORT SYSTEM 2	VBSS2-02-000009	11426105	24	10/1/2005	9/30/2006	0

Reference Number: C56-1516 Renewal
Printed: 10/27/2005

S-7

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BATTERY SUPPORT SYSTEM 2	VBSS2-02-000009	11426103	25	10/1/2005	9/30/2006	0
BATTERY SUPPORT SYSTEM 2	VBSS2-02-000009	11426095	26	10/1/2005	9/30/2006	0
BATTERY SUPPORT SYSTEM 2	VBSS2-02-000009	11416245	27	10/1/2005	9/30/2006	0
BATTERY SUPPORT SYSTEM 2	VBSS2-02-000009	11386969	28	10/1/2005	9/30/2006	0
BATTERY SUPPORT SYSTEM 2	VBSS2-02-000009	11386967	29	10/1/2005	9/30/2006	0
BATTERY SUPPORT SYSTEM 2	VBSS2-02-000009	11386966	30	10/1/2005	9/30/2006	0
BATTERY SUPPORT SYSTEM 2	VBSS2-02-000009	11383470	31	10/1/2005	9/30/2006	0
BATTERY SUPPORT SYSTEM 2	VBSS2-02-000009	11383467	32	10/1/2005	9/30/2006	0

Scope Of Service Renewal POS On Site Repair - 1 On Site Inspection per Year

Model	Part Number	Serial Number	Ref. Line	Effective Date	Expiration Date	Total Inspections
LIFEPAK® 12	VLP12-02-000170	11479945	19	10/1/2005	9/30/2006	1
LIFEPAK® 12	VLP12-02-000170	11479943	20	10/1/2005	9/30/2006	1
LIFEPAK® 12	VLP12-02-000170	11479942	21	10/1/2005	9/30/2006	1
LIFEPAK® 12	VLP12-02-000170	11479951	14	10/1/2005	9/30/2006	1
LIFEPAK® 12	VLP12-02-000170	11479949	15	10/1/2005	9/30/2006	1
LIFEPAK® 12	VLP12-02-000170	11479948	16	10/1/2005	9/30/2006	1
LIFEPAK® 12	VLP12-02-000170	11479947	17	10/1/2005	9/30/2006	1

** Denotes an inventory line that has changed since the last contract revision or addendum.

A-8

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MEDTRONIC PHYSIO-CONTROL CORP.
TECHNICAL SERVICE SUPPORT AGREEMENT
SCHEDULE B

LIFEPAK® 10 DEFIBRILLATOR/MONITOR/PACEMAKER

· Paddle repairs are included. (Paddle attachments are excluded; i.e. pediatric and anterior attachments).
· Auxiliary Power Supply included when listed on equipment inventory (Schedule A).
· Pacemaker repair is included.
· Case changes are excluded.
· Pacing and patient cables are excluded.
· FAST-PATCH® adapters and QUIK-COMBO™ pacing/defibrillation adapters are included.
· Medtronic Physio-Control® Battery Support System included when listed on equipment inventory (Schedule A).
· Repair coverage for Medtronic Physio-Control® ECG, Pacing and Defibrillation Simulators included.

Medtronic Physio-Control® Battery Pak

· Customer retains the responsibility to perform the battery maintenance and evaluation procedures outlined in the service manual and to replace batteries that do not pass the conditions outlined under "Discarding/Recycling Batteries." Batteries failing to meet battery performance tests should be removed from service and properly discarded (recycled).
· If customer provides evidence that a Medtronic Physio-Control Battery Pak fails to meet the performance tests noted above and/or the Battery Pak age exceeds 2 years, Medtronic Physio-Control shall replace said Medtronic Physio-Control Battery Pak (like for like) i.e. FASTPAK for FASTPAK, up to a maximum of 4 Medtronic Physio-Control Battery Paks every two years (including prior Support Plan periods) per LIFEPAK®10 defibrillator/monitor/pacemaker (listed on Schedule A). To assist in proper recycling and removal of low capacity batteries, replaced Battery Paks become the property of Medtronic Physio-Control and must be returned at the time of exchange.
· Only batteries manufactured by Medtronic Physio-Control are covered under this Service Agreement. Any batteries manufactured by other sources are expressly excluded from coverage under this Service Agreement. Medtronic Physio-Control cannot guarantee the operation, safety and/or performance of our product when operating with a non-Medtronic Physio-Control battery. Repairs and inspections performed under this Agreement meet original equipment manufacturer's product specifications only when operating with a Medtronic Physio-Control battery. Any repairs, as determined by a Medtronic Physio-Control Service Representative, resulting from the use of a non-Medtronic Physio-Control battery, will be billed at our standard list prices for parts and labor, including actual travel charges incurred.

S-9

CUSTOMER COPY

MEDTRONIC PHYSIO-CONTROL CORP.
TECHNICAL SERVICE SUPPORT AGREEMENT
SCHEDULE B

LIFEPAK® 12 DEFIBRILLATOR/MONITOR

· Battery Support System included when listed on equipment inventory (Schedule A).
· Battery Support System 2 included when listed on equipment inventory (Schedule A).
· AC Power Adapter included when listed on equipment inventory (Schedule A).
· DC Power Adapter included when listed on equipment inventory (Schedule A).
· Defibrillator paddle repairs are included (excludes internal, sterilizable and pediatric paddles).
· Communications and Patient cables are excluded.
· PCMCIA Modems are excluded.
· Therapy cables are excluded.
· SpO2 Sensors are excluded.
· Case Changes are excluded.
· Discount of 17% from the field installed list price for any current and/or future available LIFEPAK®12 upgrade is included when installed by Medtronic Physio-Control Technical Services.
· Discount of 17% from list price for any Medtronic Physio-Control® Data Management product is included.
· Discounts may not be combined with any other special terms, discounts and/or promotions.

Medtronic Physio-Control Fastpak®, Fastpak 2, Lifepak SLA and Lifepak NiCd Battery

· Customer retains the responsibility to perform the battery maintenance and evaluation procedures outlined in the operating instruction manual and to replace batteries that do not pass the conditions outlined under "Discarding/ Recycling Batteries." Batteries failing to meet battery performance tests should be removed from service and properly discarded (recycled).
· If customer provides evidence that a Medtronic Physio-Control Battery Pak fails to meet the performance tests noted above and/or the Battery Pak age exceeds 2 years, Medtronic Physio-Control shall replace said Medtronic Physio-Control Battery Pak (like for like) i.e. FASTPAK for FASTPAK, FASTPAK2 for FASTPAK2, LIFEPAK SLA for LIFEPAK SLA, or LIFEPAK NiCd for LIFEPAK NiCd, up to a maximum of 4 Medtronic Physio-Control Battery Paks every two years (including prior Support Plan periods) per LIFEPAK® 12 defibrillator/monitor (listed on Schedule A). To assist in proper recycling and removal of low capacity batteries, replaced Battery Paks become the property of Medtronic Physio-Control and must be returned at the time of exchange.
· Only batteries manufactured by Medtronic Physio-Control are covered under this Service Agreement. Any batteries manufactured by other sources are expressly excluded from coverage under this Service Agreement. Medtronic Physio-Control cannot guarantee the operation, safety and/or performance of our product when operating with a non-Medtronic Physio-Control battery. Repairs and inspections performed under this Agreement meet original equipment manufacturer's product specifications only when operating with a Medtronic Physio-Control battery. Any repairs, as determined by a Medtronic Physio-Control Service Representative, resulting from the use of a non-Medtronic Physio-Control battery, will be billed at our standard list prices for parts and labor, including actual travel charges incurred.

Lifepak®12 Software Updates

· If combined Repair and Inspection services are designated on the Technical Service Support Agreement inventory for Lifepak 12 units, at the customer's request, a Medtronic Physio-Control Technical Services Representative will install Lifepak 12 software updates at no additional charge provided it is installed at the time of a regularly scheduled inspection. In addition during the term of this agreement, where an assembly such as a printed circuit board must be replaced in order to install the new software, these assemblies may be purchased by the customer at a 50% discount off the current list price of a new assembly. Software updates requested to be installed at a time other than the regularly scheduled inspection will be billed at $205 per unit per software update. The cost of the software update will be billed on a separate invoice.
· If Repair-Only services are designated on the Service Order inventory for Lifepak 12 units, at the customer's request a Medtronic Physio-Control Technical Services Representative will install a Lifepak 12 software update at a discounted price of $205 per unit per software update. In addition during the term of this agreement, where an assembly such as a printed circuit board must be replaced in order to install the new software, these assemblies may be purchased by the customer at a 50% discount off the current list price of a new assembly. The cost of the software update will be billed on a separate invoice.
· Discounts may not be combined with any other special terms, discounts and/or promotions.

S-10

MEDTRONIC PHYSIO-CONTROL CORP.
SERVICE ORDER TERMS AND CONDITIONS

TERMS
Medtronic Physio-Control's ("Physio") acceptance of Customer's Service Order is expressly conditioned on Customer's assent to the terms set forth in this document ıd its attachments. Physio agrees to furnish the services ordered by Customer only on these terms, and Customer's acceptance of any portion of the goods and ser- ːes covered by this document shall confirm their acceptance by Customer. These terms constitute the complete agreement between the parties and they shall gov- ɪ any conflicting or ambiguous terms on Customer's purchase order or on other documents submitted to Physio by Customer. These terms may not be revised any manner without the prior written consent of an officer of Physio.

REPAIR SERVICES
If "Repair" services are designated, subject to the Exclusions identified below, they shall include, for the designated Covered Equipment, all repair parts and materials required, all required Physio service technician labor, and all related travel expenses. For offsite (ship-in) services, units will be returned to Customer by Physio freight prepaid.

INSPECTION SERVICES
If "Inspection" services are designated, subject to the Exclusions identified below, they shall include, for the designated Covered Equipment, verification of proper instrument calibration, verification that instrument mechanical operations and output measurements are consistent with applicable product specifications, performance of an electrical safety check in accordance with National Fire and Protection Guidelines, all required Physio service technician labor and all related travel expenses. For offsite (ship-in) services, units will be returned to Customer by Physio freight prepaid.

DOCUMENTATION
Following each Repair and/or Inspection, Physio will provide Customer with a written report of actions taken or recommended and identification of any materials replaced or recommended for replacement.

LOANERS
If a Physio product is designated as a unit of Covered Equipment for Repair Services and needs to be removed from service to complete repairs, an appropriate Loaner unit will be provided, if available, until the removed unit is returned. Customer assumes complete responsibility for the Loaner and shall return the Loaner to Physio in the same condition as received, at Customer's expense, upon the earlier of the return of the removed unit or Physio's request.

EXCLUSIONS
This Service Order does not include: supply or repair of accessories or disposables (e.g., patient cables, recorder paper, etc.); repair of damage caused by misuse, abuse, abnormal operating conditions, operator errors, and/or acts of God; repairs to return an instrument to normal operating equipment at the time of initial service by Physio under this Service Order; case changes; repair or replacement of items not originally distributed or installed by Physio; and exclusions on Schedule B to this Service Order, if any, which apply to Covered Equipment.

SCHEDULE SERVICES
Designated Repair and Inspections Services will be performed at the designated service frequency and during designated service hours. Customer is to ensure ɣered Equipment is available for Repair and/or Inspection at scheduled times. If Covered Equipment is not available as scheduled and Customer requests ɪitional services to be performed or if Physio is requested to perform Repair or Inspection services not designated in this Service Order (due to the nature of ɣices selected, instruments involved not being Covered Equipment, request being outside of designated service frequency or hours, or application of the ..lusions); Customer shall reimburse Physio at Physio's standard labor rates less 10% (including overtime, if appropriate), plus standard list prices for related parts and materials less 15%, plus actual travel costs incurred.

PAYMENT
The cost of services performed by Physio shall be payable by Customer within thirty (30) days of Customer's receipt of Physio's Invoice (or such other terms as Physio confirms to Customer in writing). In addition to the cost of services performed, Customer shall pay or reimburse Physio for any taxes assessed Physio. If the number or configuration of Covered Equipment is altered during the Term of this Service Order, the price of Services shall be adjusted accordingly.

WARRANTY
Physio warrants Services performed under this Service Order and replacement parts provided in performing such Services against defects in material and workmanship for ninety (90) days from the date a Service was performed or a part was provided. Customer's sole remedy shall be reservicing the affected unit and/or replacement of any part determined to be defective, without any additional Customer charge, provided Customer notifies Physio of any allegedly defective condition within ten (10) calendar days of its discovery by Customer. Physio makes no other warranties, express or implied, including, without limitation, NO WARRANTY OF MERCHANTABILITY OF FITNESS FOR A PARTICULAR PURPOSE, AND IN NO EVENT SHALL PHYSIO BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR OTHER DAMAGES.

TERMINATION
Either party may terminate this Service Order at any time upon sixty (60) days prior written notice to the other, except that Physio may terminate this Service Order immediately upon Customer's failure to make timely payments for services rendered under this Service Order. In the event of termination, Customer shall be obligated to reimburse Physio for that portion of the designated price which corresponds to that portion of the Term and the scope of Services provided prior to the effective date of termination.

DELAYS
Physio will not be liable for any loss or damage of any kind due to its failure to perform or delays in its performance resulting from any cause beyond its reasonable control, including, but not limited to, acts of God, labor disputes, labor shortages, the requirements of any governmental authority, war, civil unrest, delays in manufacture, obtaining any required license of permit, and Physio's inability to obtain goods from its usual sources. Any such delay shall not be considered a breach of Physio's obligations and the performance dates shall be extended for the length of such delay.

MISCELLANEOUS
a) Customer agrees to not employ or offer employment to anyone performing Services on Physio's behalf during the Term of this Service Order or for one (1) year following its expiration without Physio's prior written consent.
b) This Service Order, and any related obligation of other party, may not be assigned in whole or in part without the prior written consent of the other party.
c) The rights and obligations of Physio and Customer under this Service Order shall be governed by the laws of the State of Washington. All costs and expenses incurred by Physio related to enforcement of its rights under this document, including reasonable attorney's fees, shall be reimbursed by Customer.

5-11

CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☐ Yes	☒ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☒ Yes	☐ Not Applicable
Council Meeting Date:	11/28/05	Reviewed by Legal	☒ Yes	☐ Not Applicable
Department:	Development Business Center		Initials	Date
Department Head	Frank Turner	Executive Director		11/21/05
Dept Signature:		City Manager		11/21/05
Agenda Coordinator (include phone #):	Lynne Jones - 7109			

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

CAPTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A DEVELOPMENT AGREEMENT FOR PLANO-RICE FIELD REDEVELOPMENT PROJECT BY AND BETWEEN LEXINGTON LUXURY BUILDERS, LLC AND THE CITY OF PLANO; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR, IN HIS ABSENCE, AN EXECUTIVE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE.

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☒ CIP

FISCAL YEAR: 05/06	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	240	1,561,760	1,000,000	**2,562,000**
Encumbered/Expended Amount	-240	-12,556	0	**-12,796**
This Item	0	-1,400,000	0	**-1,400,000**
BALANCE	0	149,204	1,000,000	**1,149,204**

FUND(S): **STREETS & DRAINAGE IMPROVEMENT AND MUNICIPAL DRAINAGE CIP**

COMMENTS: This item, in the amount of $1,400,000 will leave a balance of $200,000 in the Redevelopment Streets Improvement project and will exceed the current year balance for the Rice Field Storm Sewer project by $50,796. This overage will be funded through reallocation of funds from the Miscellaneous Drainage Improvements project.

STRATEGIC GOAL PLAN: Street and Municipal Drainage Redevelopment relates to the City's Goal of "Safe, Efficient Travel."

SUMMARY OF ITEM

This agreement provides for the construction by Lexington Luxury Builders, Inc., (LLB) of not less than 90 owner occupied residences on individually plotted lots at the southwest corner of Avenue G and 18th Street in the City of Plano. The City will participate in the project, known as the Plano-Rice Field Redevelopment Project, by selling the land to LLB and contributing approximately $1.4 Million Dollars toward the cost of constructing necessary public infrastructure improvements.

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
n/a	n/a

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A DEVELOPMENT AGREEMENT FOR PLANO-RICE FIELD REDEVELOPMENT PROJECT BY AND BETWEEN LEXINGTON LUXURY BUILDERS, LLC AND THE CITY OF PLANO; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR, IN HIS ABSENCE, AN EXECUTIVE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council has been presented a proposed Development Agreement for Plano-Rice Field Redevelopment Project by and between Lexington Luxury Builders, LLC and the City of Plano, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and,

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

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

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

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

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

DULY PASSED AND APPROVED this the _____ day of _____, 2005.

_____
Pat Evans, MAYOR

ATTEST:

_____
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

t-2

STATE OF TEXAS §
§
COUNTY OF COLLIN §

DEVELOPMENT AGREEMENT WITH LEXINGTON LUXURY BUILDERS, LLC FOR PLANO-RICE FIELD REDEVELOPMENT PROJECT

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into by and between the City of Plano, a Texas municipal corporation of Collin County, Texas (the "City"), acting by and through its duly authorized officers, and Lexington Luxury Builders LLC, a Texas limited liability company ("Lexington");

RECITALS:

WHEREAS, the City is authorized pursuant to the law of Texas and its Home Rule Charter to enter into agreements with persons or entities intending to undertake any development on real property for the purposes of providing supporting public facilities and services; and

WHEREAS, Lexington desires to develop approximately 6.325 acres located at the southwest corner of 18th Street and G Avenue owned by the City of Plano (the "Property") and as shown in **Exhibit "A"** attached hereto; and

WHEREAS, Lexington has proposed a development on the Property in substantial compliance with a preliminary project design and concept plan prepared by Lexington attached hereto as **Exhibit "B"** (which design and concept plan, together with all additions, changes and amendments thereto approved by Lexington and the City, is referred to in this Agreement as the "Plan") ; and

WHEREAS, Lexington's proposed development is located in Tax Increment Financing District No. 2 and is in keeping with the intent of that reinvestment zone to promote sound growth; and

WHEREAS, Lexington's proposed development is consistent with the goals and objectives as set forth in *Downtown Plano, A Vision and Strategy for Creating a Transit Village* which was adopted by the City Council by Resolution No. 99-5-14, dated May 10, 1999, and

WHEREAS, the development of the Property in accordance with the Plan by Lexington will contribute important direct and indirect economic and social benefits to the City including,

but not limited to, the creation of a pedestrian-oriented, owner occupied residential development in close proximity to the DART railway station, and

WHEREAS, it is essential to the City's public health, safety and general welfare to assure that the Development is supported by adequate levels of public facilities and services; and

WHEREAS, the City Council has adopted Resolution No. _____ on _____, 2005, approving this Agreement with Lexington and authorizing the City Manager to execute same by affixing their hand and the City Seal;

NOW THEREFORE, in consideration of the mutual covenants and obligations herein, the parties agree as follows:

SECTION 1. **LEXINGTON'S OBLIGATIONS**

A. Lexington agrees to purchase the Property "As Is" from the City for $3.41 per square foot, for a total amount of $939,519.79. City shall provide a Special Warranty Deed in a form acceptable to Lexington. Additional terms of the sale shall be included in a Real Estate Contract (the "Contract") to be executed concurrently with execution of this Agreement. The date that Lexington becomes owner of record of the Property is the "Acquisition Date" for purposes of this Agreement.

B. Lexington agrees to cause, supervise, manage and complete the construction and design of not less than 90 owner occupied residences on individually platted lots (the "Development") on the Property, which will substantially conform to the Plan, and which when completed (and when the Public Improvements have also been completed) shall have an assessed value (prior to exemptions) of not less than Twenty Million ($20,000,000) Dollars. The Project Completion Budget (the "Budget"), attached hereto as **Exhibit "C"** and incorporated herein by this reference, sets forth the proposed nature and projected total costs of the Development and the related Public Improvements (as that term is defined in Subsection D of this Section). The Development will be the property of Lexington, except insofar as Lexington will convey easements over the Property to the City as may be necessary in connection with any Public Improvements constructed on or over the Property.

C. Lexington agrees to secure financing for the entire Development, submit any required applications for a preliminary plat and obtain issuance of all necessary permits for the division of land no later than May 1, 2006, and complete construction of all Public Improvements by January 1, 2007. Lexington further agrees to obtain all necessary permits and begin construction of the first twelve units no later than October 1, 2006 and have the first twelve units ready for occupancy by March 1, 2007. Construction shall be deemed to have begun when Lexington actually commences site work (i.e., demolition, grading or clearing) on the Property. Lexington shall provide to City independently verifiable documentary evidence of its financial ability and obligation to complete the entire project prior to transfer of any real property or commencement of any work.

D. Lexington shall complete the Development on or before June 1, 2010. The City shall not waive any fees for permits issued after June 1, 2010.

E. Lexington shall be responsible for the design and construction of all Public Improvements in substantial conformity to the Plan (provided, however, that the City shall be responsible for and shall provide the design plan and all construction cost for the portion of the storm sewer and drainage improvements to be constructed off-site, on the Alta Vista Apartments property [the "Alta Vista Property"] to the west of the Property), subject to all necessary City regulatory approvals, and for supervision and management of construction of the Public Improvements. The Public Improvements (as that term is used in this Agreement) shall include all of the proposed storm sewer, drainage, utility, paving, lighting and other improvements, both on-site and off-site, that are described or referred to in **Exhibit "E"** attached to this Agreement, all of which Public Improvements are also included in and depicted on or described in the Plan.

F. All common areas, open spaces and landscaping improvements on the Property or abutting the paved portion of interior streets, and all landscaping improvements on the Property in areas abutting public rights-of-way along the perimeter of the Property, shall be the responsibility of Lexington or a subsequent Homeowners' Association assuming Lexington's maintenance responsibilities. Maintenance of all hardscape and landscaping in public property (16th Street, 18th Street and G Avenue) adjacent to the Property (including, but not limited to tree replacement after the initial one-year tree warranty has expired) shall be the responsibility of the City. Landscaping and streetscaping in the public rights-of-way shall be in accordance with the specifications and standards set forth in the Plan, and as provided in the Rice Field Public Landscape Maintenance Schedule attached to this Agreement as **Exhibit "D".**

G. All streets and alleys on the Property contemplated by the Plan as public rights-of-way will be dedicated to the City upon completion. All storm sewer and drainage facilities and utility lines within, on or under dedicated public rights-of-way and not otherwise the subject of easements granted to third-party utility providers, will also be rights-of-way in favor of the City. Although such areas will not be dedicated to the public, public access to the common open spaces serving residential development shall be allowed and shall not be restricted by gates, barriers, or signage.

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SECTION 2. **CITY'S OBLIGATIONS**

A. In consideration of and as incentive to Lexington for the completion of the Development and the Public Improvements, the City agrees, subject to the conditions contained herein, to advance funds for the Public Improvements in an amount up to but not to exceed in the aggregate the maximum amount indicated in the Budget as the Construction Allowance (herein so called). Lexington will pay actual costs of completion of Public Improvements to the extent such aggregated total costs exceed the Construction Allowance, except as to any increase in costs resulting from supplements or amendments to or changes in the Plan or any part of the Plan requested or required by the City, and any increase in costs resulting from site conditions unknown and unanticipated at the time the Budget was prepared. The Construction Allowance will be available to Lexington on an "aggregate cost" basis, as opposed to a "line-item cost" basis, such that cost savings realized with respect to discreet line-item allocations in the Budget will be freely available for use in connection with any cost overruns experienced as to other line-item allocations, provided that in no event will the aggregate funds advanced by the City exceed the Construction Allowance. To the extent actual costs of Public Improvements are less than the Construction Allowance, any remainder shall be retained by the City. The source of funding (including grants) for all Public Improvements paid for by the City is at the discretion of the City. The City and Lexington further agree to coordinate and jointly approve the design of the Development and the Public Improvements.

B. Advances of funds to Lexington out of the Construction Allowance will be made by the City on a percentage completion basis upon written request by Lexington. In connection with each such written request for payment, Lexington shall provide evidence of expenses paid and costs incurred and confirmation from the project engineer as to the percentage of work completed. Advances of Construction Allowance funds will be made in accordance with the line-item allocations indicated in the Budget for the Construction Allowance. In the event a "cost savings" is achieved for any line-item, determined as of the completion of work for such line-item, the amount of any such line-item cost savings will become available as "contingency funds" to supplement any other line-item of Construction Allowance funds as to which the actual cost of completion exceeds the amount of the line-item allocation.

C. On the Acquisition Date, the City will reimburse Lexington for the actual design costs for utility extensions and the street and sidewalk paving plan that are part of the Plan, and for costs incurred in obtaining a boundary survey and an environmental site assessment (ESA) of the Property prior to the Acquisition Date, but in no event shall such total reimbursement exceed $25,000.00 in the aggregate. All project designs, drawings, site plans and other documents produced by Lexington in connection with the Development and the Public Improvements, including those attached to this Agreement, shall remain the property of Lexington. However, in exchange for Lexington's acceptance of the above-described reimbursement from the City, the City will retain all necessary rights to use such portion of the Plans created for public facilities and infrastructure, and all assignable rights in the boundary survey and environmental site assessment of the Property obtained by Lexington.

the Plans created for public facilities and infrastructure, and all assignable rights in the boundary survey and environmental site assessment of the Property obtained by Lexington.

D. The City will ensure Lexington's right of access to, over, across and upon the areas of the Alta Vista Property designated for construction of storm sewer and drainage improvements consistent with the City's public improvement project known as Rice Field Drainage Improvement Project No. 5391, which right of access, and the right to construct such improvements, are the subject of (i) Drainage and Utility Easement, dated September 22, 2005, from Pardue Alta Vista Apartments, Ltd. and John L. Woolems (the "Drainage Easement Grantors") to the City (filed in Volume 6041, Page 2767 of the Land Records of Collin County, Texas), (ii) Temporary Construction Easement, dated September 22, 2005, from the Drainage Easement Grantors to the City (filed in Volume 6041, Page 2775 of the Real Property Records of Collin County, Texas), and (iii) a letter agreement titled "Encroachment on Easement", dated January 7, 2005, between TXU Electric Delivery Company and the City, all of which instruments and the rights and privileges of the City thereunder are hereby assigned to Lexington.

E. The City will be responsible for maintaining, repairing and replacing all sidewalks, curbing, paving and related improvements in all rights-of-way dedicated to and accepted by the City, in accordance with the City's standard right-of-way maintenance practices, including, without limitation, the portions of 16th Street, Avenue G and 18th Street over which Lexington or a subsequent Homeowner's Association retains the obligation to maintain landscaping as provided Section 1.F. above in this Agreement. The City will also be responsible for repairing any damage caused by City work crews or contractors engaged by the City to any part of the irrigation system or systems within, on or under public rights-of-way, whether inside or outside the perimeter of the Property.

SECTION 3. **DESIGN AND CONSTRUCTION PROCUREMENT**

A. Design management for the Public Improvements and the Development will be provided by Kadleck and Associates or such other party as shall be mutually agreed to by the parties to this Agreement.

B. Procurement of construction for the Public Improvements must be in accordance with the following provisions:

1. All plans and specifications for the Public Improvements shall be submitted to the City Engineer for review and approval. All plans and specifications shall comply with the standards and requirements for similar developments located in the city, unless otherwise approved by the City for this project.

2. Lexington shall use its best efforts to insure that the Public Improvements are completed in a timely manner in accordance with the construction contract documents, plans and specifications.

its general contractor to acquire and maintain, during any period for which the Development of the Property is under construction, comprehensive general liability insurance in the amount of the construction contract or $1,000,000, whichever is greater. Such insurance shall cover any and all claims which might arise out of the construction contract, whether by the contractor, a subcontractor, materialman or otherwise. All such insurance shall: (a) be issued by a carrier which is rated "A-1" or better by A.M. Best's Key Rating Guide and licensed to do business in the State of Texas, and (b) name Lexington and City as an additional insured. Certified copies of all of such policies shall be delivered to the City upon the execution of a construction contract; provided, however, that the City, in its sole discretion and in lieu of certified copies of such policies, may permit the delivery of certificates of insurance together with the declaration page of such policies, along with the endorsement naming the City as an additional insured. Each such policy shall provide that, at least 30 days prior to the cancellation, non-renewal or modification of the same, Lexington and City shall receive written notice of such cancellation, non-renewal or modification.

4. The construction contract shall require, among other things, that the contractor provide performance and payment bonds in a form acceptable to the City.

5. In accordance with the City's Subdivision Ordinance, Article 5.10c as amended, all electric utility lines and wires, terminals and other facilities and equipment shall be constructed, placed or located underground.

SECTION 4. **FORCE MAJEURE**

It is expressly understood and agreed by the parties to this Agreement that if the substantial completion of the construction of any the Development and Public Improvements contemplated hereunder is delayed by reason by war, civil commotion, acts of God, inclement weather, governmental restrictions, regulations, or interferences, delays caused by the franchise utilities, fire or other casualty, court injunction, necessary condemnation proceedings, or acts of the other party, its affiliates/related entities and/or their contractors, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such design or construction requirement shall be extended for a period of time equal to the period such party was delayed.

SECTION 5. **TERM**

The term of this Agreement shall begin on the date of execution, and end upon the complete performance of all obligations and conditions precedent by parties to this Agreement; provided, however, that the obligations of the City to pay Lexington for unpaid Public Improvement costs pursuant to Section 2.A of this Agreement which accrued during the term of this Agreement, but which is not paid prior to the expiration of the term of this Agreement, shall survive.

SECTION 6. **INDEMNITY**

Lexington agrees to defend, indemnify and hold the City, its officers, agents and employees, harmless against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought that may arise out of or be occasioned by Lexington's breach of any of the terms or provisions of this Agreement, or by any grossly negligent act or omission of Lexington, its officers, agents, associates, employees or subconsultants, in the performance of this Agreement; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence of the City, its officers, agents, employees or separate contractors, and in the event of joint and concurrent negligence of both Lexington and the City, responsibility, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas, without, however, waiving any governmental immunity available to the City under Texas law and without waiving any defenses of the parties under Texas law. The provisions of this paragraph are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

SECTION 7. **AUTHORITY OF LEXINGTON**

Lexington represents and warrants to the City that Lexington is duly formed, validly existing and in good standing under the laws of the State of Texas. Lexington has full power, authority and legal right to execute and deliver this Agreement. This Agreement constitutes a legal, valid, and binding obligation of Lexington and the City, enforceable in accordance with its terms.

SECTION 8. **EVENTS OF DEFAULT**

A default shall exist if either party fails to perform or observe any material covenant contained in this Agreement, or if the representation provided for in Section 7 is not true or correct. A party shall immediately notify the defaulting party in writing upon becoming aware of any change in the existence of any condition or event which would constitute a default by the defaulting party, or, with the giving of notice or passage of time, or both, would constitute a default by the defaulting party under this Agreement. Such notice shall specify the nature and the period of existence thereof and what action, if any, the notifying party requires or proposes to require with respect to curing the default.

SECTION 9. **REMEDIES AVAILABLE TO THE CITY**

If a default shall occur and continue, after thirty (30) days' written notice to cure default, City may, at its option, terminate this Agreement or pursue any and all remedies it may be entitled to, at law or in equity, in accordance with Texas law, without the necessity of further notice to or demand upon Lexington; provided, however, that if Lexington shall within such thirty (30) day period commence action to cure such default but is unable, by reason of the nature of the performance required, to cure the default within such period, and if

Lexington continues such action thereafter diligently and without unnecessary delays, Lexington shall not be in default hereunder until the expiration of a period of time as may be reasonably necessary to cure such failure, provided further, however, that in any event Lexington shall be in default hereunder if such failure is not cured on or before ninety (90) days after receipt by Lexington of the above-described written notice of default and demand for performance. In the event of any termination of this Agreement due to any such default, Lexington will remain entitled to recover from the City any Construction Allowance funds for Public Improvements earned through the date of termination.

Notwithstanding the above, in the event Lexington does not commence construction of the Public Improvements identified in the Budget by May 1, 2006, the City shall have the right to repurchase (the "Right of Repurchase") the Property at Lexington's original purchase price, which remedy the City shall be entitled to exercise by written notice to Lexington that the City is exercising the Right of Repurchase. The Right of Repurchase, which will be referenced in and retained by the City in the Deed to Lexington, will automatically terminate and expire, if not sooner exercised by the City, on the date that both of the following conditions (the "Conditions to Release") have been met: (i) Lexington has secured all approvals required to proceed with the subdivision of the Property and the Public Improvements related thereto; and (ii) Lexington has met the conditions for the first drawdown of funds from its construction lender to commence the construction of Public Improvements on the Property (with the exception of any requirement of such lender that the Right of Repurchase shall already have been terminated). Simultaneously with the conveyance of the Property to Lexington and the delivery of the Deed by the City, the City will also execute and deliver into escrow with the title company handling the closing of such conveyance and acting as escrow agent under the Contract (the "Escrow Agent") the following items relating to the Right of Repurchase: (a) a fully-executed release instrument (the "Release") in recordable form by which the Right of Repurchase is waived, released and terminated by the City, and (b) a letter of escrow instructions by which the City instructs the Escrow Agent to hold the Release in escrow pending completion of the Conditions to Release, and authorizes the Escrow Agent to file the Release in the Real Property Records of Collin County, Texas upon the Escrow Agent's receipt of an affidavit from Lexington asserting that the Conditions to Release have been met, together with copies of all such authorizations, consents or permits issued by the City or any department, agency or body of the City for commencement of construction of the Public Improvements, all of which items collectively Lexington shall certify to the Escrow Agent as satisfying the Conditions to Release. The Escrow Agent shall be entitled to accept and act upon any such affidavit and supporting documentation received from Lexington, which the Escrow Agent, in good faith, believes to be genuine and what it purports to be, and shall not be required to further investigate the validity, completeness or accuracy of the items submitted or Lexington's authority to submit the same. Lexington and the City agree to enter into any standard escrow agreement reasonably required by the Escrow Agent in connection with establishing the escrow.

From and after the date that the Conditions to Release have been satisfied, and the Right of Repurchase has terminated, the City shall still be entitled to the remedy of payment from Lexington, not as a penalty but as liquidated damages, for the pro-rata portion

of the Development not completed by June 1, 2010. The formula to be used to determine the liquidated damages shall be as follows: A x (B/C) = D, where A is the amount of the Construction Allowance actually advanced to Lexington by the City, B is the number of lots, if any, upon which Lexington has not commenced and is not then continuing with and in the process of construction, C is the total number of lots designated in the final plat for the Development, and D is the amount of liquidated damages to which the City is entitled.

SECTION 10. **VENUE AND GOVERNING LAW**

This Agreement is performable in Collin County, Texas and venue of any action arising out of this Agreement shall be exclusively in Collin County, Texas. This Agreement shall be governed and construed in accordance with the laws of the State of Texas.

SECTION 11. **NOTICES**

Any notice required by this Agreement shall be deemed to be properly served if deposited in the U.S. mails by certified letter, return receipt requested, addressed to the recipient at the recipient's address shown below, subject to the right of either party to designate a different address by notice given in the manner just described.

If intended for City, to:

City of Plano, Texas
Attention: City Manager
1520 Avenue K
Plano, Texas 75086

If intended for Lexington, to:

Lexington Luxury Builders, LLC
Attention: Tracey Schaefer
6371 Mercedes Avenue
Dallas, Texas 75214

SECTION 12. **GIFT TO PUBLIC SERVANT**

A. City may terminate this Agreement immediately if Lexington has offered, conferred, or agreed to confer any benefit upon a City employee or official that the City employee or official is prohibited by law from accepting.

B. For purposes of this section, "benefit" means anything reasonably regarded as economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include a contribution or expenditure made and reported in accordance with law.

C . Notwithstanding any other legal remedies, City may require Lexington to remove any employee of Lexington from the development of the Public Improvements who has violated the restrictions of this section or any similar state or federal law, and obtain

reimbursement for any expenditures made to Lexington as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

SECTION 13. **APPLICABLE LAWS**

This Agreement is made subject to the provisions of the Charter and ordinances of City, as amended, and all applicable State and federal laws.

SECTION 14. **LEGAL CONSTRUCTION**

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

SECTION 15. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

SECTION 16. **CAPTIONS**

The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.

SECTION 17. **SUCCESSORS AND ASSIGNS**

A. The terms and conditions of this Agreement and the Contract are binding upon the successors and assigns of all parties hereto. Provided, however, this Agreement and the Contract shall not be assigned without the prior consent of the Plano City Council, which approval shall not be unreasonably withheld.

B. An assignment or delegation of this Agreement and the Contract to an Affiliate of Lexington shall not require City Council approval and shall not result in a breach of the Agreement or the Contract if the Affiliate of Lexington expressly assumes all of the obligations of Lexington under this Agreement and the Contract for the balance of the term of this Agreement and provides evidence establishing the relationship between Lexington and an Affiliate. Lexington shall notify the City in writing, however, within 30 days of such assignment. "Affiliates", as used herein, includes any parent, sister, partner, joint venturer,

this Agreement and provides evidence establishing the relationship between Lexington and an Affiliate. Lexington shall notify the City in writing, however, within 30 days of such assignment. "Affiliates", as used herein, includes any parent, sister, partner, joint venturer, equity investor or subsidiary entity of Lexington; any entity in which either of Lexington, Scott Schaefer or Tracey Schaefer is a major shareholder, owns an equity interest or is a joint venturer or partner (whether general or limited).

SECTION 18. **ENTIRE AGREEMENT**

This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in this Agreement, and except as otherwise provided herein cannot be modified without written agreement of the parties to be attached to and made a part of this Agreement.

SECTION 19. **INCORPORATION OF RECITALS**

The recitals set forth herein are intended, and are hereby deemed to be a part of this Agreement.

EXECUTED on the _____ day of _____, 2005, by City, signing by and through its City Manager, duly authorized to execute same by Resolution Nos._____ and _____ approved by the City Council on _____, and by ____, acting through its duly authorized officials.

CITY OF PLANO:

_____
Thomas H. Muehlenbeck, City Manager

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, City Attorney

LEXINGTON LUXURY BUILDERS LLC,
a Texas limited liability company

BY: _____

LIST OF EXHIBITS

EXHIBIT A	Property legal Description
EXHIBIT B	Design and Concept Plan
EXHIBIT C	Project Completion Budget
EXHIBIT D	Public Landscape Maintenance Schedule
EXHIBIT E	Public Improvements and Public Improvements Construction Allowance

EXHIBIT "A"

LEGAL DESCRIPTION

Being a 275,519 square foot or 6.3250 acre tract of land situated in the Joseph Keppler Survey, Abstract No. 213, City of Plano, Collin County, Texas, said tract being part of two tracts of land conveyed to the Plano Independent School District by deeds recorded in Volume 250, Page 593 and in Volume 399, Page 111, Deed Records of Collin County, Texas and a called 1.895 acre tract of land conveyed to the City of Plano by deed recorded in Volume 4509, Page 918, Deed Records of Collin County, Texas, and being more particularly described as follows (the bearing basis for this description is a bearing of N 00°13'20" W for the east line of North Central Addition as recorded in Volume 6, Page 74, Map Records of Collin County, Texas):

BEGINNING at a found "x" cut on concrete pavement for a corner at the intersection of the west line of Avenue G (a variable width right of way) with the south line of 18th Street (a 60 foot right of way);

THENCE, the following courses and distances with the west line of Avenue G:

- S 00°08'20" W, a distance of 20.00 feet to a found ½ inch iron rod at the beginning of a tangent curve to the right with a central angle of 05°29'46", a radius of 1679.08 feet, a chord bearing of S 02°53'13" W and a chord distance of 160.72 feet;

- Southwesterly, along said curve, an arc distance of 160.78 feet to a found ½ inch iron rod with a plastic cap at the beginning of a reverse curve to the left with a central angle of 05°29'46", a radius of 1726.08 feet, a chord bearing of S 02°53'13" W and a chord distance of 165.51 feet;

- Southwesterly, along said curve, an arc distance of 165.57 feet to a set 5/8 inch iron rod at the end of said curve;

- S 00°08'20" W, a distance of 336.90 feet to a found 5/8 inch iron rod for a corner, said point being the northeast corner of Lot 1, Block 1 of Bridgeman's Office Addition as recorded in Volume F, Page 516, Map Records of Collin County, Texas;

THENCE, S 89°03'45" W, departing the west line of Avenue G and with the north line of the said Bridgeman's Office Addition, a distance of 144.24 feet to a set 5/8 inch iron rod for a corner, said point being the northwest corner of the said Bridgeman's Office Addition and in the east line of the said City of Plano tract;

t-15

THENCE, S 01°11'35" E, with the west line of the said Bridgeman's Office Addition, a distance of 196.06 feet to a set 5/8 inch iron rod for a corner in the north line of 16th Street (a 60 foot right of way), said point being the southwest corner of the said Bridgeman's Office Addition;

THENCE, S 89°04'39" W, with the north line of 16th Street, a distance of 197.10 feet to a set 5/9 inch iron rod for a corner, said point being the southwest corner of the said City of Plano tract;

THENCE, N 01°20'23" W, departing the north line of 16th Street, a distance of 198.40 feet to a set 5/8 inch iron rod for a corner, said point being in the south line of Lot 1, of North Central Addition, as recorded in Volume 6, Page 74, Map Records of Collin County, Texas;

THENCE, N 89°18'37" E, with the south line of the said Lot 1, North Central Addition, a distance of 11.97 feet to a set 5/8 inch iron rod for a corner, said point being the southeast corner of said Lot 1, North Central Addition;

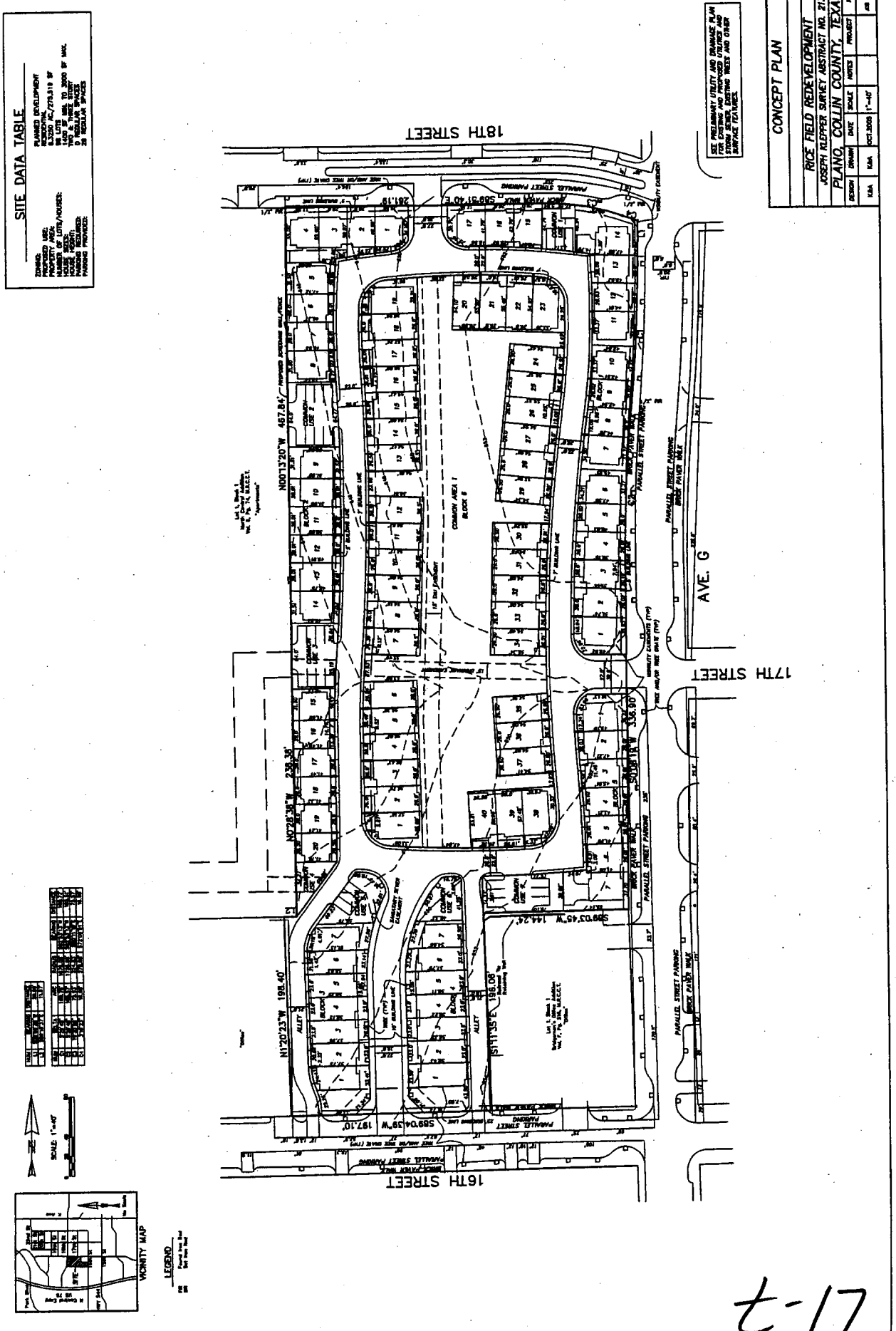
THENCE, N 00°28'38" W, with the east line of said Lot 1, North Central Addition, a distance of 236.38 feet to a found ½ inch rod with a plastic cap for an angle point, said point being the common west corner of the said City of Plano tract and the Plano Independent School District tract;

THENCE, N 00°13'20" W, continuing with the east line of said Lot 1, North Central Addition, a distance of 467.84 feet to a found ½ inch iron rod with a plastic cap for a corner in the south line of 18th Street, said point being the northeast corner of said Lot 1, North Central Addition;

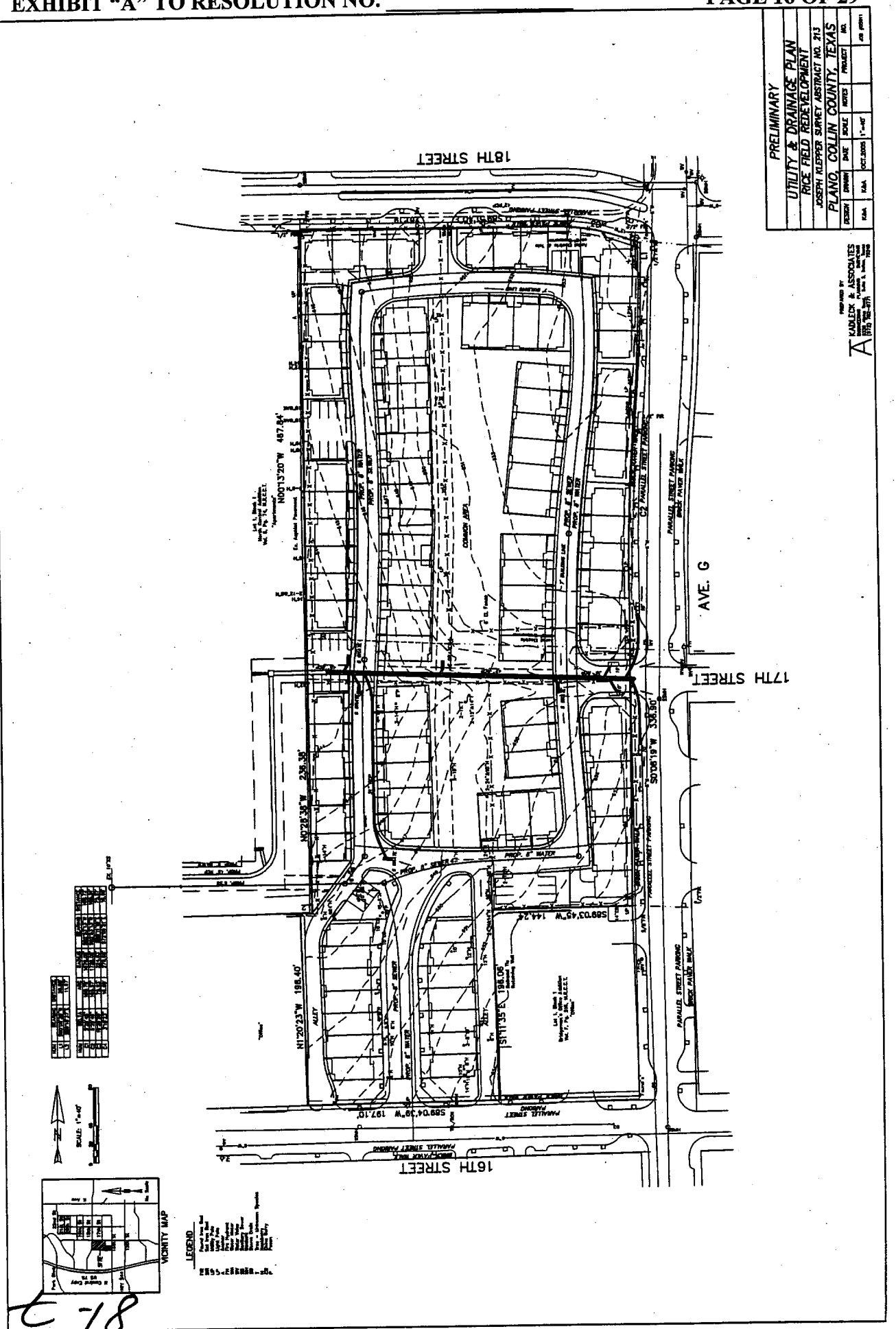
THENCE, the following courses and distances with the south line of 18th Street:

- S 89°51'40" E, a distance of 261.19 feet to a set 5/8 inch iron rod at the beginning of a curve to the right with a central angle of 19°21'00", a radius of 224.83 feet, a chord bearing of S 80°11'10" E and a chord distance of 75.57 feet;
- Southeasterly, along said curve, an arc distance of 75.93 feet to a found ½ inch iron rod with a plastic cap at the point of tangency;
- S 72°09'51" E, a distance of 16.08 feet to the Point of Beginning and Containing 275,519 square feet or 6.3250 acres of land.

t-16


SITE DATA TABLE
CONCEPT PLAN
RICE FIELD REDEVELOPMENT
JOSEPH KLEPPER SURVEY ABSTRACT NO. 213
PLANO, COLLIN COUNTY, TEXAS
18TH STREET
17TH STREET
16TH STREET
AVE. G
VICINITY MAP
LEGEND

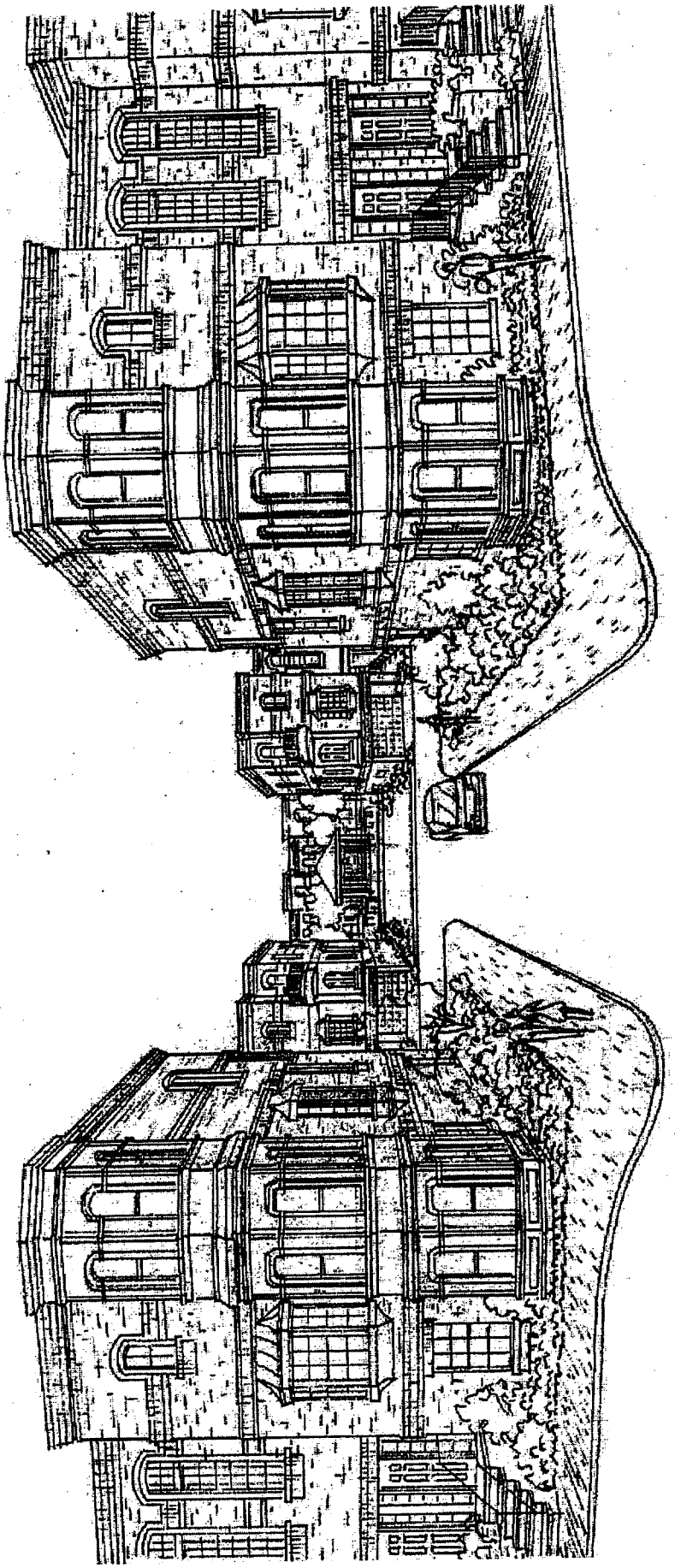
t-17


PRELIMINARY
UTILITY & DRAINAGE PLAN
RICE FIELD REDEVELOPMENT
JOSEPH KLEPPER SURVEY ABSTRACT NO. 213
PLANO, COLLIN COUNTY, TEXAS
KADLECK & ASSOCIATES
18TH STREET
17TH STREET
16TH STREET
AVE. G
PARALLEL STREET PARKING
BRICK PAVER BELT
COMMON AREA
PROP. 8" WATER
PROP. 8" SEWER
ALLEY
N00°13'20"W 467.84'
N01°28'38"W 236.36'
S01°06'19"W 336.50'
N1°20'23"W 198.40'
S1°11'35"E 198.06'
S89°03'45"W 144.24'
S89°04'39"W 197.10'
SCALE: 1"=40'
VICINITY MAP
LEGEND

E-18

CONCEPTUAL ELEVATION

LEXINGTON LUXURY BUILDERS



PRELIMINARY RENDERING

RICE FIELD REDEVELOPMENT PROJECT

LEXINGTON

t-19

CONCEPTUAL ELEVATION

LEXINGTON LUXURY BUILDERS

LEXINGTON

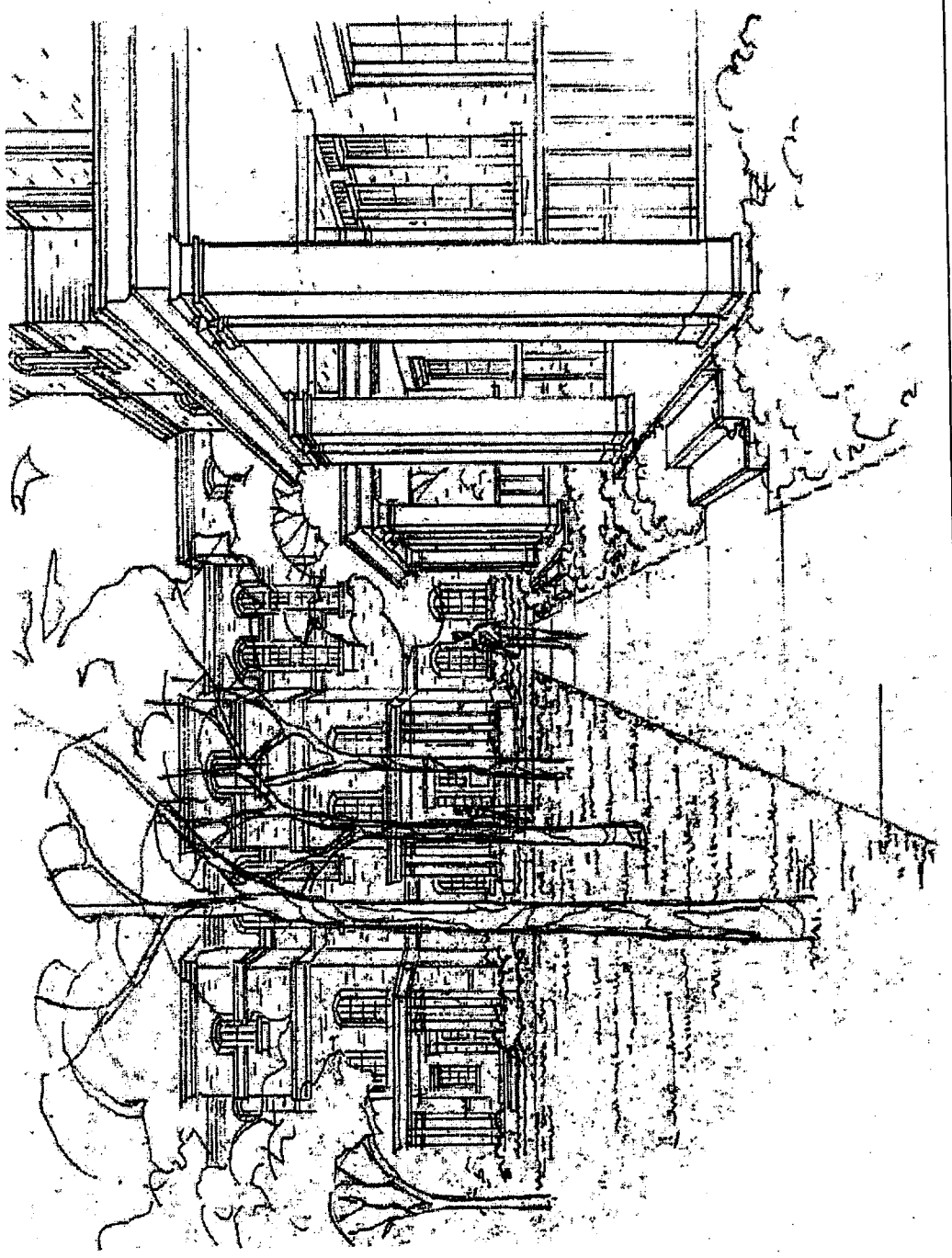
PRELIMINARY RENDERING

RICE FIELD REDEVELOPMENT PROJECT

t-20

CONCEPTUAL ELEVATION

LEXINGTON LUXURY BUILDERS



PRELIMINARY RENDERING

RICE FIELD REDEVELOPMENT PROJECT

LEXINGTON

t-21

CONCEPTUAL ELEVATION

LEXINGTON LUXURY BUILDERS

PRELIMINARY RENDERING

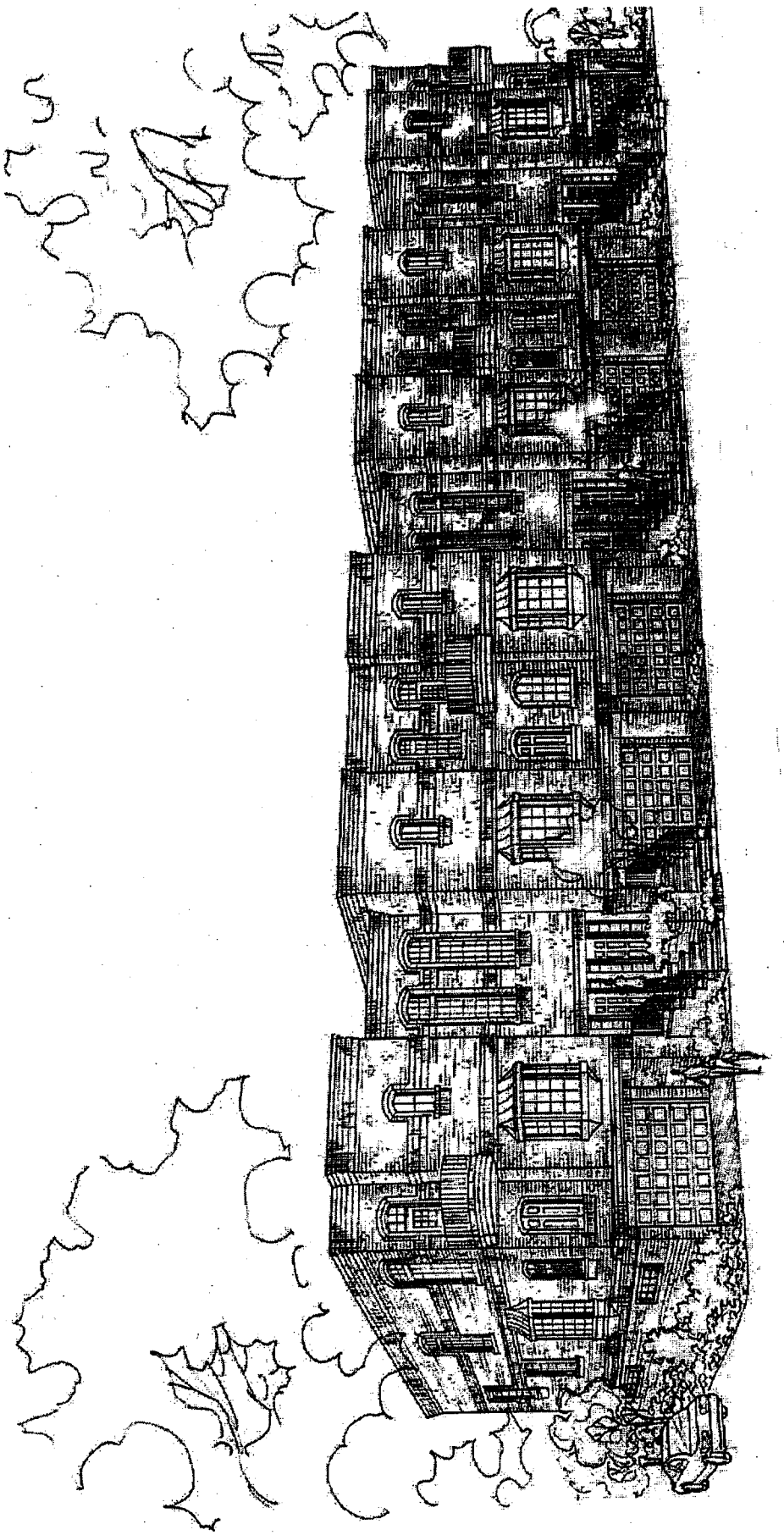
RICE FIELD REDEVELOPMENT PROJECT

LEXINGTON

t-22

CONCEPTUAL ELEVATION

LEXINGTON LUXURY BUILDERS



LEXINGTON

PRELIMINARY RENDERING

RICE FIELD REDEVELOPMENT PROJECT

t-23

7-24

LEXINGTON

LEXINGTON LUXURY BUILDERS

CONCEPTUAL ELEVATION

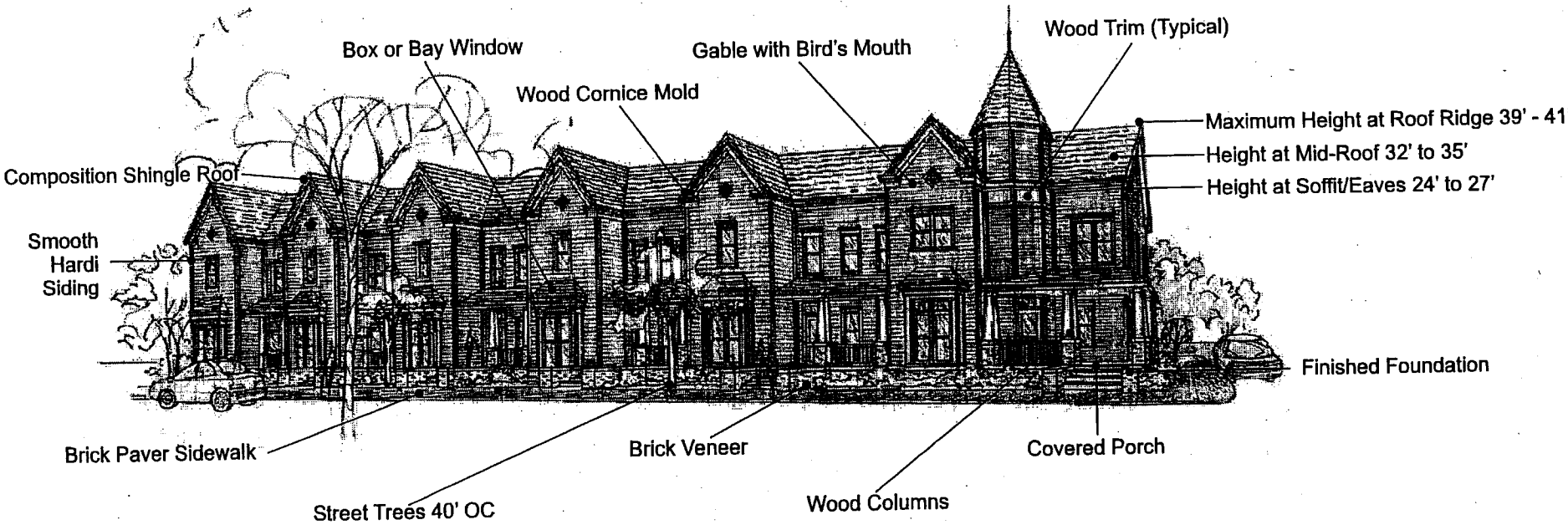
PRELIMINARY RENDERING

RICE FIELD REDEVELOPMENT PROJECT

LEXINGTON

LEXINGTON LUXURY BUILDERS

CONCEPTUAL ELEVATION



PRELIMINARY RENDERING

RICE FIELD REDEVELOPMENT PROJECT

EXHIBIT "A" TO RESOLUTION NO. _____

7-29

Rice Field Redevelopment Block Project

Project Completion Budget
Summary of Project Costs

Development Agreement Exhibit "C"
A Public/Private Partnership Between
Lexington Luxury Builders and the City of Plano

LAND AND SOFT COSTS		TOTAL
A	Land Cost	$939,520
B	Development Loan Interest and Fees	$372,391
C	Development Period Taxes, Insurance and Advertising	$360,025
	LAND AND SOFT COSTS	**$1,671,936**

LAND DEVELOPMENT COSTS		TOTAL
D	Civil, Geotechnical and Environmental Engineering	$157,636
E	Construction Management / General Contractor Fees	$416,500
F	Development Agreement, Due Diligence and Acquisition Costs	$176,085
G	Drainage and Storm Sewer Construction	$249,723
H	Electric, Gas and Communication (TV/Phone) Utilities	$147,900
I	Erosion Control Provisions and Maintenance	$15,128
J	Fees: City Permit, Impact, Park, Utility and Inspection (Waived Due To NEZ)	$0
K	General Conditions and Mobilization	$73,443
L	Grading, Excavation and Earthwork	$247,458
M	Greenbelt Hardscape and Landscape Areas	$221,634
N	Off-Site / Perimeter Public Infrastructure Improvements	$889,467
O	Paving, Concrete and Sidewalks	$162,740
P	Perimeter Hardscape and Landscape Areas	$78,660
Q	Sanitary Sewer Service	$127,139
R	Water Service	$163,453
S	Contingency and Miscellaneous Other Costs	$379,397
	LAND DEVELOPMENT COSTS	**$3,506,362**

TOWNHOME CONSTRUCTION COSTS		TOTAL
T	Townhome Hard Construction Costs	$16,254,342
U	Interim Construction Loan Interest and Soft Costs	$1,422,076
V	Townhome Construction Personel and General Costs	$2,454,900
W	Townhome Sales Commissions and Selling Expenses	$2,082,600
	TOWNHOME CONSTRUCTION COSTS	**$22,213,918**

TOTAL PROJECT COSTS	**$27,392,216**
LESS CITY CONSTRUCTION COST ALLOWANCE FOR PUBLIC IMPROVEMENTS	**-$1,000,000**
NET TOTAL PROJECT COST	**$26,392,216**

t-26

Rice Field Redevelopment Block Project

Development Agreement Exhibit "D"

A Public/Private Partnership Between
Lexington Luxury Builders and the City of Plano

Rice Field Public Landscape
Maintenance Schedule

SERVICE DESCRIPTION	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL
MOW ALL RYE AREAS: CUT GROUNDCOVER LOWER, RYE SCALPING, RYE SEEDING	5	4	4	2	5	4	4	5	2	4	5	4	48
EDGE ALL CURBS, SIDEWALKS, ETC.	5	4	4	2	5	4	4	5	2	4	5	4	48
TRIM GRASS AROUND FENCES, SPRINKLERS HEADS, ETC.	5	4	4	2	5	4	4	5	2	4	5	4	48
TRIM ALL HEDGES SHRUBS, AND GROUNDCOVER			1	2	2	2	2	2	2	2			15
FERTILIZE ALL RYE TURF AND BED AREAS				1		1		1	1		1		5
APPLY PRE EMERGENT TO ALL TURF AREAS	1			1							1		3
PRUNE TREES UP 7 FT.		1					1						2
CHECK SPRINKLER SYSTEM	1	1	1	1	1	1	1	1	1	1	1	1	12
CLEAN-UP OF ALL SIZEABLE TRASH AND LITTER FROM TURF AND BED AREAS.	5	4	4	4	5	4	4	5	4	4	5	4	52

SPECIAL INSTRUCTIONS:

3X POST EMERGENT HERBICIDE

RYE GRASS INCLUDED - PUT DOWN AT 14# PER 1000 SQ, FT.

WINTER LEAF PICKUP INCLUDED

OTHER AVAILABLE SERVICES:

TREE PRUNING
MULCHING BEDS
PLANT INSTALLATION
SEASONAL COLOR INSTALLATION
PRICES TO BE PROVIDED UPON REQUEST.

7-27

Rice Field Redevelopment Block Project

Public Improvements and Public Improvement Construction Allowance

Development Agreement Exhibit "E"

A Public/Private Partnership Between Lexington Luxury Builders and the City of Plano

	SUMMARY DESCRIPTION AND CONSTRUCTION COST ALLOWNCE OF PUBLIC IMPROVEMENTS	TOTAL
A	Civil Engineering, Surveying, Infrastructure Design and Professional Fees	$120,140
B	Construction Management and General Overhead Costs	$76,769
C	Demolition, Site Clearing, Site Preparation and Clean-Up	$65,520
D	Electric Utilities, Overhead Power Line Relocation and Antique Style Street Lights	$54,270
E	General Conditions, Mobilization, Traffic Control and Street Cleaning	$19,550
F	Fire Hydrants, Erosion Control, Street Signs and Miscellaneous Costs	$15,890
G	Paving, Concrete, Sidewalks, Curb and Gutter Improvements	$327,162
H	Street Trees, Tree Grates, Irrigation Systems, Landscape and Hardscape Improvements	$126,935
I	Construction Contingency and Other Miscellaneous Costs	$83,231
J	Drainage and Storm Sewer Construction (Facility for Haggard Park Addn and On-Site)	$65,534
K	Off-Site Sanitary Sewer Extension Costs	$45,000
	CITY CONSTRUCTION COST ALLOWNCE FOR PUBLIC IMPROVEMENTS	**$1,000,000**
	COST OF OFF-SITE DRAINAGE IMPROVEMENTS FROM THE PROPERTY TO THE POINT OF DISCHARGE [1]	**$438,000**

[1] This line item is a cost estimate. The City shall pay the actual cost of the off-site drainage improvements from the property to the point of discharge plus construction management costs and overhead equal to 9½% of costs.

Rice Field Redevelopment Block Project

Public Improvements and Public Improvement Construction Allowance

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		UNITS	COST/UNIT	QUANTITY	TOTAL
A	**Civil Engineering, Surveying, Infrastructure Design and Professional Fees**				
	Design Survey (Including Existing Public Improvements)	Each	$10,290.00	1	$10,290
	Public Streetscape, Landscape and Hardscape Designs	Each	$51,680.00	1	$51,680
	Irrigation System Design	Each	$3,600.00	1	$3,600
	Printing, Duplication, Renderings and Electronic Media	Each	$4,260.00	1	$4,260
	Civil Engineering - Demolition Plans	Each	$4,500.00	1	$4,500
	Civil Engineering - Traffic Control Plans	Each	$3,400.00	1	$3,400
	Civil Engineering - Streetscape, Sidewalk, ROW Construction Drawings	Each	$14,750.00	1	$14,750
	Civil Engineering - Bid Phase Services	Each	$6,100.00	1	$6,100
	Construction Administration	Each	$1,450.00	7	$10,150
	Civil Engineering - Construction Control Surveys	Each	$5,700.00	1	$5,700
	Civil Engineering - ROW and Easement Surveying	Each	$2,660.00	1	$2,660
	Reimbursable Expenses	Each	$4,200.00	1	$3,050
	Civil Engineering, Surveying, Infrastructure Design and Professional Fees				$120,140

		UNITS	COST/UNIT	QUANTITY	TOTAL
B	**Construction Management and General Overhead Costs**				$76,769
	Construction Management, Overhead, General Contractor Fees				$76,769
	Construction Management and General Overhead Costs				

		UNITS	COST/UNIT	QUANTITY	TOTAL
C	**Demolition, Site Clearing, Site Preparation and Clean-Up**				
	Sawcut, Demolish and Remove Existing Curbs and Gutters	LF	$14.00	2,500	$35,000
	Demolish and Remove Existing Sidewalks	SY	$22.50	778	$17,500
	Sawcut, Demolish and Remove Street Sections - 18th Median 12' Width	SY	$22.50	440	$9,900
	Misc Clean-Up and Trash Hauling	%	5%		$3,120
	Demolition, Site Clearing, Site Preparation and Clean-Up				$65,520

		UNITS	COST/UNIT	QUANTITY	TOTAL
D	**Electric Utilities, Overhead Power Line Relocation and Antique Style Street Lights**				
	TXU Electric - Relocate Overhead Lines 18th Street	Each	$22,770.00	1	$22,770
	TXU Electric - 11' Historical Acorn Street Lights	Each	$2,500.00	10	$25,000
	TXU Electric - Services for Street Lights and Irrigation	Each	$1,625.00	4	$6,500
	Electric Utilities, Overhead Power Line Relocation and Antique Style Street Lights				$54,270

7-29

7-30

Rice Field Redevelopment Block Project

Public Improvements and Public Improvement Construction Allowance

Development Agreement Exhibit "E"

A Public/Private Partnership Between Lexington Luxury Builders and the City of Plano

		UNITS	COST/UNIT	QUANTITY	TOTAL
E	**General Conditions, Mobilization, Traffic Control and Street Cleaning**				
	General Conditions and Mobilization	Each	$4,100.00	1	$4,100
	Barricades and Traffic Control	Each	$650.00	3	$1,950
	Construction Signage	Each	$1,680.00	1	$1,680
	General Liability Insurance	Each	$4,270.00	1	$4,270
	Miscellaneous Costs	Each	$1,000.00	3	$3,000
	Construction and Street Cleaning	Each	$2,275.00	2	$4,550
	General Conditions, Mobilization, Traffic Control and Street Cleaning				$19,550

		UNITS	COST/UNIT	QUANTITY	TOTAL
F	**Fire Hydrants, Erosion Control, Street Signs and Miscellaneous Costs**				
	Relocate Existing Fire Hydrants	Each	$2,235.00	4	$8,940
	Silt Fence (prior to excavation)	LF	$1.70	2,500	$4,250
	Erosion Control Maintenance	%	40%		$1,700
	Four Way Stop Signs - Intersection Ave G and 16th Street	Each	$500.00	2	$1,000
	Fire Hydrants, Erosion Control, Street Signs and Miscellaneous Costs				$15,890

		UNITS	COST/UNIT	QUANTITY	TOTAL
G	**Paving, Concrete, Sidewalks, Curb and Gutter Improvements**				
	New 24" Curb and Gutter	LF	$22.00	3,220	$70,840
	New 10' Wide Concrete Sidewalk Base	SF	$3.40	25,000	$85,000
	Brick Pavers - Installed Turnkey	SF	$5.45	25,000	$136,250
	Connect Concrete Pavement at 18TH Street	SY	$26.50	180	$4,770
	Street Signs and Poles (Street, Parking, Stop, Pedestrian)	Each	$425.00	25	$10,625
	Stripe Travel and Parking Lanes	LF	$1.00	3,200	$3,200
	Barrier Free Ramps	Each	$750.00	16	$12,000
	Maintenance and Performance Bonds	%	1%		$3,227
	Materials Testing	SY	$0.45	2,778	$1,250
	Paving, Concrete, Sidewalks, Curb and Gutter Improvements				$327,162

Rice Field Redevelopment Block Project

Public Improvements and Public Improvement Construction Allowance

Development Agreement Exhibit "E"

A Public/Private Partnership Between Lexington Luxury Builders and the City of Plano

H	Street Trees, Tree Grates, Irrigation Systems, Landscape and Hardscape Improvements	UNITS	COST/UNIT	QUANTITY	TOTAL
	3" Shade Trees (Street Trees Planted Turnkey)	Each	$500.00	63	$31,500
	Sidewalk Tree Gates Materials and Labor Installed	Each	$650.00	63	$40,950
	Landscape / Hardscape Design - 18th Street Median	Each	$10,250.00	1	$10,250
	Landscaping Materials and Labor 18th Street Median	SF	$6.50	2,640	$17,160
	Hardscape Improvements 18th Street Median	Each	$3,800.00	1	$3,800
	Re-Sod Effected Areas After Construction	Each	$35.00	315	$11,025
	Irrigation System Materials and Labor Installed	Each	$175.00	70	$12,250
	Street Trees, Tree Grates, Irrigation Systems, Landscape and Hardscape Improvements				$126,935

I	Construction Contingency and Other Miscellaneous Costs	UNITS	COST/UNIT	QUANTITY	TOTAL
	Contingency				$83,231
	Construction Contingency and Other Miscellaneous Costs				$83,231

J	Drainage and Storm Sewer Construction (Facility for Haggard Park Storm Water Run-Off)	UNITS	COST/UNIT	QUANTITY	TOTAL
	Drainage & Storm Sewer Engineering Plans	Contract	$9,250.00	1	$9,250
	Turnkey Contract - Estimate	Contract	$238,000.00	1	$238,000
	Maintenance Bond (1.0% of Total)	%	1%		$2,473
	Amount Paid By Developer for On-Site Only Storm Sewer and Drainage Facilities	Contract	$139,189.00	1	-$139,189
	Drainage and Storm Sewer Construction (Facility for Haggard Park Storm Water Run-Off)				$110,534

7-31

CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☐ Yes	☒ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☒ Yes	☐ Not Applicable
Council Meeting Date:	11/28/05	Reviewed by Legal	☒ Yes	☐ Not Applicable
Department:	Property Standards		Initials	Date
Department Head	Cynthia O'Banner	Executive Director		11/18/05
Dept Signature:	Cynthia O'Banner	City Manager		11/18/05
Agenda Coordinator (include phone #):	Gloria Carter 972.941.5150			

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

CAPTION

Council discussion and action to adopt an ordinance of the City of Plano, TX amending Article III, Property Maintenance Code, of Chapter 6, Buildings and Buildings Regulations, of the Code of Ordinances of the City of Plano by adding Division 3, Registration and Inspection of Multi-Family dwelling complexes, to provide for procedures allowing registration and inspection of multi-family dwelling complexes; providing a penalty clause; a severability clause; a repealing clause; a publication clause and an effective date.

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☒ OPERATING EXPENSE ☐ REVENUE ☐ CIP

FISCAL YEAR: 2005-2006	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	**0**
Encumbered/Expended Amount	0	0	0	**0**
This Item	0	0	0	**0**
BALANCE	0	0	0	**0**

FUND(S):

COMMENTS: This item establishes an ordinance for the Rental Registration and Inspection Pilot Program. Funds, in the amount of $40,100, are available in the 2005-06 Property Standards department budget.

STRATEGIC PLAN GOAL: The Rental Registration and Inspection Pilot Program relates to the City's Goals of "Livable Neighborhoods and urban Centers".

SUMMARY OF ITEM

This item authorizes the implementation of a pilot program for registration and inspection of multi-family dwelling complexes twenty years old or older which are designed, built, rented, leased or let to be occupied as five or more dwelling units. This Ordinance establishes annual registration requirements and fees, late registration assessments, inspection guidelines and fees, and landlord/tenant self inspections for complexes included in the pilot program. Expansion of the program is anticipated to phase in all multi-family dwelling complexes and single family rental properties.

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
	n/a

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PLANO, TEXAS AMENDING ARTICLE III, PROPERTY MAINTENANCE CODE, OF CHAPTER 6, BUILDINGS AND BUILDING REGULATIONS, OF THE CODE OF ORDINANCES OF THE CITY OF PLANO BY ADDING DIVISION 3, REGISTRATION AND INSPECTION OF MULTI-FAMILY DWELLING COMPLEXES, TO PROVIDE FOR PROCEDURES ALLOWING REGISTRATION AND INSPECTION OF MULTI-FAMILY DWELLING COMPLEXES; PROVIDING A PENALTY CLAUSE; A SEVERABILITY CLAUSE; A REPEALING CLAUSE; A PUBLICATION CLAUSE; AND AN EFFECTIVE DATE.

WHEREAS, the City Council has enacted regulations regarding property maintenance in the City of Plano; and

WHEREAS, such regulations are now codified in Article III, Property Maintenance Code, of Chapter 6, Buildings and Building Regulations, of the Code of Ordinances of the City of Plano; and

WHEREAS, in order to provide for procedures allowing registration and inspection of multi-family dwelling complexes, the City Council must add Division 3, Registration and Inspection of Multi-Family Dwelling Complexes.

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

Section I. Article III, Property Maintenance Code, of Chapter 6, Buildings and Building Regulations, of the Code of Ordinances of the City of Plano is hereby amended by adding Division 3 to read in its entirety as follows:

"DIVISION 3. REGISTRATION AND INSPECTION OF MULTI-FAMILY DWELLING COMPLEXES

Sec. 6-60. Short title.

This division may be referred to as the "Multi-Family Dwelling Registration and Inspection Code".

Sec. 6-61. Definitions.

Unless a provision explicitly states otherwise, the following terms and phrases, as used in this article, shall have the meanings hereinafter designated. Where terms are not defined, they shall have their ordinary accepted meanings.

Accessory building or use means a building or use that is clearly subordinate to and functionally related to the primary building or use, which contributes to the comfort,

convenience, or necessity of occupants of the primary building or use on the same platted lot. Accessory buildings shall be detached from the primary building and shall not be used for living quarters.

Bedroom means any room or space used or intended to be used for sleeping purposes.

Building Official means the officer or other designated authority charged with the administration and enforcement of the building code, or the building official's duly authorized representative.

Code Official means the official who is charged with the administration and enforcement of this code, or any duly authorized representative.

Common Area means communal areas of the complex, including hallways, stairways, lobby areas, laundry rooms, pool facilities, green spaces, recreation rooms and parking lots.

Dwelling unit means a building or portion of a building which is arranged, occupied, or intended to be occupied as living quarters of a family and including facilities for food preparation, sleeping and sanitation.

Exterior Property means the open space on the premises and on adjoining property under the control of owners or operators of such premises.

Landlord means the owner, operator, lessor, management company, managing agent or on-site manager of a multi-family dwelling.

Multi-family dwelling/building/residence means any building or portion thereof that is twenty years old or older, which is designed, built, rented, leased, or let to be occupied as five or more dwelling units or apartments. The term shall not include hotels, motels, U. S. Department of Housing and Urban Development (HUD) approved Section 8 units, or such owner occupied dwelling units.

Occupancy means the purpose for which a building or portion thereof is utilized or occupied.

Occupant means any individual living or sleeping in a building, or having possession of a space within a building.

Owner means any person, agent, operator, firm or corporation having a legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.

Person means an individual, corporation, partnership or any other group acting as a unit.

Premises mean a lot, plot or parcel of land, easement or public way, including any structures thereon.

Property Standards Director or Director means the code compliance director or the director's duly authorized representative who is charged with the administration and enforcement of this ordinance.

Tenant means a person, corporation, partnership or group other than the legal owner of record, occupying a building or portion thereof as a unit.

Sec. 6-62. Purpose.

The purpose of this article is to safeguard the life, health, safety, welfare, and property of the occupants of multi-family dwelling complexes and the general public by developing a process to enforce the minimum building standards and property maintenance codes; and to provide equitable and practical remedies for the violation of minimum building standards and property maintenance codes.

Sec. 6-63. Applicability and administration.

(a) This article shall apply to multi-family complexes located in the city which are twenty (20) years old or older with five (5) or more dwelling units.

(b) The property standards director and the director's authorized representatives are authorized to administer and enforce the provisions of this article.

Sec. 6-64 – 6-69. Reserved.

Sec. 6-70. Registration required.

(a) The landlord of a multi-family dwelling complex that is twenty (20) years old or older with five (5) or more dwelling units shall annually register the complex with the property standards director by March 31st of each calendar year.

(b) A registration is valid for one calendar year, unless the ownership of the complex changes.

(c) If a change in ownership of the complex occurs during the period that a registration is otherwise valid, the landlord of the complex shall have thirty (30) days from the date the change of ownership occurred to file a new

registration with the property standards director and shall pay a $25.00 fee to re-issue the registration.

(d) Annual registration or renewals postmarked or received after March 31st shall be assessed an additional fee increase of:

i) 10% of registration fee if within 1 month of due date
ii) 30% of registration fee if within 2 months of due date
iii) 50% of registration fee thereafter

(e) Registration re-issues received after thirty (30) days of ownership change shall be assessed a late fee of $75.00 at the time of registration re-issue.

(f) The registration shall be on a form prescribed by the property standards director and shall at a minimum contain the following information about the complex:

1. The trade name, physical address, business mailing address and total number of units;
2. The names of designated employees or authorized representatives who shall be assigned to respond to emergency conditions and a telephone number where said employees can be contacted during any twenty-four (24) hour period. Emergency conditions shall include fire, natural disaster, flood, burst pipes, collapse hazard and violent crime;
3. The names, addresses, and telephone numbers of the owner, property manager, resident manager, registered agent, all federal, state, and local funding agencies; and the type of business entity which owns the complex;
4. The names, addresses and telephone numbers of any mortgage lienholders;
5. The number and type of security systems and fire alarm systems maintained on the premises and the names and telephone numbers of the alarm companies which respond to alarms or relay alarms to emergency services.

(g) A landlord commits an offense if the landlord operates a multi-family dwelling complex which is not currently registered with the director as prescribed.

Sec. 6-71. Fees.

(a) The landlord of a multi-family dwelling complex shall annually pay the city a fee to offset the city's cost of administration, registration and inspection.

(b) A fee of ten dollars ($10.00) per dwelling unit per year shall be submitted annually with the registration form required by Section 6-70.

(c) The landlord of a multi-family dwelling complex that fails a periodic inspection as provided for in Section 6-72 shall eliminate all violations identified at the time of the periodic inspection. The landlord must allow follow-up inspections by the director or the director's representative after a period of time determined by the director or the director's representative to be sufficient for the landlord to abate the violations. Inspection fees shall be assessed as follows:

i) Initial inspection and first re-inspection – No fee
ii) Second re-inspection - $150.00 / unit or public area
iii) Third and subsequent re-inspections - $300.00 / unit or public area

(d) Municipal court actions may be pursued for failure to correct or abate code violations.

Sec. 6-72. Inspection by director or director's designated representative.

(a) To determine compliance with minimum building and property maintenance standards in accordance with the International Property Maintenance Code and other applicable city codes and to determine compliance with this article, the director or director's designated representative may conduct:

1. periodic inspections;
2. follow-up inspections; and
3. inspections based on indications of code violations, including complaints filed with the director or director's designated representative.

(b) The following areas of a multi-family dwelling complex shall be subject to periodic inspection by the director or director's designated representative:

1. all building exteriors;
2. all exterior and interior common areas;
3. vacant dwelling units;
4. comparative sample of occupied dwelling units upon receipt of consent by the unit's tenant or other recourse as provided by law.

(c) Multi-family dwellings that are found to be maintained in accordance with minimum building and property maintenance standards during the initial inspection may receive a waiver of inspection and will not require a periodic property inspection for the following year unless a subsequent complaint is received prior to the next required systematic inspection.

(d) The director, building official or their designated representative may inspect portions of a multi-family dwelling complex as frequently as the director or building official deems necessary. Periodic inspections shall be scheduled annually, unless otherwise exempted by waiver of inspection, but no less frequently than once every two (2) years.

(e) The landlord of a multi-family dwelling complex shall make all exteriors, all interior and exterior public areas, and all vacant dwelling units of the complex available to the director or director's designated representative for inspections at all reasonable times.

(f) The director or director's designated representative is authorized to make follow-up inspections of a multi-family dwelling complex which fails a periodic inspection and to inspect all areas included in the periodic inspection until such time as the violations are abated.

(g) The authority granted by this section is subject to constitutional restrictions on unreasonable search and seizures. If entry is refused or not obtained, the director or director's representative is authorized to pursue recourse as provided by law, to include all rights and authority granted by Article 18.05 of the Texas Code of Criminal Procedure.

Sec. 6-73. Landlord/tenant self inspections.

(a) The landlord or their designee of a multi-family dwelling complex shall inspect each dwelling unit within the complex:

1. The inspection of a dwelling unit shall be conducted with the unit's tenant:

   a. A minimum of once annually; and
   b. When the occupancy of the unit changes;

2. The landlord shall sign each inspection report, and shall require the tenant to sign the report for the tenant's dwelling unit. If the tenant disagrees with any notation made by the landlord on the report, the landlord shall permit the tenant to make written comments on the report prior to signing it. The landlord shall provide the tenant with a copy of the report after it is signed by the tenant and the landlord.

3. The minimum building and property maintenance standards established by the International Property Maintenance Code and other applicable city codes shall be covered by the inspection, including but not limited to the following items:

a). Electrical facilities
b). Plumbing facilities
c.) Heating facilities
d). Ventilation
e). Smoke detectors
f). Occupancy limitations
g). Means of egress
h). Handrails and guardrails
i). Exterior property areas
j). Rubbish and garbage

4. The failure of a landlord to make inspections as required by this section, to maintain records of the inspections, and to permit inspection of those records pursuant to subsection (b) is a violation of this ordinance.

(b) A landlord shall maintain reports of the inspections conducted pursuant to subsection (a) for all dwelling units within the multi-family dwelling complex.

1. The reports shall be in written form on a form prescribed by the Code Compliance Director.

2. The report shall include places for marking whether the dwelling unit complies with the standards set by this section and shall include the names of all persons occupying the dwelling unit other than overnight guests.

3. The report shall also include:

   a. The names of designated employees or other authorized persons who shall be assigned to respond to emergency conditions;
   b. The telephone number where said employees can be contacted during any twenty-four (24) hour period. Emergency conditions shall include fire, natural disaster, flood, collapse hazard, burst pipes or violent crime; and
   c. A notice for reporting code violations to the city as follows: "TO REPORT UNRESOLVED VIOLATIONS OF CITY PROPERTY MAINTENANCE CODE FOR THESE PREMISES, PLEASE CONTACT THE PROPERTY STANDARDS DEPARTMENT AT (972) 941-7124."

4. The landlord shall maintain these inspection reports on the

premises of the complex and shall make them available to the director for inspection at all reasonable times. If there is no business office on the premises of the complex, the landlord shall maintain reports at the landlord's central business office and shall make them available to the director for inspection at the complex at all reasonable times.

5. The inspection reports shall be maintained by the landlord for a minimum of three (3) years.

Sec. 6-74. Offenses

A landlord commits an offense if the landlord:

(a) operates a multi-family dwelling complex which is not currently registered with the director as prescribed;

(b) fails to permit periodic inspections;

(c) fails to permit follow-up inspections or re-inspections;

(d) fails to pay administrative fees as required by this article;

(e) fails to perform annual landlord/tenant self inspections;

(f) maintains a property in violation of the city's property maintenance code;

(g) fails to make inspections, maintain records of the inspections, and/or permit the inspection of those records as required; or

(h) commits any other violation of this ordinance.

Sec. 6-75. Posting

Each multi-family dwelling unit described herein shall have prominently displayed in a conspicuous, publicly accessible area on the premises of the complex:

1) Current and valid registration certificates.

2) Signs posted by the owner or owners representative showing the names of designated employees or authorized representatives who shall be assigned to respond to emergency conditions and a telephone number where said employees can be contacted during any twenty-four (24) hour period.

Sec. 6-76 - 79. Reserved.

Sec. 6-80. Enforcement.

(a) A violation of this article is a Class C misdemeanor punishable as stated in Section II below.

(b) Nothing in this article prohibits the City of Plano from enforcing civil and criminal enforcement remedies concurrently or availing itself of any other remedy allowed by law."

Section II. Any person, firm or corporation found to be violating any term or provision of this Ordinance, shall be subject to a fine not to exceed two thousand dollars ($2,000.00) for each offense. Every day a violation continues shall constitute a separate offense.

Section III. It is the intention of the City Council that this Ordinance, and every provision hereof, shall be considered severable, and the invalidity or unconstitutionality of any section, clause, provision or portion of this Ordinance shall not affect the validity or constitutionality of any other portion of this Ordinance.

Section IV. All provisions of the ordinances of the City of Plano, codified or uncodified, in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the ordinances of the City of Plano, codified or uncodified, not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

Section V. 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 VI. This ordinance shall become effective immediately upon its passage and publication as required by law.

DULY PASSED AND APPROVED this the ____ day of _____, 2005.

_____
Pat Evans, MAYOR

ATTEST:

_____
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

U-11

CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☐ Yes	☒ Not Applicable
☒ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☐ Yes	☒ Not Applicable
Council Meeting Date:	11/28/05	Reviewed by Legal	☒ Yes	☐ Not Applicable
Department:	City Secretary		Initials	Date
Department Head	Elaine Bealke	Executive Director		
Dept Signature:		City Manager		11/18/05
Agenda Coordinator (include phone #):	Sharon Kotwitz - x7120			

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

CAPTION

To adopt and enact Supplement Number 72 to the Code of Ordinances for the City of Plano; providing for amendment to certain sections of the Code; and providing an effective date.

FINANCIAL SUMMARY

☒ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☐ CIP

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

FUND(S):

COMMENTS: This item has no fiscal impact

SUMMARY OF ITEM

Adoption of this ordinance enables this supplement to be admissible in court.

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

V-1

REV 08/98

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS ADOPTING AND ENACTING SUPPLEMENT NUMBER 72 TO THE CODE OF ORDINANCES FOR THE CITY OF PLANO; PROVIDING FOR AMENDMENT TO CERTAIN SECTIONS OF THE CODE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Plano, Texas adopted a new Code of Ordinances upon adoption of Ordinance No. 87-3-14, on March 9, 1987; and

WHEREAS, Sections V and VI of Ordinance No. 87-3-14 provide for amendment to said Code of Ordinances; and

WHEREAS, §3.11 of the City of Plano Charter provides that the City Council has the power to have its ordinances codified and printed in Code form, and that such printed form shall have full force and effect without the necessity of publishing the same or any part thereof in a newspaper; and

WHEREAS, the Code of Ordinances of the City of Plano, Texas has been revised by previous amendments duly passed as individual ordinances by the City Council and such amendments are reflected on Supplement Number 72;

WHEREAS, The City Council wishes to adopt the ordinance codification version appearing in Supplement 72 of the Plano Code of Ordinances in order for the printed Code form to be considered identical to the original ordinance and to eliminate any confusion or differences in the format of the original ordinance.

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

Section I. The City Council hereby adopts the printed Code form of the ordinances contained in Supplement 72 as prepared by the codifier.

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

DULY PASSED AND APPROVED this the 28th day of November 2005.

_____
Pat Evans, MAYOR

ATTEST:

_____
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

V-2

M:ord-supplement72

CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☐ Yes	☒ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☒ Yes	☐ Not Applicable
Council Meeting Date:	11/28/05	Reviewed by Legal	☒ Yes	☐ Not Applicable
Department:	Human Resources		Initials	Date
Department Head	LaShon Ross	Asst City Manager		11-18-05
Dept Signature:	LaShon Ross	City Manager		11.18.05
Agenda Coordinator (include phone #):	Rachal Hudson x5155			

ACTION REQUESTED: ☒ ORDINANCE ☐ RESOLUTION ☐ CHANGE ORDER ☐ AGREEMENT
☐ APPROVAL OF BID/AWARD OF CONTRACT ☐ OTHER ___

CAPTION

AN ORDINANCE OF THE CITY OF PLANO, TEXAS AMENDING ORDINANCE NO. 2005-9-23 TO CORRECT EXHIBIT "A" WHICH LISTED THE INCORRECT NUMBER OF FIRE CAPTAIN POSITIONS AND INCORRECT ASSISTANT FIRE CHIEF COMPENSATION IN THE ORIGINAL ORDINANCE; AND PROVIDING A REPEALER CLAUSE, A SEVERABILITY CLAUSE, AND AN EFFECTIVE DATE.

FINANCIAL SUMMARY

☒ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☐ CIP

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

COMMENTS: Funding for the Police and Fire Department Civil Service personnel in accordance with the Civil Service Plan is included in the FY 2005-06 approved budget. This amending ordinance corrects the number of Fire Captain positions and has no impact to the 2005-06 approved budget amounts.

STRATEGIC PLAN GOAL: Corrections to the Civil Service position ordinance for the Plano Fire Department relates to the City's Goal of and "Service Excellence".

SUMMARY OF ITEM

In June 2005, Ordinance 2005-6-28 was approved which set out the number of Fire Captains effective June 13, 2005. The attachment also did not reflect the correct Assistant Fire Chief compensation. Attachment "A" of ordinance 2005-9-23 did not reflect the June 13th approved positions. This amended ordinance is submitted to correct the error.

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
Ordinance Exhibit A	

W-1

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PLANO, TEXAS AMENDING ORDINANCE NO. 2005-9-23 TO CORRECT EXHIBIT "A" WHICH LISTED THE INCORRECT NUMBER OF FIRE CAPTAIN POSITIONS AND INCORRECT ASSISTANT FIRE CHIEF COMPENSATION IN THE ORIGINAL ORDINANCE; AND PROVIDING A REPEALER CLAUSE, A SEVERABILITY CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS, on SEPTEMBER 26, 2005 by Ordinance No. 2005-9-23, the City Council of the City of Plano, Texas, established the number of certain classifications within the Police and Fire Departments, the authorized number and effective dates of such positions for each classification and the classification and salary plan for the Police and Fire Departments for Fiscal Year 2005-06; and

WHEREAS, attached as Exhibit "A" to Ordinance No 2005-9-23 was a chart which was to show the various classifications and compensation for the Fire Department; however, the number of captain positions and Assistant Fire Chief compensation listed was incorrect; and

WHEREAS, the City Council hereby finds that Ordinance No. 2005-9-23 should be amended to include the corrected Exhibit "A" as attached hereto.

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

Section I. Ordinance No. 2005-9-23 duly passed and approved by the City Council of the City of Plano, Texas on September 26, 2005, is hereby amended to include the corrected Exhibit "A" attached.

Section II. All provisions of the Ordinances of the City of Plano, codified and uncodified, in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the Ordinances of the City of Plano, codified or uncodified, not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

Section 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. Upon passage, this Ordinance shall become effective November 28, 2005.

DULY PASSED AND APPROVED, this, the _____ day of _____, 2005.

_____
Pat Evans, MAYOR

W-2

ATTEST:

_____
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane Wetherbee, CITY ATTORNEY

h-N

CITY OF PLANO
2005-2006 CIVIL SERVICE
COMPENSATION PLAN
Effective 10/03/05

FIRE

RANGE	POSITION	# Positions Effective		BASE NON-PMDC	12 MOS. NON-PMDC	24 MOS. NON-PMDC
FCS 001	Fire Rescue Specialist**	10/01/05 - 177 01/01/06 - 186	**Monthly:** **Annual:** **Hourly:**	4201 50,412 17.3118	4497 53,964 18.5316	4954 59,448 20.4148
FCS 002	Fire Apparatus Operator**	10/01/05 - 48 01/01/06 - 51	**Monthly:** **Annual:** **Hourly:**	5448 65,376 22.4505		
FCS 003	Lieutenant**	10/01/05 - 21	**Monthly:** **Annual:** **Hourly:**	6138 73,656 25.2940		
FCS 004	Captain**	10/01/05 - 35 01/01/06 - 38	**Monthly:** **Annual:** **Hourly:**	6876 82,512 28.3352		
FMC 005	Battalion Chief*	10/01/05 - 8	**Monthly:** **Annual:** **Hourly:**	8331 99,972 48.0635		
FMC 006	Assistant Fire Chief*	10/01/05 - 4	**Monthly:** **Annual:** **Hourly:**	9314 111,768 53.7346		

* Hourly rate based on 2080 hours annually
** Hourly rate based on 2912 hours annually

EXHIBIT "A" TO ORDINANCE NO. _____

CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☐ Yes	☐ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☐ Yes	☐ Not Applicable
Council Meeting Date:	11/28/05	Reviewed by Legal	☒ Yes	☐ Not Applicable
Department:	Intergovernmental Relations		Initials	Date
Department Head	Mark Israelson	Executive Director		11/17/05
Dept Signature:		City Manager		11.18.05
Agenda Coordinator (include phone #):	**Mark Israelson ext 5440**			

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

CAPTION

A public hearing by the City Council of the City of Plano, Texas, pursuant to Chapter 26 of the Texas Parks and Wildlife Code pertaining to the use or taking of a portion of a City of Plano park and known as Jack Carter Park for a Communications Facilities License Agreement for cellular technolocy incorporated within the existing TXU Electric transmission tower.

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☐ CIP

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

FUND(S):

COMMENTS:

SUMMARY OF ITEM

Verizon Wireless has requested that the City allow it to use a portion of Jack Carter Parkfor cellular technology incorporated into existing TXU Electric transmission towers, as depicted in drawing included with this agenda item. Chapter 26 of the Texas Parks and Wildlife Code requires a public hearing for any use or taking of park land. To permit the use or taking of park land, the governing body with jurisdiction over the park, the City Council for instance, must find the following:

1. There is no feasible and prudent alternative to the use and taking of the park land as proposed by the project exists; and

2. The Project includes all reasonable planning to minimize harm to the Park Land resulting from the use or the taking.

Witnesses will present at the public hearing on these issues.

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

MEMORANDUM

TO: **Honorable Mayor and City Council**

THROUGH: **Tom Muehlenbeck, City Manager**

FROM: **Mark D. Israelson, Assistant to the City Manager** MDI

DATE: **November 16, 2005**

SUBJECT: **Verizon Wireless Ground Space Agreements**

There is a current City project being conducted by Intergovernmental Relations and the Legal Departments investigating cellular attachments to TXU power lines. For each attachment, ground equipment has been necessary for the cellular company to house equipment and draw power, however, the City has not been involved in the approval process for any of the ground equipment and no company, to date, has requested a license agreement with the City.

Late in the Spring of 2005, Verizon Wireless ("Verizon") approached the City about attaching cellular equipment to the City's Tennyson water tower. At that time, staff informed Verizon there were two existing ground equipment sites, believed to be owned by Verizon, that were being investigated by the City for unauthorized use of ground space. Staff informed Verizon that the resolution of the two ground sites was necessary prior to proceeding with the water tower site. Verizon and staff spent several months reviewing easements where the equipment is located and were able to agree that a Communications Facilities License Agreement would be necessary for each site, Jack Carter Park and Wellington.

It is important to note, that both of the sites being considered have existed for several years. No new construction will be necessary, however additional landscaping, as established in a ground lease agreement earlier this year, will be required. Intergovernmental Relations staff feels that the approval of this project would fall directly within section 12.1 of the technology section of the comprehensive plan in establishing efficient communications. The proposed use of this site is consistent with facilities already located in the area and along the power lines.

On September 6, 2005, I presented to the Parks and Recreation Board two proposed agreements between the City of Plano and Verizon for the ground equipment to support a cellular antenna that are attached to the TXU transmission lines. The presentation to the Board was not required by statute, but is made according precedent established earlier in the year to assure inclusion of the Board on this type of project. The board approved both agreements, and also informed staff that the additional sites under investigation would not require additional Board approval provided the equipment was similar and staff requirements were consistent.

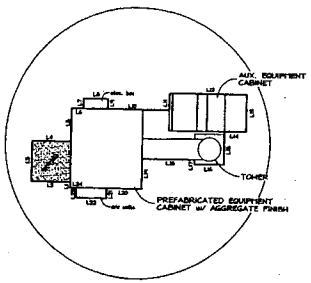
The approval of this project would set an important precedent for the City and the cellular providers in the City of Plano. This precedent would require wireless companies to enter into an agreement with the City prior to attaching to TXU power lines.

BASIS OF BEARING:
NAD-27 GRID NORTH

Site Name: JACK CARTER, Site ID #: R0044A

City of Plano, Collin County, Texas

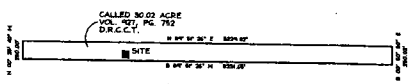
AS-BUILT SURVEY FOR WIRELESS COMMUNICATIONS ANTENNA AND ACCESSORY CABINET



LEASE SITE DETAIL
NOT TO SCALE

LINE	BEARING	DIST.
L1	N 00° 14' 18" W	0.60'
L2	S 89° 45' 42" W	4.00'
L3	N 00° 14' 18" W	4.00'
L4	N 89° 45' 42" E	4.00'
L5	N 00° 14' 18" W	3.30'
L6	N 89° 45' 42" E	1.30'
L7	N 00° 14' 18" W	1.00'
L8	N 89° 45' 42" E	2.50'
L9	S 00° 14' 18" E	1.00'
L10	N 89° 45' 42" E	6.50'
L11	N 00° 14' 18" W	1.60'
L12	N 89° 45' 42" E	7.80'

LINE	BEARING	DIST.
L13	S 00° 14' 18" E	3.70'
L14	S 89° 45' 42" W	2.20'
L15	S 00° 14' 18" E	5.30'
L16	S 89° 45' 42" E	3.00'
L17	N 00° 14' 18" W	0.50'
L18	S 89° 45' 42" W	5.30'
L19	S 00° 14' 18" E	3.00'
L20	S 89° 45' 42" W	3.70'
L21	S 00° 14' 18" E	1.00'
L22	S 89° 45' 42" W	3.10'
L23	N 00° 14' 18" W	1.00'
L24	S 89° 45' 42" W	0.60'



FEE SIMPLE
NOT TO SCALE

LEGAL DESCRIPTION
TEXAS UTILITIES ELECTRIC COMPANY
EASEMENT PER VOLUME 927, PAGE 752
DEED RECORDS, COLLIN COUNTY, TEXAS

All that certain tract of land in the George W. Massie Survey, Abstract No. 545, and the Alfred Harrington Survey, Abstract No. 420, Collin County, Texas, containing 50.02 acres of land, being part of a 96.978 acre tract of land described in deed dated April 1, 1974, from Dan B. Harrington to Robert S. Folsom, Trustee, as now of record in Volume 908, Page 740, being also a part of a 88.265 acre tract of land described in deed dated April 1, 1974, from R.L. Harrington, Jr. to Robert S. Folsom, Trustee, as now of record in Volume 908, Page 787, being also part of a 94.605 acre tract of land described in deed dated April 1, 1974, from R.L. Harrington, et ux, to Robert S. Folsom, Trustee, as now of record in Volume 908, Page 734, being part of a 1.03 acre tract of land that was conveyed by deed dated November 18, 1948, from Clinton A. Harrington to John F. Harrington, as now of record in Volume 345, Page 66, said 1.83 acre tract being also conveyed by deed dated January 15, 1974, from Wagner-Hartfield, a partnership to Robert S. Folsom Investments, Inc., as now of record in Volume 898, Page 378, all of the above in the Deed Records of Collin County, Texas, said tract being described by metes and bounds as follows:

BEGINNING at a point in the West boundary line of the above referred to 1.83 acre tract of land, same being the East boundary line of property owned by George Jones, same also being the West survey line of the George W. Massie Survey, Abstract No. 545, said point being located South 00 degrees 25 minutes 40 seconds East, 766.00 feet from the Northwest corner of said 1.83 acre tract of land, said corner being also the Northwest corner of the said Massie Survey;

THENCE North 89 degrees 51 minutes 26 seconds East, 5229.82 feet to a point for corner located in the East boundary line of the above referred to 94.605 acre tract of land, same being the West right-of-way line of Farm-To-Market Road No. 2478 (Custer Road);

THENCE with said common boundary line South 00 degrees 50 minutes 50 seconds East, 250.02 feet to a point for corner;

THENCE South 89 degrees 51 minutes 26 seconds West, 5231.65 feet to a point for corner located in the West boundary line of said 1.83 acre tract of land, same being the East boundary line of property owned by George Jones, same also being the West survey line of the George W. Massie Survey, Abstract No. 545;

THENCE with said common boundary line North 00 degrees 25 minutes 40 seconds West, 250.00 feet to the Place of Beginning, being a strip of land 250.00 feet width, located as above described and containing 30.02 acres of land.

LEASE SITE

Being a 0.005 acre tract of land situated in the City of Plano, Collin County, Texas and being part of that certain 30.02 acre tract as conveyed for use as an easement and right-of-way by deed recorded in Volume 927, Page 752, Deed Records, Collin County, Texas and being more particularly described by metes and bounds as follows:

COMMENCING at the southeast corner of said 30.02 acre tract of land;

THENCE North 89 degrees 51 minutes 26 seconds East, a distance of 1478.76 feet to a point in the south line of said 30.02 acre tract of land and being in the north right-of-way line of Pleasant Valley;

THENCE North 00 degrees 08 minutes 34 seconds West, a distance of 46.74 feet to the POINT OF BEGINNING;

THENCE North 00 degrees 14 minutes 18 seconds West, a distance of 0.60 feet to a point for corner;

THENCE South 89 degrees 45 minutes 42 seconds West, a distance of 4.00 feet to a point for corner;

THENCE North 00 degrees 14 minutes 18 seconds West, a distance of 4.00 feet to a point for corner;

THENCE North 89 degrees 45 minutes 42 seconds East, a distance of 4.00 feet to a point for corner;

THENCE North 00 degrees 14 minutes 18 seconds West, a distance of 3.30 feet to a point for corner;

THENCE North 89 degrees 45 minutes 42 seconds East, a distance of 1.30 feet to a point for corner;

THENCE North 00 degrees 14 minutes 18 seconds West, a distance of 1.00 feet to a point for corner;

THENCE North 89 degrees 45 minutes 42 seconds East, a distance of 2.50 feet to a point for corner;

THENCE South 00 degrees 14 minutes 18 seconds East, a distance of 1.00 feet to a point for corner;

THENCE North 89 degrees 45 minutes 42 seconds East, a distance of 6.50 feet to a point for corner;

THENCE North 00 degrees 14 minutes 18 seconds West, a distance of 1.60 feet to a point for corner;

THENCE North 89 degrees 45 minutes 42 seconds East, a distance of 7.80 feet to a point for corner;

THENCE South 00 degrees 14 minutes 18 seconds East, a distance of 3.70 feet to a point for corner;

THENCE South 89 degrees 45 minutes 42 seconds West, a distance of 2.20 feet to a point for corner;

THENCE South 00 degrees 14 minutes 18 seconds East, a distance of 5.30 feet to a point for corner;

THENCE South 89 degrees 45 minutes 42 seconds West, a distance of 3.00 feet to a point for corner;

THENCE North 00 degrees 14 minutes 18 seconds West, a distance of 0.50 feet to a point for corner;

THENCE South 89 degrees 45 minutes 42 seconds West, a distance of 5.30 feet to a point for corner;

THENCE South 00 degrees 14 minutes 18 seconds East, a distance of 3.00 feet to a point for corner;

THENCE South 89 degrees 45 minutes 42 seconds West, a distance of 3.70 feet to a point for corner;

THENCE South 00 degrees 14 minutes 18 seconds East, a distance of 1.00 feet to a point for corner;

THENCE South 89 degrees 45 minutes 42 seconds West, a distance of 3.10 feet to a point for corner;

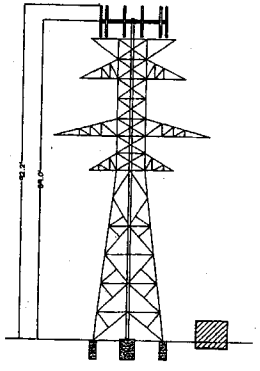
THENCE North 00 degrees 14 minutes 18 seconds West, a distance of 1.00 feet to a point for corner;

THENCE South 89 degrees 45 minutes 42 seconds West, a distance of 0.60 feet to the POINT OF BEGINNING and CONTAINING 184 square feet or 0.005 acre of land, more or less.

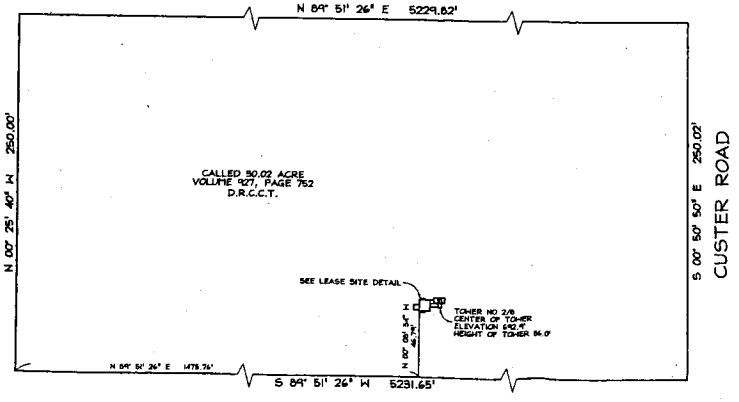
I, JAMES P. KEENE, a Registered Professional Land Surveyor of the State of Texas, have prepared this plat from an actual survey made on the ground under my personal supervision.

This site is not located in a 100 year flood plain, as defined by the U.S. Department of Housing and Urban Development, pursuant to the Flood Disaster Protection Act of 1973, as amended, as reflected by Flood Insurance Rate Map, which such map covers the area in which the property is situated.

REGISTERED PROFESSIONAL LAND SURVEYOR

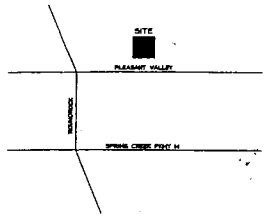


NORTH TOWER ELEVATION
NOT TO SCALE
GROUND ELEVATION (AMSL) = 692.9' (NGVD 29)
NAD27 LATITUDE : 33° 03' 36.94" N
LONGITUDE : 96° 44' 43.43" W



SITE LOCATION MAP

NOT TO SCALE



CITY OF PLANO
COLLIN COUNTY, TEXAS
MAPSCO # 657D

GEOGRAPHIC COORDINATES

ALL COORDINATES BASED ON THE NORTH AMERICAN DATUM OF 1927

GENERAL NOTES:

THIS SURVEY IS VALID ONLY WITH ORIGINAL SIGNATURE IN BLACK INK

AS-BUILT SURVEY
FOR WIRELESS COMMUNICATIONS ANTENNA AND ACCESSORY CABINET

JACK CARTER
SITE # R0044A
ROUNDROCK ROAD AND PLEASANT VALLEY
TDX3708 ML 2
TOWER # 2/8
COLLIN COUNTY, TEXAS
MAPSCO # 657D

PRECISE LAND SURVEYING, INC.
4915 GUS THOMASSON MESQUITE, TEXAS 75150
(972) 681-7072 FAX (972) 279-1508

REVISIONS:
DATE:

DATE: 12-14-98
SCALE: 1" = 40'
DRAWN BY: BE
CHECKED BY: PLS
FILE NAME: 98-0312.dwg

1-3

CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☐ Yes	☐ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☐ Yes	☐ Not Applicable
Council Meeting Date:	11/28/05	Reviewed by Legal	☒ Yes	☐ Not Applicable
Department:	Intergovernmental Relations		Initials	Date
Department Head	Mark Israelson	Executive Director		
Dept Signature:		City Manager		11/21/05
Agenda Coordinator (include phone #):	**Mark Israelson ext 5440**			

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

CAPTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A COMMUNICATIONS FACILITIES LICENSE AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS AND DALLAS MTA, L.P., A TEXAS LIMITED PARTNERSHP, D/B/A VERIZON WIRELESS,, TO LOCATE, PLACE, ATTACH, INSTALL, AND OPERATE, TELECOMMUNCIATIONS GROUND EQUIPMENT IN CERTAIN SPECIFIC PORTIONS OF THE PUBLIC RIGHTS-OF-WAY IN THE CITY OF PLANO NEAR JACK CARTER PARK IDENTIFIED AS THE PRESTON MEADOW SITE; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR, IN HIS ABSENCE, AN EXECUTIVE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE.

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☐ OPERATING EXPENSE ☒ REVENUE ☐ CIP

FISCAL YEAR: 05/06	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0

FUND(S): GENERAL FUND

COMMENTS: This item will provide additional revenue of $6,000 per year for five years, and a one time payment for past considerations of $21,000.

SUMMARY OF ITEM

This Resolution approves a Communications Facilities License Agreement with Dallas MTA, L.P., d/ba/ Verizon Wireless for communications faciliites near Jack Carter Park.

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

2-1

REV 08/98

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A COMMUNICATIONS FACILITIES LICENSE AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS AND DALLAS MTA, L.P., A TEXAS LIMITED PARTNERSHIP, D/B/A VERIZON WIRELESS, TO LOCATE, PLACE, ATTACH, INSTALL, AND OPERATE, TELECOMMUNCIATIONS GROUND EQUIPMENT IN CERTAIN SPECIFIC PORTIONS OF THE PUBLIC RIGHTS-OF-WAY IN THE CITY OF PLANO NEAR JACK CARTER PARK IDENTIFIED AS THE PRESTON MEADOW SITE; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR, IN HIS ABSENCE, AN EXECUTIVE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council has been presented a proposed Communications Facilities License Agreement by and between the City of Plano, Texas and Dallas MTA, L.P. d/b/a Verizon Wireless., (hereinafter called "Agreement"), a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference; and

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

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

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

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

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

DULY PASSED AND APPROVED on this the ____ day of _____, 2005.

_____
Pat Evans, MAYOR

ATTEST:

_____
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

City Site ID: _____
Licensee Site ID: JACK_CARTER Location: 105022

STATE OF TEXAS §
§ **COMMUNICATIONS FACILITIES**
§ **LICENSE**
COUNTY OF COLLIN §

KNOW ALL BY THESE PRESENTS:

This non-exclusive License for Communications Facilities ("Agreement") is made by and between the **CITY OF PLANO, TEXAS**, a home rule municipal corporation (hereinafter referred to as the "CITY") and **DALLAS MTA, L.P., a Texas Limited Partnership, d/b/a VERIZON WIRELESS** (hereinafter referred to as "LICENSEE"), for the use of certain premises and/or facilities according to the following terms and conditions:

W I T N E S S E T H:

WHEREAS, CITY desires to provide LICENSEE with facilities for housing and operating certain communications equipment, including the installation of antennas or antenna systems and the space required to run cable between the equipment and the antenna or antenna systems; and

WHEREAS, LICENSEE is a communications services company duly authorized to provide certain telecommunications services and desires to lease certain property owned by CITY for installation and operation of IMPROVEMENTS, as defined herein, to operate a communications facility and all related purposes; and

WHEREAS, CITY owns the premises and facilities described below and desires to allow LICENSEE to enter and utilize designated areas of the facilities and premises.

NOW, THEREFORE, in consideration of the terms and conditions hereinafter set forth, the Parties agree as follows:

1. Location

1.1 The premises and facilities (hereinafter referred to as the "PREMISES") provided by CITY are described in the SITE PLAN attached hereto and incorporated herein as **Appendix "A"**. Included upon the PREMISES shall be an existing transmission tower (the "Tower"), LICENSEE's Equipment Compound, the Antenna Facilities, as defined herein, and the cabling run

2-4

between the Antenna Facilities and the Equipment Compound (hereinafter referred to as "IMPROVEMENTS"). As a part of the SITE PLAN, LICENSEE shall provide to CITY a map that identifies all of LICENSEE's cell sites within the City of Plano and within a one-mile radius of the boundaries of the City of Plano. As used herein, the term "Equipment Compound" means all equipment, shelters and similar structures located on the PREMISES and identified on **Appendix "A"**. The license authorized under the terms of this Agreement shall be a license for the use of that portion of the PREMISES designated for use by LICENSEE on the SITE PLAN.

1.2 **Site Plan**. The SITE PLAN must be approved by CITY prior to the execution of this Agreement, with approval or disapproval not to be unreasonably withheld, conditioned or delayed. The SITE PLAN shall describe and illustrate the location of the IMPROVEMENTS under this Agreement. The SITE PLAN shall include a scale drawing and inventory analysis of the proposed installations, as well as an elevation of the PREMISES with the proposed installations. Performance under this Agreement shall be in strict compliance with the SITE PLAN. If LICENSEE's installation, maintenance and operation of the IMPROVEMENTS fail to comply with the approved SITE PLAN, at any time, as reasonably determined by CITY, then CITY shall have the right to terminate this Agreement upon notice to LICENSEE, who has an opportunity to cure as provided under Section 5 herein. Any proposed material modifications to LICENSEE's SITE PLAN must be approved in writing by CITY before LICENSEE may make any changes to its SITE PLAN as originally approved by CITY.

1.3 LICENSEE has inspected, examined and investigated the status of the title and condition of the PREMISES to the extent that LICENSEE has deemed necessary, and LICENSEE understands, acknowledges and agrees that it is entering into this Agreement to acquire a leasehold interest in the PREMISES "AS IS" in reliance solely upon the results of any inspection, examination and investigation of the status of title and condition of the PREMISES that LICENSEE has conducted and not as a result of any representation, warranty, assurance, guaranty or promise of CITY or any person purporting to act on behalf of CITY, other than those which may be expressly set forth in this Agreement.

1.4 LICENSEE UNDERSTANDS, ACKNOWLEDGES AND AGREES THAT NEITHER CITY NOR ANY AGENT, EMPLOYEE OR OTHER PERSON ACTING ON BEHALF OF THE CITY, HAS MADE ANY, AND THE CITY EXPRESSLY DISCLAIMS EVERY, REPRESENTATION, WARRANTY (INCLUDING WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE AND HABITABILITY), ASSURANCE, GUARANTY OR PROMISE, EXPRESS OR IMPLIED, CONCERNING THE STATUS OF THE TITLE OR CONDITION OF THE PREMISES WHICH ARE NOT EXPRESSLY SET FORTH IN THIS AGREEMENT AND THAT NO AGENT OR EMPLOYEE OF THE CITY OR

City Site ID: _____
Licensee Site ID: JACK_CARTER Location: 105022

OTHER PERSON HAS ANY AUTHORITY TO MAKE OR DELIVER ANY REPRESENTATION, WARRANTY, ASSURANCE, GUARANTY OR PROMISE WHICH IS NOT SET FORTH IN THIS AGREEMENT.

2. Use of Premises

2.1 **Permitted Use.** CITY agrees to allow installment of LICENSEE's IMPROVEMENTS, in accordance with the terms of this Agreement. LICENSEE's use shall be non-exclusive and shall be for the purpose of the installation, operation, and maintenance of its IMPROVEMENTS, for the transmission, reception, and operation of a communications facility and all related purposes thereto. LICENSEE shall obtain the written approval of the City prior to installation of any IMPROVEMENTS on the PREMISES, which approval shall not be unreasonably withheld, conditioned or delayed. LICENSEE understands, acknowledges and agrees that the use of the PREMISES by LICENSEE in conjunction with the terms of this Agreement is to be for the installation, operation and maintenance of communications equipment, in strict compliance with the Agreement and the attached SITE PLAN. LICENSEE shall not use the PREMISES for any other purpose whatsoever, including the storage or placement of debris, storage of replacement IMPROVEMENTS, or any other item, without first obtaining the prior written consent of CITY, which may be given or withheld for any reason or for no reason, in the CITY'S sole, absolute and unrestricted discretion.

2.2 **Prohibited Use.** LICENSEE shall not use the PREMISES in any manner that constitutes waste or nuisance, or that violates any applicable law, ordinance or governmental regulation in any respect. LICENSEE shall neither do nor permit to be done anything that would violate any certificate of occupancy applicable to the PREMISES or would render void or uncollectible any insurance then in force with respect to the PREMISES, or that would in any way increase the premiums payable by CITY for fire, liability or any other insurance coverage on the PREMISES or the contents of any improvements thereon.

2.3 **Subletting of Use Premises or Improvements**. LICENSEE may not sublet to or license others to use the PREMISES or LICENSEE's IMPROVEMENTS without the prior written consent of CITY. Any such attempt by LICENSEE shall be without effect and may at CITY's option result in the termination of this Agreement.

2.4 **Maintenance, Repair or Replacement of Improvements**. LICENSEE may update, maintain, repair, or replace the IMPROVEMENTS located upon the PREMISES from time to time without CITY's approval, provided that the total of all IMPROVEMENTS do not require more space than the existing IMPROVEMENTS. Any change in the location of improvements on the PREMISES must be satisfactory to CITY, such approval not to be unreasonably

2-6

withheld, conditioned or delayed. LICENSEE shall submit to CITY for approval, a detailed proposal for any substantial replacement of IMPROVEMENTS and any supplemental materials for CITY's evaluation and written approval, such approval not to be unreasonably withheld, conditioned or delayed. As used herein, substantial replacement shall mean any replacement that (i) involves the parking of a "semi" truck on the premises, or (ii) involves a material change-out or alteration of Licensee's equipment. Notwithstanding the foregoing and any other provision herein to the contrary and further notwithstanding the frequencies set forth elsewhere herein, Licensee shall have the right, at any time during the term of this Agreement as the same might be extended, to change or add additional frequencies without the consent of CITY; provided, however that Licensee shall provide CITY with advance written notice of any such change or addition and provided further that Licensee agrees to comply with the terms and provisions of Section 9 herein with respect to interference in connection with such change or addition of frequencies. A current and accurate SITE PLAN must be submitted to CITY by LICENSEE and maintained on file with CITY for the entire term of this Agreement and all renewals thereof.

3. Term

3.1 This Agreement shall be for an initial term of five (5) years, commencing on the Effective Date. The Effective Date shall be the date LICENSEE moves materials or other equipment onto the PREMISES or begins construction on the PREMISES or the 1st day of January, 2006, whichever occurs first. For a period not to exceed one hundred eighty (180) days following the Effective Date, LICENSEE shall have the right to terminate this Agreement by giving thirty (30) days written notice to CITY of such termination if LICENSEE is unable to obtain all licenses and permits or authorizations required for LICENSEE's use of the PREMISES from all applicable government and/or regulatory entities (the "Governmental Approvals") for LICENSEE's intended use of and improvements to the PREMISES.

3.2 LICENSEE is granted the option to renew this license for five (5) additional five (5) year terms, after the initial term expires. Unless LICENSEE gives written notice of its decision not to exercise the renewal option within 90 days prior to the expiration of the current term or period, this Agreement will automatically renew for each said renewal term as long as LICENSEE remains in full compliance with all other provisions of this Agreement. All the terms and covenants of this Agreement apply to all extension periods, subject to amendment by the mutual agreement of the Parties, in writing and signed by both Parties. If LICENSEE continues to possess the PREMISES following the expiration of all of the extension periods provided herein, and this Agreement has not been renewed or superseded, this Agreement (1) shall be deemed to be a holdover tenancy at will but shall not itself constitute a renewal or extension of any term, (2) shall continue from month to month under the terms and conditions

set forth herein and (3) may be terminated by either party upon at least thirty (30) days written notice to the other party. All the terms and covenants of this Agreement apply to all holdover tenancy periods.

4. Payment Terms and Conditions

4.1 **Rent Payment.** In consideration for providing the PREMISES for use by LICENSEE, the LICENSEE shall pay rent to CITY annually, with the first payment being due within thirty (30) days following the Effective Date of this Agreement. Thereafter payment shall be due annually on the anniversary of the Effective Date throughout the initial term and all renewal terms hereof and prorated for any partial term. LICENSEE shall pay rent to CITY annually in advance, without prior notice or demand, without any abatement, setoff, reduction, deduction, counterclaim or recoupment whatsoever, in the amount of Six Thousand and No/100 Dollars ($6,000.00) per annum for the term of this Agreement **("Rent Payment")**. Interest on late payments shall accrue at the then prime interest rate. If this Agreement is terminated at a time other than the last day of the calendar year of the term for any reason other than a default by LICENSEE, all Rent Payments shall be prorated as of the date of termination and all prepaid Rent Payments shall be refunded to LICENSEE.

4.2 **Rent Adjustment.** The Rent Payment shall be increased by three percent (3%) at the beginning of each Lease Year (as herein defined) following the first Lease Year of the Lease Term or the first Lease Year. For purposes of this Lease Agreement, the term **"Lease Year"** shall mean the twelve-month period which commences on the first day of the calendar month in which the Effective Date occurs (if the Effective Date occurs on the first day of a calendar month) or on the first day of the calendar month following the calendar month in which the Effective Date occurs (if the Effective Date occurs on a day other than the first day of a calendar month). The dollar increase in the Rent Payment shall be determined by multiplying the Rent Payment (as previously adjusted) payable during the preceding Lease Year by three percent (3%). The sum of the dollar increase required by this multiplication plus the Rent Payment (as previously adjusted) payable for and on account of the preceding Lease Year (i.e., one hundred three percent (103%) of the prior Lease Year's Rent shall be the Rent Payment for the Lease Year of the adjustment.

4.3 **Holdover Rent.** The Rent Payment, as defined in Subsection (a) above, due during any holdover period shall be equal to one hundred fifty percent (150%) of the Rent Payment due during the immediately preceding Initial term or any renewal term.

4.4 **Additional Fees.** CITY may assess, in addition to the Rent Payment, additional payments by LICENSEE to cover CITY's additional costs **("Additional Fees")**, which include but are not limited to: (i) costs of utilities

2-8

associated with the day-to-day operation and maintenance of the Premises; (ii) costs incurred by CITY for providing access to the Premises outside of normal business hours; and (iii) applicable taxes, including property taxes, or business taxes levied on the PREMISES. CITY shall notify LICENSEE of amounts due in Additional Fees in writing, and LICENSEE shall pay Additional Fees simultaneously with the next monthly Rent Payment due on the Premises, or, if notice of Additional Fees occurs within ten (10) days of the due date of the next monthly Rent Payment, simultaneous with the Rent Payment due for the next month. The foregoing shall be subject to the provisions of Section 16 herein.

4.5 **Payment Address.** Rent Payments and Additional Fees shall be made payable to City of Plano, C/O Intergovernmental Relations Department, PO Box 860358, Plano, Texas 75086.

4.6 **Lawful Currency.** Rent Payments and Additional Fees shall be made according to paragraph 4.5 above in lawful money of the United States of America without any abatement, setoff, reduction, deduction, counterclaim or other recoupment whatsoever. Rent Payments shall be free and clear of any business license tax or fee which is measured upon the size of the PREMISES. In no event will LICENSEE be obligated to pay any general income taxes measured upon the income of the City. In the event any federal, state, county, municipal or other governmental authority hereafter imposes or levies any such business license tax or fee, LICENSEE shall pay to CITY an amount equal to any and all amounts so imposed or levied as a component of Additional Fees. This Section does not preclude the assessment of lawful fees pursuant to a franchise or other agreement that the City may have with Licensee or its parent or any subsidiary or affiliate.

4.7 **Dishonored Checks.** Any dishonored check shall incur a service charge of ten percent (10%) of its face amount. Subsequent to the first dishonored check received by CITY for any payment, all subsequent payments, including Rent Payments and Additional Fees, shall be made by cashier's check.

4.8 **Consideration for Rent in Prior Periods**. As compensation to City for LICENSEE'S use of the Premises prior to execution of this Agreement, LICENSEE agrees to pay to City a lump sump total of TWENTY ONE THOUSAND and No/100 ($21,000).

5. Termination

5.1 **Termination for Cause.** Upon the occurrence of any one or more of the events listed below (hereinafter referred to as "Event of Default"), or as provided elsewhere in this Agreement, CITY may, without penalty, at its option and without prejudice to any other remedy to which it may be entitled at law or equity, or otherwise under this Agreement, terminate use or occupancy under

this Agreement at any time, either in whole or in part, by giving at least sixty (60) days prior written notice thereof to LICENSEE with the understanding that all use of the PREMISES being terminated shall cease upon the date specified on such notice. LICENSEE shall equitably compensate CITY in accordance with the terms of this Agreement for the use of the PREMISES prior to the date specified in such notice, following inspection and acceptance of same by CITY. LICENSEE shall not, however, be entitled to any damages, including but not limited to, lost or anticipated profits should CITY choose to exercise its option to terminate.

5.2 **Event of Default.** Any of the following occurrences, conditions, or acts shall be deemed an "Event of Default" under this Agreement:

(a) if LICENSEE fails to pay amounts due under this Agreement within fifteen (15) days of receipt of written notice that such payments are overdue;

(b) if either party fails to observe or perform its obligations under this Agreement other than as provided in Section 5.2(a) above and does not cure such failure within thirty (30) days from the party's receipt of written notice of breach or such longer period as may be mutually reasonably agreed upon by the Parties to complete a cure commenced within the 30 day period.

5.3 **Termination by LICENSEE.** This Agreement may be terminated by LICENSEE, without penalty or further liability, as follows:

(a) upon written notice, if LICENSEE is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Communication Facility as now and hereafter intended by LICENSEE; or if LICENSEE determines in its sole discretion that the cost of obtaining or retaining the same is commercially unreasonable;

(b) on sixty (60) days written notice for any reason, other than 5.2(a) or (b) above, so long as LICENSEE pays CITY a termination fee equal to six (6) months rent at the current rate or rent at the current rate prorated to the end of CITY's fiscal year in which the termination occurs, whichever is greater.

5.4 **Notice and Opportunity to Cure.** Upon the occurrence of an Event of Default, CITY shall deliver to LICENSEE a Notice of Intent to Terminate that identifies in detail the Event of Default. If the Event of Default remains uncured for thirty (30) calendar days after delivery of such notice, CITY may

2-10

terminate this Agreement and the license granted herein by delivering to the LICENSEE a Notice of Termination that identifies the effective date of the termination, which date shall not be less than sixty (60) days after the date of delivery of the Notice of Intent to Terminate; provided, however, that the time periods for notice of termination specified in this Section shall not apply to a default pursuant to Section 5.2(b).

5.5 **Primary Function of PREMISES.** The parties understand and agree that the primary function of the PREMISES is to serve as a public park for the City of Plano and that the interests of LICENSEE are superseded by the public health, safety, and welfare of the citizens of Plano served by the public park. In the event that the Plano City Council or the Plano City Manager declares a public emergency or if there exists a threat to the public park facilities that would detrimentally impact public health, safety and welfare such that immediate action is necessary, LICENSEE shall, within thirty (30) days following receipt of written notice of such emergency and need to relocate and/or remove its IMPROVEMENTS from the PREMISES. In the event that LICENSEE is not able to timely respond, CITY may remove LICENSEE's IMPROVEMENTS without incurring any liability for damages of any type. Costs of removal and reattachment of IMPROVEMENTS shall be borne by LICENSEE.

5.6 **Removal of Improvements.** If LICENSEE's IMPROVEMENTS must be removed, whether or not such removal is done pursuant to Section 5.5 above, LICENSEE shall have the right to set up a portable mounted antenna, a cell on wheels (COW), and/or some other similar temporary structure approved by CITY, such approval not to be unreasonably withheld, conditioned or delayed, on CITY premises to allow LICENSEE to continue to provide communications services and all related purposes. LICENSEE may maintain its COW for a period of thirty (30) days past the date of removal of IMPROVEMENTS. To maintain the temporary antenna, COW, or other temporary structure for a period in excess of thirty (30) days, LICENSEE must obtain written approval from CITY, such approval not to be unreasonably withheld, conditioned or delayed. If the PREMISES are not in such condition as to be utilized by LICENSEE at the end of the initial thirty (30) day period, CITY shall provide as many additional thirty (30) day extensions for such temporary structures as are necessary to allow LICENSEE to continue its operations as authorized by this Agreement.

6. City's Right of Entry Onto Premises

6.1 CITY and CITY's agents, employees or contractors may enter upon the PREMISES, except LICENSEE's secured areas, for the purpose of performing repairs and maintenance work to the PREMISES. If maintenance work is required, CITY agrees to provide LICENSEE with reasonable notice prior to commencing such work to allow LICENSEE to remove the affected IMPROVEMENTS. Decisions as to the extent to which LICENSEE will be

required to remove such IMPROVEMENTS shall be within the reasonable discretion of CITY. If, however, in the reasonable discretion of CITY, repair or maintenance requires immediate action on the part of CITY, CITY will take reasonable efforts to notify LICENSEE, but may enter the PREMISES, except LICENSEE's secured areas, and take such action as is required, except any action to remove any or all IMPROVEMENTS made by LICENSEE. In no event shall CITY be liable for any expenses associated with LICENSEE's removal of IMPROVEMENTS or for lost or anticipated profits. LICENSEE, at its expense and exclusive use, may use any and all reasonable and appropriate means of restricting access to the LICENSEE's equipment shelter, as identified in the SITE PLAN.

7. Access

7.1 LICENSEE shall have the non-exclusive right to access the aforementioned PREMISES at any time, by contacting and providing notice to CITY. LICENSEE must be accompanied by CITY personnel at all times when accessing the PREMISES. If CITY is contacted by LICENSEE after the normal business hours of CITY for the purpose of accessing the aforementioned location, LICENSEE agrees to reimburse CITY for the actual cost of any CITY staff involvement necessary for this access.

7.2 LICENSEE's right of access is a contractual right for the benefit of LICENSEE only and nothing contained in this Agreement shall be construed to constitute a dedication or an easement. However, in the event this Agreement is assigned in accordance and in compliance with Section 22.9 herein, such right of access shall inure to the benefit of LICENSEE's assignee.

8. Damages to Property

8.1 **Damage and Restoration of Property.** LICENSEE shall immediately notify CITY of any and all damages resulting from, arising out of, or caused to, the PREMISES and CITY property surrounding the PREMISES, including but not limited to structural damages, electrical damages, damages to fencing, irrigation systems or landscaping by LICENSEE's operations, by LICENSEE, its officers, agents, employees and invitees. LICENSEE shall be solely responsible for the costs and the repair of all such damages and such repairs and/or replacements shall be completed within thirty (30) calendar days and shall be completed in a manner reasonably acceptable to CITY.

8.2 **Failure to Restore Property**. If LICENSEE does not make or perform any required maintenance or repairs to the PREMISES within the time period provided in Section 8.1, CITY shall have the right, but not the obligation, to make such repairs and to perform such maintenance, in which event LICENSEE shall pay CITY the cost thereof, plus an administrative fee of ten

2-12

percent (10%) of the cost of the repairs, within thirty (30) calendar days of demand. Within thirty (30) days following the expiration or earlier termination of this Agreement, LICENSEE shall restore the PREMISES to the condition in which the PREMISES existed on the Effective Date of this Agreement, ordinary wear and tear and loss due to other casualty beyond LICENSEE's control excepted.

9. Electrical, Radio and Intermodulation Interference

9.1 LICENSEE shall operate its IMPROVEMENTS in a manner that will not cause radio frequency interference to the CITY or other licensees of the SITE in their use of any equipment or their conduct of any activity on the SITE pursuant to agreements which pre-date the installation and operation of LICENSEE's IMPROVEMENTS. LICENSEE's installation and operation of the IMPROVEMENTS shall be in compliance with all FCC requirements.

9.2 Prior to installation of any IMPROVEMENTS on the PREMISES, LICENSEE shall conduct bandwidth testing of its IMPROVEMENTS and CITY equipment to check bandwidth conflict between CITY's monitoring control system and LICENSEE's system. If such conflict occurs, LICENSEE shall take all steps necessary to resolve the conflict to the reasonable satisfaction of CITY. If the conflict cannot be remedied to the reasonable satisfaction of CITY, CITY may terminate this Agreement upon thirty (30) days written notice to LICENSEE.

9.3 LICENSEE shall not cause electrical, radio or intermodulation interference to CITY or to any other licensee who is using the PREMISES prior to or at the time of LICENSEE's installation of its IMPROVEMENTS. Should such interference occur, LICENSEE will promptly take all steps necessary to correct such interference within ten (10) days notice of the problem and, if such interference cannot be eliminated within thirty (30) days of such notice, LICENSEE shall suspend operations (transmissions) at the site, except for brief periods for testing, while such interference problems are studied and a means to eliminate the problem is determined. Any such method for correction of an interference problem must be reasonably acceptable to both CITY and LICENSEE. If the interference complained of cannot be eliminated after ninety (90) additional days, despite its good faith efforts, LICENSEE will remove the equipment which caused the interference from the PREMISES, or at its option, terminate this Agreement.

9.4 LICENSEE shall not cause electrical, radio or intermodulation interference to CITY at anytime during or after installation or operation of LICENSEE's IMPROVEMENTS. Moreover, LICENSEE's use will not in any material way adversely affect or interfere with CITY's signal operation or its communication system. Should such interference occur, LICENSEE will promptly take all steps necessary to correct such interference within ten (10)

days notice of the problem and, if such interference cannot be eliminated within thirty (30) days of such notice, LICENSEE shall suspend operations (transmissions) at the site, except for brief periods for testing, while the interference problems are studied and a means to eliminate the problem is found. Any such method for correction of an interference problem must be reasonably acceptable to both CITY and LICENSEE. If the interference complained of cannot be eliminated after ninety (90) additional days, despite its good faith efforts, LICENSEE will remove the equipment which caused the interference from the PREMISES, or at its option, terminate this Agreement.

9.5 CITY will not grant a license to any other party for the use of CITY's PREMISES without including in that license a provision stating that the party's use will not in any way adversely affect or interfere with LICENSEE's signal operation or its communication system. Such provision shall be similar to the provisions required of LICENSEE herein. Furthermore, license agreements with third parties will state that prior to installation of improvements, such third parties shall be required to conduct bandwidth testing of its equipment and the equipment of LICENSEE to check bandwidth conflict between third-party equipment and LICENSEE's equipment. If such conflict occurs, CITY shall take all steps necessary to resolve the conflict caused by such third-party to the reasonable satisfaction of LICENSEE. If the conflict cannot be remedied to the reasonable satisfaction of LICENSEE, CITY shall terminate such third-party's license upon thirty (30) days written notice to such third-party. LICENSEE shall have the right to terminate this Agreement upon ten (10) days written notice to CITY if another user of the PREMISES causes interference with LICENSEE's operations, and such interference is not corrected within thirty (30) days following the notice to such third party user causing the interference. In the event that LICENSEE experiences interference caused by a third-party licensee, LICENSEE agrees that it shall seek recourse solely from such third party. No compensation shall be due from CITY for damages, including, but not limited to, lost or anticipated profits.

9.6 LICENSEE shall have the sole burden of, and be responsible for all costs associated with, alleging and proving that another user of the PREMISES is causing significant interference. CITY shall not be responsible for the costs associated with the resolution of any dispute between users of the PREMISES, but shall be responsible for the enforcement of any of LICENSEE's rights provided by Section 9.5 of this Agreement.

9.7 Upon report to LICENSEE, and all other third parties with communications equipment on that CITY-owned property, of interference with any CITY-owned/operated radio emergency system, LICENSEE shall, within six (6) hours after such notification, perform an assessment of the source of the interference. In the event such interference results from LICENSEE's operations, LICENSEE agrees, within twelve (12) hours of first notification, to

2-14

propose a plan of action to eliminate such interference. CITY and LICENSEE agree to provide a technician or other qualified representative to assist in testing, formulating and coordination of a plan for resolution.

9.8 If such interference results from LICENSEE's operations, LICENSEE must correct such interference within twenty-four (24) hours of CITY's original notification to LICENSEE or shall discontinue all use of LICENSEE's IMPROVEMENTS upon the PREMISES. LICENSEE's IMPROVEMENTS cannot be reactivated until LICENSEE can demonstrate that the cause of such interference has been eliminated.

9.9 Each party agrees to provide the other with a telephone number through which that party can contact a representative of the other on a 24-hour per day, 7 days a week basis for the purpose of implementing the requirements of this paragraph.

10. Condition of Premises

10.1 CITY shall maintain the PREMISES in compliance with all applicable statutes, ordinances, regulations and rules required for CITY uses of the PREMISES and surrounding property, and in a manner which will not interfere with LICENSEE's reasonable use of the PREMISES. Upon expiration, cancellation, or termination of this Agreement, LICENSEE will have the right to remove its IMPROVEMENTS from the PREMISES at LICENSEE's cost and expense. Title to all remaining improvements shall belong to CITY. However, upon vacation of the PREMISES, LICENSEE shall surrender the PREMISES in substantially the same condition as received, except for ordinary wear and tear and loss due to other casualty beyond LICENSEE's control, as determined by CITY. If, as determined by CITY, the PREMISES are not surrendered in satisfactory condition, the LICENSEE shall pay CITY within thirty (30) business days of demand an amount equal to the actual cost to restore the PREMISES to substantially the same condition as received plus an administrative fee of ten percent (10%) of the restoration costs..

10.2 LICENSEE shall have sole responsibility for the maintenance, repair, and security of its IMPROVEMENTS, and shall keep same in good repair and condition during the term and all renewals and holdover tenancies of this Agreement.

10.3 Landscaping. LICENSEE will be required to provide a "landscape buffer" around the perimeter of the of the ground lease area. The planting material to be use will be Elderica Pine with a minimum separation of ten feet. It is understood that the LICENSEE will be required to maintain the "landscape buffer", including affected turf, throughout the term of the Agreement. LICENSEE will not be responsible for installing and maintaining an automatic

underground irrigation system in order to maintain the ground lease area. LICENSEE agrees to replace any landscaping that dies during the term of the Agreement.

10.4 LICENSEE shall keep the PREMISES free of debris and anything reasonably determined to be of a dangerous, noxious, or offensive nature or which would create a hazard or undue vibration, heat, noise, or interference.

10.5 In the event CITY or any other licensee undertakes painting, construction, or other alterations on the PREMISES, LICENSEE shall take reasonable measures at LICENSEE's cost to cover all of LICENSEE's IMPROVEMENTS and protect such from paint and debris fallout which may occur during the painting, construction, or alteration process. CITY shall not be responsible for any damages or costs incurred by LICENSEE due to the actions or omissions of any third-party licensees upon the PREMISES. CITY shall provide thirty (30) business days written notice to all licensees upon the PREMISES prior to CITY undertaking such painting, construction, or other alterations.

10.6 By taking possession of the PREMISES, LICENSEE accepts the PREMISES in the condition existing as of the Effective Date. CITY makes no representation or warranty with respect to the condition of the PREMISES and CITY shall not be liable for any latent or patent defect in the PREMISES. CITY agrees to notify LICENSEE of the existence of any latent defects of which the CITY has knowledge.

11. Construction, Installation and Operation

11.1 **Construction, Installation and Operation.** LICENSEE may, at its sole cost and expense, construct, install, operate, maintain, monitor, reconfigure and repair its IMPROVEMENTS. Not less than thirty (30) days prior to the date on which LICENSEE intends to commence construction of its IMPROVEMENTS, LICENSEE shall provide to the CITY for its approval, such approval not to be unreasonably withheld, conditioned or delayed, a proposal containing: (i) a written notice and plan describing in reasonable detail, the steps necessary to complete LICENSEE's construction and installation; (ii) a list and description of all IMPROVEMENTS to be installed on the PREMISES; (iii) a list of all contractors, subcontractors and other entities that will perform LICENSEE's construction and installation work; and (iv) copies, certificates or other proof that LICENSEE or LICENSEE's contractors and subcontractors have obtained all necessary permits and licenses for the performance of LICENSEE's work. CITY's failure to respond in writing to LICENSEE's proposal within twenty (20) days of CITY's receipt of the proposal shall constitute CITY's rejection of the proposal, and LICENSEE shall not commence LICENSEE's work. CITY's grant of approval under this Section shall not be construed as an assumption of liability or indemnification; nor shall such approval replace or constitute any approval

2-16

that LICENSEE is required to obtain from any duly authorized local authorities for any construction, installation or other element of LICENSEE's work.

11.2 **Marking and Lighting Requirements**. LICENSEE acknowledges that it shall be responsible for compliance with all tower or building marker and lighting requirements which may be required by the Federal Aviation Administration or the Federal Communication Commission in conjunction with LICENSEE's installation and maintenance of IMPROVEMENTS under this Agreement, as well as any expenses, fees or fines associated with the compliance or the non-compliance of LICENSEE's installation or maintenance of IMPROVEMENTS under this Agreement. If the LICENSEE does not cure a condition of noncompliance within the time-frame allowed by the citing agency, CITY may thereafter terminate this Agreement upon thirty (30) days written notice to LICENSEE.

11.3 **Inspection and Tests.** Upon the Effective Date and for the term of this Agreement, LICENSEE shall have reasonable access as provided in Section 7 above to the SITE and PREMISES as are necessary and approved by CITY for the purpose of inspection and planning. LICENSEE shall retain, or shall cause to be retained, at its sole cost and expense, certified and insured structural engineers to perform such an inspection and provide a structural report as to the structural integrity of the PREMISES, its maximum load capacity, and other aspects of the PREMISES, as appropriate. LICENSEE shall provide to CITY a copy of the report. LICENSEE shall not conduct construction, installation, operation, maintenance or repair of IMPROVEMENTS in a manner inconsistent with the structural report.

11.4 **Payment, No Mechanics Liens.** LICENSEE shall make full and prompt payment of all sums necessary to pay the costs of all installation, repairs and alterations, improvements, changes and other work done by LICENSEE in or to the PREMISES. Title to the IMPROVEMENTS shall be held by LICENSEE. CITY shall not be responsible for or with respect to the performance of LICENSEE's Work. LICENSEE shall pay or cause to be paid all costs associated with LICENSEE's work. LICENSEE shall not suffer or permit to be enforced against any portion of the SITE or PREMISES any (i) mechanic's, materialman's, contractor, subcontractor or other lien or claim arising from or in any way related to LICENSEE's work, or (ii) any other claim, mortgage, security interest, encumbrance, lien or other charge. Within thirty (30) days after recordation of any lien, encumbrance, judgment or similar item which affects the SITE or PREMISES in any way, LICENSEE shall obtain the complete discharge and release thereof at LICENSEE's sole expense or expenditure (without any cost being imposed upon CITY.) However, LICENSEE shall have the right to contest, in good faith, any mechanic's or materialman's lien upon the condition that LICENSEE provides a bond or other form of security reasonably acceptable to CITY in an amount sufficient to hold CITY fully and completely harmless from any and all liability therefor or on account thereof.

11.5 **Improvements to Premises; Removal.** All IMPROVEMENTS constructed, installed and operated by or on behalf of LICENSEE shall remain LICENSEE's personal property and are not fixtures. LICENSEE shall remove all IMPROVEMENTS at its sole expense within thirty (30) days following the expiration or earlier termination of this Agreement, and LICENSEE shall repair any damage to the PREMISES or SITE caused by such removal and fully restore the PREMISES or SITE to the same condition as existed prior to such damage at its sole cost and expense. LICENSEE shall provide to CITY in writing, by not later than the end of the prescribed thirty (30)-day period, notice that all IMPROVEMENTS have been removed in accordance with this Section. Failure of LICENSEE to remove any or all IMPROVEMENTS from the PREMISES and SITE within the prescribed thirty (30) days shall be construed as holdover pursuant to this Section, and all obligations and requirements, including payment of Rent Payments, shall continue to apply unless and until LICENSEE removes all IMPROVEMENTS and so notifies CITY.

11.6 **Liability for Damage/Outages.** LICENSEE shall be solely responsible for any damage caused by LICENSEE, its agents and/or contractors on or to the PREMISES or SITE that causes an interruption or outage in the services, operations or utilities of another licensee, and shall indemnify and hold harmless CITY, Signal Sites, Inc., and all of their respective partners, employees, agents, successors and assigns from all claims or actions for damages, including actual, incidental and consequential damages, brought by another licensee as a result of LICENSEE's, or its employees', contractors', agents', assigns' or licensees', willful, reckless or gross negligence or other conduct.

12. Communication Tower

12.1 This provision shall be implemented only in the instances where LICENSEE will be leasing ground space from the CITY and constructing a suitable support structure ("Communication Tower") upon which LICENSEE will install, operate, maintain, and repair LICENSEE's IMPROVEMENTS.

12.2 The LICENSEE shall have the right to construct a suitable support structure to be structurally capable of supporting up to three (3) wireless communications carriers. Structural design shall be provided to CITY for review and shall be in compliance with approved Site Plan reference para. 1.2. Possession of the Communication Tower remains that of LICENSEE. LICENSEE agrees to receive and reasonably negotiate requests of other wireless communications carriers ("COLLOCATEES"), according to then current Master Lease Agreement ("MLA") between LICENSEE and the COLLOCATEE, if applicable, to collocate their communications equipment at the PREMISES, but LICENSEE retains the sole right of approval for said COLLOCATEES, including

2.18

but not limited to, type and placement of antennas and ancillary coax cable runs. and will not unreasonably withhold, condition or delay approval of COLLOCATEES. LICENSEE agrees to pay the CITY forty percent (40%) of any compensation received by LICENSEE from all such COLLOCATEES. LICENSEE shall not allow any carrier to use space designated by LICENSEE for LICENSEE's own use. In the event CITY leases ground space to any COLLOCATEE, CITY shall retain one hundred percent (100%) of the rental compensation derived therefrom.

12.3 LICENSEE shall have the right to perform necessary tests including, but not limited to, Radio Frequency tests, and a structural analysis on such Communication Tower. Such costs shall be paid by the COLLOCATEE. A copy of any such structural analysis shall be provided to CITY.

12.4 CITY will provide notice to LICENSEE at least thirty (30) days prior to the commencement of co-location construction. LICENSEE shall not unreasonably withhold or obstruct access to such Communication Tower for the purposes of co-location.

13. Compliance with Laws

13.1 **By LICENSEE** LICENSEE, its employees, agents, designees, contractors, subcontractors, customers, invitees and licensees, shall comply in all respects and at all times with all applicable local, state and federal laws, statutes, ordinances, regulations, rulings, requirements, conditions, orders, licenses, permits, covenants, restrictions, approvals and consents pertaining to LICENSEE's services, LICENSEE's construction, installation and operation work, IMPROVEMENTS and LICENSEE's use of the PREMISES. Without limiting the generality of the preceding sentence, LICENSEE shall fully and timely observe and comply with applicable laws, regulations, policies and requirements concerning health and/or public safety, including standard industry equipment safety regulations (*e.g.*, NEBs, IEEE, Federal Communications Commission ("**FCC**") and BellCore standards) and shall not use the PREMISES or operate the IMPROVEMENTS in any manner which is inconsistent therewith. LICENSEE shall, at LICENSEE's sole cost and expense, promptly apply for and use its best efforts to obtain and maintain all necessary licenses, permits, approvals and consents required or necessary for the construction and operation of the IMPROVEMENTS. In the event LICENSEE fails to obtain any required license, permit, approval or consent to construct and operate the IMPROVEMENTS, through no fault of LICENSEE, LICENSEE shall have the right to terminate this Agreement in accordance with Section 5 of this Agreement.

13.2 **By CITY.** CITY shall comply in all material respects, and shall exercise commercially reasonable efforts to cause its employees, agents, designees, contractors, subcontractors, customers, invitees and licensees to

comply in all material respects with all laws, ordinances, orders, rules and regulations of all governmental or judicial authorities having jurisdiction thereof, whether state, federal or local, relating to CITY's leasehold interest in the SITE.

14. Complaint Resolution

If either LICENSEE or CITY receives a written complaint regarding LICENSEE's operations and such complaint, if reasonably determined by the City to be valid and if the cause of such complaint would cause LICENSEE to be in default of this Agreement, LICENSEE shall respond within twenty-four (24) hours of receipt of such written complaint. LICENSEE shall respond with a written explanation to each such complaint with detail of its investigation into the incident upon which the complaint was based (the "Incident") and the actions that LICENSEE has taken to resolve the Incident including, when necessary, all future actions LICENSEE will take to fully resolve the Incident or prevent a recurrence of the Incident. If the Incident cannot be resolved to the reasonable satisfaction of the complainant within fifteen (15) days, LICENSEE shall provide a schedule for completion of its plan to resolve or prevent the Incident, such schedule is subject to CITY approval, such approval not to be unreasonably withheld, conditioned or delayed. If future action is necessary, LICENSEE shall include a schedule for completion of its plan to correct or prevent the Incident, such schedule is subject to CITY approval, such approval not to be unreasonably withheld, conditioned or delayed. If CITY must step in and resolve a complaint regarding LICENSEE's operations, LICENSEE shall reimburse CITY for all reasonable expenses incurred. If CITY imposes upon LICENSEE a resolution to an Incident that does not involve a breach of the Agreement by LICENSEE, the breach by LICENSEE of any federal, state, or local law or ordinance or the commission by LICENSEE of any negligent or intentional act or omission to a person that causes bodily injury or property damage and LICENSEE does not wish to resolve the Incident in the manner directed by CITY, LICENSEE may terminate this Agreement upon thirty (30) days notice without penalty.

15. Utility Easements and Utility Cost

15.1 LICENSEE shall pay directly to all public utility service companies, before delinquency, all charges for the electricity, water and other utility services that LICENSEE consumes in connection with the installation and operation of LICENSEE's IMPROVEMENTS and which are separately metered and charged to LICENSEE by any public utility service company, without any expense therefor being imposed upon CITY.

15.2 If LICENSEE first obtains CITY's written consent, which may be given or withheld for any reason or no reason in the CITY's sole discretion, LICENSEE shall have the right to obtain electricity and other public utility services from the existing outlets available at the PREMISES. Absent such

2-20

consent, LICENSEE shall obtain separate public utility services from any company that will provide such services to the PREMISES (which services may include an approved battery-powered or diesel standby power generator located on the PREMISES for LICENSEE's exclusive use).

15.3 LICENSEE shall not permit any charges for public utility services to accumulate or become a lien on the SITE. If LICENSEE fails to pay any such charge required to be paid by LICENSEE pursuant to this Section, CITY may, but shall not be required to, pay such charge on LICENSEE's behalf. If CITY pays any such charge on behalf of LICENSEE or incurs any cost with respect to any grant of any public utility service easement for the benefit of LICENSEE pursuant to this Section, LICENSEE shall reimburse and pay to CITY an amount equal to all such charges so paid and all such easement costs so incurred, within thirty (30) days after receipt of CITY's demand, as Additional Fees.

15.4 **Additional Utility/Power Equipment.** In the event that LICENSEE is required to or otherwise decides to install, operate and use additional equipment to provide electricity or other utility services required for the operations of LICENSEE's IMPROVEMENTS, such installation, operation and use shall comply in all respects with the terms and conditions set forth in this Agreement.

16. Taxes

16.1 LICENSEE agrees to timely reimburse CITY for all taxes that are assessed against CITY, if any, due to the real property taxes attributable to LICENSEE's IMPROVEMENTS or use of the PREMISES and IMPROVEMENTS constructed or maintained by LICENSEE on or about the PREMISES; provided, however, CITY shall use its best efforts to provide prior notification of any taxes for which LICENSEE is to be charged, so LICENSEE will have the opportunity to appear before the taxing authority and contest any assessment.

16.2 If LICENSEE fails to pay any such taxes after such contest of any assessment and for which LICENSEE is obligated, CITY may, but shall not be required to, pay such taxes on LICENSEE's behalf. If CITY pays any such taxes on behalf of LICENSEE pursuant to the preceding sentence, LICENSEE shall reimburse and pay to CITY an amount equal to any such taxes so paid, plus an administrative fee of ten percent (10%) of the taxes, within thirty (30) days after demand as Additional Rent.

17. Liability and Indemnification

17.1 LICENSEE shall at all times comply with all laws and ordinances and all applicable rules and regulations of municipal, state and federal government authorities relating to the installation, maintenance, height, location,

use, operation, and removal of the IMPROVEMENTS, authorized herein, and, **except for the negligence or willful misconduct of CITY, its officers, officials, agents, servants or employees**, shall fully release, defend, indemnify and hold harmless CITY, its officers, officials, agents, servants or employees against any and all claims, damages, lawsuits, losses, costs, or expenses which may be sustained or incurred by CITY, its officers, officials, agents, servants or employees as a result of LICENSEE's installation, operation, or removal of such IMPROVEMENTS.

17.2 LICENSEE undertakes and assumes for its officers, agents, employees, servants, affiliates, contractors and subcontractors, all risk of dangerous conditions, if any on or about the PREMISES, and, **except for the negligence or willful misconduct of CITY, its officers, officials, agents, servants or employees**, LICENSEE hereby agrees to release, defend, indemnify and hold harmless CITY, its officers, officials, agents, servants and employees against and from any claim asserted or liability imposed upon CITY, its officers, officials, agents, servants, and employees for personal injury or property damage to any person arising out of LICENSEE's installation, operation, maintenance, condition or use of the PREMISES or LICENSEE's IMPROVEMENTS or LICENSEE's failure to comply with any applicable federal, state, or local statute, ordinance or regulation.

17.3 LICENSEE represents and warrants that its use of the PREMISES herein will not generate any hazardous substance, and it will not store or dispose on the PREMISES nor transport to or over the PREMISES any hazardous substance. The storage of acid storage batteries on the Premises as necessary for use in the event of a power outage, and the installation on the premises of a diesel or propane generator for emergency use to provide electricity in the event of a power outage shall not be a violation of this Section 17. LICENSEE further agrees to release, defend, indemnify, and hold CITY, its officers, officials, agents, servants and employees, harmless from and against any damage, loss, or expense or liability resulting from the generating, transporting, storage or disposal of such hazardous substances including all attorneys' fees, costs and penalties incurred as a result thereof. "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term by any applicable federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death, or disease, including diesel and propane fuel.

2-22

City Site ID: _____
Licensee Site ID: JACK_CARTER Location: 105022

18. Insurance

18.1 LICENSEE shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension or renewal thereof, at LICENSEE's sole expense, liability insurance and workers' compensation insurance, and a certificate of insurance shall be submitted to and approved by CITY prior to the Effective Date of this Agreement. LICENSEE must provide insurance in compliance with **Appendix "B",** attached hereto and incorporated herein for all purposes. At the time of an extension or renewal of this license agreement, LICENSEE shall provide a certificate of insurance for the added term that shows LICENSEE meets all insurance requirements under Appendix B.

18.2 In the event that LICENSEE uses third-party contractors or subcontractors to provide services or to perform work upon the PREMISES, LICENSEE shall include in all contracts, subcontracts, and bid documents with such third parties, the requirement that: (a) each such third party shall provide CITY with separate certificates of insurance or such other documentation as is reasonably required by CITY to evidence that each such third party obtains and maintains insurance coverage consistent with the insurance requirements of this Agreement throughout the term of its contract with LICENSEE; and (b) such third party shall execute the Contractor Agreement, a copy of which is attached hereto and incorporated herein as **Appendix "B-1"**,. All such insurance certificates and other documents evidencing coverage shall contain an affirmative statement of the contractor, subcontractor, or other third party that such third party shall notify the City of Plano in the event that the policy lapses or is canceled for any reason.

19 Notice

19.1. Any notice or demand required or desired to be given to any Party pursuant to this Agreement shall be in writing, shall be delivered to the address set forth below and shall be deemed validly served, given, delivered or made only if (i) personally delivered (including delivery by a commercially-recognized courier which provides service between the point-of-origin and the point-of-destination); or (ii) deposited in the United States mail, certified or registered, postage prepaid, return receipt requested. Service by United States mail shall be deemed made on the date actually received.

CITY	LICENSEE
City of Plano c/o Intergovernmental Relations Department PO Box 860358 Plano, Texas 75086	Dallas MTA, L.P. d/b/a Verizon Wireless 180 Washington Valley Road Bedminster, New Jersey 07921 Attn: Network Real Estate

CITY or LICENSEE may from time to time designate any other address for this purpose by written notice to the other party.

20. Remedies

20.1 LICENSEE's failure to timely remit payments due hereunder three times within a 12-month period shall be a breach of this Agreement for which LICENSEE shall be given fifteen (15) days from receipt of written notice from CITY (that such payment is overdue for the third time within such 12-month period) to cure. If LICENSEE fails to make payment as required; if LICENSEE abandons or vacates the PREMISES; or if LICENSEE becomes insolvent; and has not filed for bankruptcy, CITY shall have the right, at its option, in addition to and not exclusive of any other remedy CITY may have hereunder or by operation of law, with fifteen (15) days notice, require LICENSEE to re-enter the PREMISES and remove the IMPROVEMENTS therefrom. Under no circumstances shall CITY or anyone acting on CITY's behalf attempt to remove LICENSEE's communications equipment, except as provide for in Section 5.5 herein. Upon such occurrence, CITY may either (a) declare this Agreement and license granted herein at an end, in which event LICENSEE shall immediately pay CITY a sum of money equal to the total of (i) the amount of Rental Fees accrued through the date of termination; (ii) the amount by which the Rental Fees reserved for the balance of the term exceeds the amount of such rental loss that the LICENSEE proves could be reasonably avoided (net of the costs of such reletting); and (iii) any other reasonable amounts necessary to compensate CITY for all detriment proximately caused by LICENSEE's failure to perform its obligations under this Agreement, or (b) without terminating this Agreement, relet the PREMISES, or any part thereof, for the account of LICENSEE upon such terms and conditions as CITY may deem advisable, and any moneys received from such reletting shall be applied first to the expenses of such reletting and collection, including reasonable attorneys' fees, any real estate commissions paid; and, thereafter, toward payment of all sums due or to become due to CITY hereunder, and if a sufficient sum shall not be thus realized to pay such sums and other charges, LICENSEE shall pay CITY any deficiency monthly, notwithstanding that CITY may have received Rental Fees in excess of the Rental Fees stipulated in this Agreement in previous or subsequent months, and CITY may bring an action therefor as such monthly deficiency shall arise.

20.2 No re-entry and taking of possession of the PREMISES by CITY shall be construed as an election on CITY's part to terminate this Agreement, regardless of the extent of renovations and alterations by CITY, unless a written notice of such intention is given to LICENSEE by CITY.

2-24

21. Force Majeure

21.1 Notwithstanding any other provision in this Agreement to the contrary, neither Party will have any liability to the other with respect to its failure to perform its obligations under this Agreement, except for the payment of amounts due, if such failure is due to any of the following events (each a "Force Majeure" event): (i) the failure of any equipment or software under the control of a person, firm or entity not affiliated with such Party; (ii) fire, flood, earthquake, law or government regulation; or (iii) any other cause beyond the reasonable control of such Party. In any such case, the Parties' time for performance under this Agreement and the term hereof, to the extent affected by any of the foregoing, shall be correspondingly extended; provided, however, that if such condition shall continue in effect for more than 180 days, either Party shall have the right to terminate this Agreement upon thirty (30) days notice.

22. Miscellaneous Provisions

22.1 **Modifications**. LICENSEE's operations and all CITY approved modifications to the PREMISES must at all times comply with the terms of this Agreement, all applicable federal, state and local laws and ordinances and all amendments thereto.

22.2 **Entire Agreement**. This Agreement, together with all Appendices attached hereto and incorporated herein constitutes the entire agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written agreement between the Parties that in any manner relates to the subject matter of this Agreement.

22.3 **Capacity**. Both LICENSEE and CITY represent that they have full capacity and authority to grant all rights and assume all obligations they have granted and assumed under this Agreement.

22.4 **Governing Law**. The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the Parties, shall be governed by the laws of the State of Texas, and exclusive venue for any action concerning this Agreement shall be **in a court with jurisdiction over** Collin County, Texas.

22.5 **Amendment**. This Agreement may only be amended by the mutual written agreement signed by the parties hereto.

22.6 **Legal Construction; Severability**. In the event that any one or more of the provisions contained in the Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or

unenforceability shall not affect the other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

22.7 **Nonwaiver**. No right or remedy granted herein or reserved to the parties is exclusive of any right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every right or remedy given hereunder. No covenant or conditions of this Agreement may be waived without consent of the Parties. It is further agreed that one (1) or more instances of forbearance by a Party in the exercise of its rights herein shall in no way constitute a waiver thereof.

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

22.9 **Successors and Assigns**.

(a) CITY and LICENSEE each bind themselves, their successors, executors, administrators and assigns to the other party to this Agreement. Neither CITY nor LICENSEE will assign, sublet, subcontract or transfer any interest in this Agreement without the written consent of the other party. No assignment, delegation of duties or subcontract under this Agreement will be effective without the written consent of CITY. LICENSEE shall not assign, sublet, subcontract, transfer or allow the use of any interest in the PREMISES or any use of LICENSEE's IMPROVEMENTS, including but not limited to equipment, lines, channels or frequencies, on the PREMISES without the prior written consent of CITY. CITY's consent may be conditioned upon LICENSEE successfully obtaining contracts from such third parties wherein those parties agree to directly compensate CITY for all benefits incurred by the use of the PREMISES.

(b) Notwithstanding anything in Section 22.9(a) to the contrary, LICENSEE may assign this Agreement to any parent, subsidiary or affiliate, or any entity that acquires all or substantially all of LICENSEE's assets in the market where the Premises are located

2-26

without CITY'S consent. Notwithstanding any assignment permitted under this Section or otherwise under this Agreement, LICENSEE shall remain absolutely and unconditionally primarily liable to pay and perform each and all of the obligations set forth in this Agreement prior to said assignment and shall be relieved of all future performance, liability and obligations after said assignment.

(c) If CITY shall, at any time, relinquish its ownership or otherwise dispose of the PREMISES, CITY shall be automatically released from all obligations under and pursuant to this Agreement that accrue after such disposition; provided, however, that such relinquishment of ownership or disposition of the PREMISES shall be subject to LICENSEE's rights under this Agreement. If the PREMISES are so disposed of, LICENSEE shall not disavow any of LICENSEE's obligations pursuant to this Agreement but shall attorn to the purchaser or transferee thereof for the performance of CITY's obligations under this Agreement.

22.10 **Applicable Laws**. This Agreement is entered into subject to the charter and ordinances of CITY as they may be amended from time to time, and is subject to and is to be construed, governed and enforced under all applicable federal and state laws.

22.11 **Subordination to Mortgage**. As to any mortgage now or subsequently placed upon any property of which the PREMISES are a part, of which CITY shall notify LICENSEE in writing, shall be deemed to be prior in time and senior to the rights of the LICENSEE under this Agreement. LICENSEE subordinates all of its interest in the Premises created by this Agreement to the lien of any such mortgage. CITY and LICENSEE shall, at the other Party's request, execute any additional documents necessary to indicate this subordination, provided that such mortgage shall not disturb possession of LICENSEE hereunder.

22.12 **Contract Interpretation**. Both parties have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement.

City Site ID: _____
Licensee Site ID: JACK_CARTER Location: 105022

EXECUTED on the _____ day of _____, 200___.

LICENSEE:

DALLAS MTA, L.P., a Texas Limited Partnership, d/b/a VERIZON WIRELESS

BY: Verizon Wireless Texas, LLC, a Texas Limited Liability Company, Its General Partner

BY: _____
Hans F. Leutenegger
Area Vice President – Network, South Area

CITY:

CITY OF PLANO, TEXAS, a home rule municipal corporation

BY: _____
Thomas H. Muehlenbeck
CITY MANAGER
1520 Avenue K
P.O. Box 860358
Plano, TX 75086-0358

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

CITY'S TAX ID#: 75-6000640

2-28

City Site ID: _____
Licensee Site ID: JACK_CARTER Location: 105022

ACKNOWLEDGMENTS

STATE OF NORTH CAROLINA §
§
COUNTY OF MECKLENBURG §

This instrument was acknowledged before me on the _____ day of _____, 2005, by **HANS F. LEUTENEGGER**, Area Vice President – Network, South Area of **Verizon Wireless Texas, LLC**, a Texas Limited Liability Company, General Partner of **DALLAS MTA, L.P.**, a Texas Limited Partnership, d/b/a Verizon Wireless, on behalf of said limited liability company and said partnership.

_____
Notary Public, State of Texas

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2005, by **THOMAS H. MUEHLENBECK**, City Manager of the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, on behalf of said corporation.

_____
Notary Public, State of Texas

City Site ID: _____
Licensee Site ID: JACK_CARTER Location: 105022

APPENDIX "A"

SITE PLAN

(See attached)

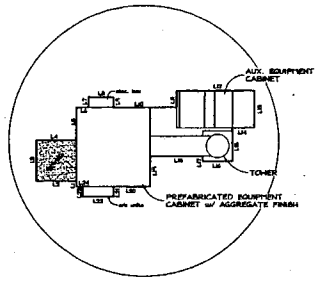
2-30

BASIS OF BEARING:
NAD-27 GRID NORTH

Site Name: JACK CARTER, Site ID #: R0044A

City of Plano, Collin County, Texas

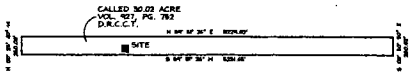
AS-BUILT SURVEY FOR WIRELESS COMMUNICATIONS ANTENNA AND ACCESSORY CABINET



LEASE SITE DETAIL
NOT TO SCALE

LINE	BEARING	DIST.
L1	N 00° 14' 18" W	0.60'
L2	S 89° 45' 42" W	4.00'
L3	N 00° 14' 18" W	4.00'
L4	N 89° 45' 42" E	4.00'
L5	N 00° 14' 18" W	3.30'
L6	N 89° 45' 42" E	1.20'
L7	N 00° 14' 18" W	1.00'
L8	N 89° 45' 42" E	2.50'
L9	S 00° 14' 18" E	1.00'
L10	N 89° 45' 42" E	6.30'
L11	N 00° 14' 18" W	1.60'
L12	N 89° 45' 42" E	7.80'

LINE	BEARING	DIST.
L13	S 00° 14' 18" E	3.70'
L14	S 89° 45' 42" W	2.20'
L15	S 00° 14' 18" E	3.30'
L16	S 89° 45' 42" W	3.00'
L17	N 00° 14' 18" W	0.50'
L18	S 89° 45' 42" W	5.20'
L19	S 00° 14' 18" E	3.00'
L20	S 89° 45' 42" W	3.70'
L21	S 00° 14' 18" E	1.00'
L22	S 89° 45' 42" W	3.30'
L23	N 00° 14' 18" W	1.00'
L24	S 89° 45' 42" W	0.60'



FEE SIMPLE
NOT TO SCALE

LEGAL DESCRIPTION
TEXAS UTILITIES ELECTRIC COMPANY
EASEMENT PER VOLUME 927, PAGE 752
DEED RECORDS, COLLIN COUNTY, TEXAS

All that certain tract of land in the George M. Plessie Survey, Abstract No. 615, and the Alfred Harrington Survey, Abstract No. 426, Collin County, Texas, containing 30.02 acres of land, being part of a 94.978 acre tract of land described in deed dated April 1, 1974, from Dan B. Harrington to Robert S. Folsom, Trustee, as now of record in Volume 928, Page 740, being also a part of a 93.213 acre tract of land described in deed dated April 1, 1974, from R.L. Harrington, Jr. to Robert S. Folsom, Trustee, as now of record in Volume 928, Page 757; being also part of a 94.268 acre tract of land described in deed dated April 1, 1974, from R.L. Harrington, et ux, to Robert S. Folsom, Trustee, as now of record in Volume 928, Page 754; being part of a 1.88 acre tract of land that was conveyed by deed dated November 18, 1948, from Clinton A. Harrington to John F. Harrington, as now of record in Volume 343, Page 66, said 1.83 acre tract being also conveyed by deed dated January 15, 1974, from Hagar-Penfield, a partnership to Robert S. Folsom Investments, Inc., as now of record in Volume 849, Page 298, all of the above in the Deed Records of Collin County, Texas, said tract being described by metes and bounds as follows:

BEGINNING at a point in the west boundary line of the above referred to 1.88 acre tract of land, same being the East boundary line of property owned by George Jones, same also being the West survey line of the George M. Plessie Survey, Abstract No. 615, said point being located South 00 degrees 25 minutes 40 seconds East, 765.00 feet from the Northwest corner of said 1.83 acre tract of land, said corner being also the Northwest corner of the said Plessie Survey;

THENCE North 89 degrees 51 minutes 26 seconds East, 5229.82 feet to a point for corner located in the East boundary line of the above referred to 94.608 acre tract of land, same being the West right-of-way line of Farm-To-Market Road No. 2478 (Custer Road);

THENCE with said common boundary line South 00 degrees 50 minutes 50 seconds East, 250.02 feet to a point for corner;

THENCE South 89 degrees 51 minutes 26 seconds West, 5231.65 feet to a point for corner located in the West boundary line of said 1.83 acre tract of land, same being the East boundary line of property owned by George Jones, same also being the West survey line of the George M. Plessie Survey, Abstract No. 615;

THENCE with said common boundary line North 00 degrees 25 minutes 40 seconds West, 250.00 feet to the Place of Beginning, being a strip of land 250.00 feet width, located as above described and containing 30.02 acres of land.

LEASE SITE

Being a 0.005 acre tract of land situated in the City of Plano, Collin County, Texas and being part of that certain 30.02 acre tract as conveyed for use as an easement and right-of-way by deed recorded in Volume 927, Page 752, Deed Records, Collin County, Texas and being more particularly described by metes and bounds as follows:

COMMENCING at the southeast corner of said 30.02 acre tract of land;

THENCE North 89 degrees 51 minutes 26 seconds East, a distance of 1478.76 feet to a point in the south line of said 30.02 acre tract of land and being in the north right-of-way line of Pleasant Valley;

THENCE North 00 degrees 08 minutes 34 seconds West, a distance of 46.74 feet to the POINT OF BEGINNING;

THENCE North 00 degrees 14 minutes 18 seconds West, a distance of 0.60 feet to a point for corner;

THENCE South 89 degrees 45 minutes 42 seconds West, a distance of 4.00 feet to a point for corner;

THENCE North 00 degrees 14 minutes 18 seconds West, a distance of 4.00 feet to a point for corner;

THENCE North 89 degrees 45 minutes 42 seconds East, a distance of 4.00 feet to a point for corner;

THENCE North 00 degrees 14 minutes 18 seconds West, a distance of 3.30 feet to a point for corner;

THENCE North 89 degrees 45 minutes 42 seconds East, a distance of 1.20 feet to a point for corner;

THENCE North 00 degrees 14 minutes 18 seconds West, a distance of 1.00 feet to a point for corner;

THENCE North 89 degrees 45 minutes 42 seconds East, a distance of 2.50 feet to a point for corner;

THENCE South 00 degrees 14 minutes 18 seconds East, a distance of 1.00 feet to a point for corner;

THENCE North 89 degrees 45 minutes 42 seconds East, a distance of 6.30 feet to a point for corner;

THENCE North 00 degrees 14 minutes 18 seconds West, a distance of 1.60 feet to a point for corner;

THENCE North 89 degrees 45 minutes 42 seconds East, a distance of 7.80 feet to a point for corner;

THENCE South 00 degrees 14 minutes 18 seconds East, a distance of 3.70 feet to a point for corner;

THENCE South 89 degrees 45 minutes 42 seconds West, a distance of 2.20 feet to a point for corner;

THENCE South 00 degrees 14 minutes 18 seconds East, a distance of 3.30 feet to a point for corner;

THENCE South 89 degrees 45 minutes 42 seconds West, a distance of 3.00 feet to a point for corner;

THENCE North 00 degrees 14 minutes 18 seconds West, a distance of 0.50 feet to a point for corner;

THENCE South 89 degrees 45 minutes 42 seconds West, a distance of 5.20 feet to a point for corner;

THENCE South 00 degrees 14 minutes 18 seconds East, a distance of 3.00 feet to a point for corner;

THENCE South 89 degrees 45 minutes 42 seconds West, a distance of 3.70 feet to a point for corner;

THENCE South 00 degrees 14 minutes 18 seconds East, a distance of 1.00 feet to a point for corner;

THENCE South 89 degrees 45 minutes 42 seconds West, a distance of 3.30 feet to a point for corner;

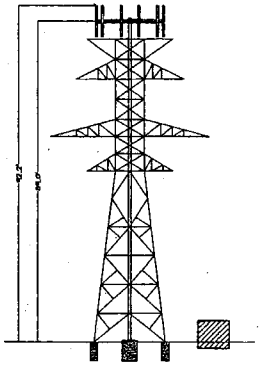
THENCE North 00 degrees 14 minutes 18 seconds West, a distance of 1.00 feet to a point for corner;

THENCE South 89 degrees 45 minutes 42 seconds West, a distance of 0.60 feet to the POINT OF BEGINNING and CONTAINING 194 square feet or 0.005 acre of land, more or less.

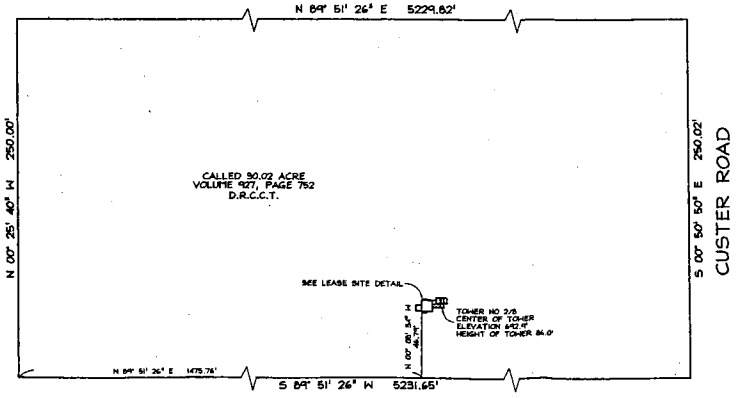
I, JAMES P. KEENE, a Registered Professional Land Surveyor of the State of Texas, have prepared this plat from an actual survey made on the ground under my personal supervision.

This site is not located in a 100 year flood plain, as defined by the U.S. Department of Housing and Urban Development, pursuant to the Flood Disaster Protection Act of 1973, as amended, as reflected by Flood Insurance Rate Map, which such map covers the area in which the property is situated.

REGISTERED PROFESSIONAL LAND SURVEYOR

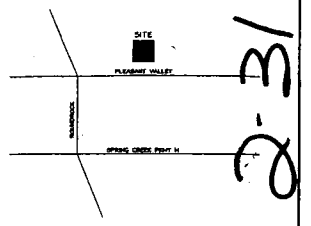


NORTH TOWER ELEVATION
NOT TO SCALE
GROUND ELEVATION (AMSL) = 692.9' (NGVD 29)
NAD27 LATITUDE : 33° 03' 36.94" N
LONGITUDE : 96° 44' 43.43" W



SITE LOCATION MAP

NOT TO SCALE



CITY OF PLANO
COLLIN COUNTY, TEXAS
MAPSCO # 657D

2-31

GEOGRAPHIC COORDINATES

ALL COORDINATES BASED ON THE NORTH AMERICAN DATUM OF 1927

GENERAL NOTES:

THIS SURVEY IS VALID ONLY WITH ORIGINAL SIGNATURE IN BLACK INK

AS-BUILT SURVEY
FOR WIRELESS COMMUNICATIONS ANTENNA AND ACCESSORY CABINET

JACK CARTER
SITE # R0044A
ROUNDROCK ROAD AND PLEASANT VALLEY
TDSTPM ML 2
TOWER # 2/3
COLLIN COUNTY, TEXAS
MAPSCO # 657D

REVISIONS:
DATE:

PRECISE LAND SURVEYING, INC.
4915 GUS THOMASSON MESQUITE, TEXAS 75150
(972) 681-7072 FAX (972) 279-1508

DATE: 12-14-99
SCALE: 1" = 40'
DRAWN BY: BE
CHECKED BY: PLS
FILE NAME: 360-0012.dwg

City Site ID: _____
Licensee Site ID: JACK_CARTER Location: 105022

APPENDIX "B"
INSURANCE

Licensee shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Licensee, Licensee's agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. ISO Form Number GL 0002 (Ed 1/72) or equivalent forms covering Comprehensive General Liability and ISO Form Number GL 0404 covering Broad Form Comprehensive General Liability; or ISO Commercial General Liability coverage ("occurrence" Form CG 0001). "Claims made" form is unacceptable except for professional liability.

2. Automobile liability shall include all owned, hired and non-owned vehicles.

3. Workers' Compensation insurance as required by the Labor Code of the State of Texas, including Employers' Liability Insurance.

B. Minimum Limits of Insurance

Licensee shall maintain limits not less than:

1. Commercial General Liability: $5,000,000 per occurrence for bodily injury, personal injury and property damage. $10,000,000 Aggregate Policy will include coverage for (a) Premises-Operations; (b) Broad Form Contractual Liability; (c) Products and Completed Operations; (d) Use of Contractors and Subcontractors; (e) Personal Injury; (f) Broad Form Property Damage; (g) Explosion Collapse and Underground (XCU) Coverage, Fire Damage, Medical Expense.

2. Automobile liability: $1,000,000 combined single limit per accident, for bodily injury and property damage.

2-32

3. Workers' Compensation and Employer's Liability: Workers' Compensation limits as required by the Labor Code of the State of Texas and Statutory Employer's Liability Limits.

C. Deductibles and Self-Insured Retentions

N/A

D. Other Insurance Provisions

The policies are to contain, or be generic endorsements with standard certificates for general and automobile liability coverage to contain the following provisions:

1. General Liability and Automobile Liability Coverage

(a) The City, its officers, officials, employees, Boards and Commissions and volunteers are to be added as "Additional Insureds" as respects liability arising out of activities performed by or on behalf of the Licensee, products and completed operations of the Licensee, premises owned, occupied or used by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers. It is understood that the business auto policy under "Who is Insured" automatically provides liability coverage in favor of the City as an additional insured.

(b) The Licensee's insurance coverage shall be primary insurance as respects Licensee's operations. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be excess of the Licensee's insurance and shall not contribute with it in this respect.

(c) [INTENTIONALLY DELETED]

(d) The Licensee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insured's liability.

2. Workers' Compensation and Employer's Liability Coverage

   The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by the Licensee for the City.

3. All Coverages

   Each insurance program required by this clause shall be directed to state that coverage shall not be suspended, voided, canceled or non-renewed, reduced in coverage or in limits, except after ten (10) days prior written notice by mail has been given to the City.

E. Acceptability of Insurers

The City prefers that Insurance be placed with insurers with an A.M. Best's rating of no less than A-:VI, or, A or better by Standard & Poors. This requirement will be waived for workers' compensation coverage only for those Licensees whose workers' compensation coverage is placed with companies who participate in the State of Texas Workers' Compensation Assigned Risk Pool. Professional Liability carriers will need to be approved by the Risk Manager.

F. Verification of Coverage

Contractor shall furnish the City with certificates of insurance effecting coverage required. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be on standard insurance certificate forms and are to be received and approved by the City before work commences.

2-34

City Site ID: _____
Licensee Site ID: JACK_CARTER Location: 105022

APPENDIX "B-1"

CONTRACT BY AND BETWEEN
CITY OF PLANO, TEXAS
AND
_____, d/b/a _____

THIS CONTRACT is made and entered by and between and _____ **d/b/a** _____, hereinafter referred to as "Licensee," _____, hereinafter referred to as "Contractor," and the **CITY OF PLANO, TEXAS**, hereinafter referred to as "City," to be effective subsequent to execution by the Plano City Manager or his designee.

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

I.
SCOPE OF WORK

Contractor shall provide all supervision, labor, materials and equipment necessary for the performance of all obligations required under the terms of the contract between Licensee and _____(Contractor's name) dated _____, 200_.

II.
THIRD PARTY INTEREST

It is agreed by and between the parties that the City has an interest in the proper performance of this Contract, and that the City may bring suit for failure to comply with the specifications.

Contractor acknowledges that Licensee has no property interest in the premises provided by the City, and agrees that Contractor will not file any Lien against the City's premises should a dispute arise between Licensee and Contractor.

Contractor agrees that it shall not provide any work or services of any nature unless Contractor has obtained the insurance coverage as specified herein.

City Site ID: _____
Licensee Site ID: JACK_CARTER Location: 105022

III.
VENUE

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

IV.
INDEPENDENT CONTRACTOR

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

V.
INSURANCE AND CERTIFICATES OF INSURANCE

Contractor shall procure and maintain for the duration of the contract insurance as set forth below.

Licensee shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Licensee, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the Contractor's bid.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. ISO Form Number GL 0002 (Ed 1/72) covering Comprehensive General Liability and ISO Form Number GL 0404 covering Broad Form Comprehensive General Liability; or ISO Commercial General Liability coverage ("occurrence" Form CG 0001). "Claims made" form is unacceptable except for professional liability.

2. Automobile liability shall include all owned, hired and non-owned vehicles.

2-36

3. Workers' Compensation insurance as required by the Labor Code of the State of Texas, including Employers' Liability Insurance.

4. Professional Liability (when applicable).

B. Minimum Limits of Insurance
Licensee shall maintain limits not less than:

1. Commercial General Liability: $500,000 per occurrence for bodily injury, personal injury and property damage. $1,000,000 Aggregate Policy will include coverage for (a) Premises - Operations; (b) Broad Form Contractual Liability; (c) Products and Completed Operations; (d) Use of Contractors and Subcontractors; (e) Personal Injury; (f) Broad Form Property Damage; (g) Explosion Collapse and Underground (XCU) Coverage (when applicable), Fire Damage, Medical Expense. NOTE: The aggregate loss limit applies to each project.

2. Automobile liability: $500,000 combined single limit per accident, for bodily injury and property damage.

3. Workers' Compensation and Employer's Liability: Workers' Compensation limits as required by the Labor Code of the State of Texas and Statutory Employer's Liability Limits.

4. Professional Liability.

C. Deductibles and Self-Insured RetentionsAny deductible or self-insured retentions must be declared to and approved by the City.

D. Other Insurance Provisions
The policies are to contain, or be endorsed to contain the following provisions:

1. General Liability and Automobile Liability Coverages

(a) The City, its officers, officials, employees, Boards and Commissions and volunteers are to be added as "Additional Insureds" as respects liability arising out of activities performed by or on behalf of the Licensee, products and completed operations of the Licensee, premises owned, occupied or used by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers. It is understood that the business auto policy under "Who is an Insured" automatically provides liability coverage in favor of the City.

(b) The Licensee's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be excess of the Licensee's insurance and shall not contribute with it.

(c) Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the City, its officers, officials, employees, Boards and Commissions or volunteers.

(d) The Licensee's insurance shall apply separately to each insured against who claim is made or suit is brought, except with respect to the limits of the insured's liability.

2. Workers' Compensation and Employer's Liability Coverage
The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by the Licensee for the City.

3. All Coverages
Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled or non-renewed by either party, reduced in coverage or in limits except after ten (10) days prior written notice by certified mail, return receipt requested, has been given to the City..

E. Acceptability of Insurers
The City prefers that Insurance be placed with insurers with an A.M. Best's rating of no less than A-:VI, or, A or better by Standard & Poors. This requirement will be waived for workers' compensation coverage only for those Licensees whose workers' compensation coverage is placed with companies who participate in the State of Texas Workers' Compensation Assigned Risk Pool. Professional Liability carriers will need to be approved by the Risk Manager.

F. Verification of Coverage
Contractor shall furnish the City with certificates of insurance effecting coverage required. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be on forms provided by the City and are to be received and approved by the City before work commences. The City

2-38

reserves the right to require complete, certified copies of all required insurance policies, at any time.

VI.
AFFIDAVIT OF NO PROHIBITED INTEREST

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

VII.
SEVERABILITY

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

VIII.
ENTIRE AGREEMENT

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

IX.
CONTRACT INTERPRETATION

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

X.
SUCCESSORS AND ASSIGNS

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

XI.
HEADINGS

City Site ID: _____
Licensee Site ID: JACK_CARTER Location: 105022

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

XII.
THIRD PARTY BENEFIT

The parties to this Contract agree that Contractor will obtain and maintain insurance coverage as specified herein until completion of all work and services by Contractor for Licensee. Contractor shall release, defend, indemnify and hold harmless City from all damages, attorneys' fees and costs of any kind incurred by City due to Contractor's breach of its obligations hereunder. The parties further agree that this Contract is intended to benefit the City of Plano, its officials, officers, employees, agents, successors and assigns, each of which may enforce its terms in a court of competent jurisdiction either individually or collectively.

[SIGNATURE PAGE FOLLOWS]

2-40

City Site ID: _____
Licensee Site ID: JACK_CARTER Location: 105022

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

_____,
d/b/a _____

BY: _____
Name:
Title:

CONTRACTOR:

BY:_____
Name:_____
Title:_____

CITY OF PLANO, TEXAS

Date: _____

BY:_____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

City Site ID: _____
Licensee Site ID: JACK_CARTER Location: 105022

ACKNOWLEDGMENTS

STATE OF TEXAS §
§
COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of _____, 200_, by _____, of _____ a Texas corporation, on behalf of said corporation as general partner of _____, dba _____.

_____
Notary Public in and for
The State of _____

STATE OF TEXAS §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the ___ day of _____, 2002 by _____, _____ of _____, a _____ corporation, on behalf of said corporation.

_____
Notary Public in and for the
State of Texas

2·42

City Site ID: _____
Licensee Site ID: JACK_CARTER Location: 105022

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me on the ___ day of _____, 200__ by **THOMAS H. MUEHLENBECK**, City Manager of the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, on behalf of said corporation.

_____
Notary Public in and for the
State of Texas

City Site ID: _____
Licensee Site ID: JACK_CARTER Location: 105022

EXHIBIT "A"

AFFIDAVIT OF NO PROHIBITED INTEREST

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

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

_____
Name of Contractor

By:_____
(Signature)

_____
(Printed Name)

_____
(Title)

Date:_____

STATE OF TEXAS §
§
COUNTY OF _____ §

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 200__.

_____
Notary Public, State of Texas

2-44

CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☐ Yes	☐ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☐ Yes	☐ Not Applicable
Council Meeting Date:	11/28/05	Reviewed by Legal	☒ Yes	☐ Not Applicable
Department:	Intergovernmental Relations		Initials	Date
Department Head	Mark Israelson	Executive Director		11/17/05
Dept Signature:		City Manager		11.18.05
Agenda Coordinator (include phone #):	**Mark Israelson ext 5440**			

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

CAPTION

A public hearing by the City Council of the City of Plano, Texas, pursuant to Chapter 26 of the Texas Parks and Wildlife Code pertaining to the use or taking of a portion of a City of Plano park and known as Preston Meadow Park - Wellington Site for a Communications Facilities License Agreement for cellular technolocy incorporated within the existing TXU Electric transmission tower.

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☐ CIP

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

FUND(S):

COMMENTS:

SUMMARY OF ITEM

Verizon Wireless has requested that the City allow it to use a portion of Preston Meadow Park - Wellington Site for cellular technology incorporated into existing TXU Electric transmission towers, as depicted in drawing included with this agenda item. Chapter 26 of the Texas Parks and Wildlife Code requires a public hearing for any use or taking of park land. To permit the use or taking of park land, the governing body with jurisdiction over the park, the City Council for instance, must find the following:

1. There is no feasible and prudent alternative to the use and taking of the park land as proposed by the project exists; and

2. The Project includes all reasonable planning to minimize harm to the Park Land resulting from the use or the taking.

Witnesses will present at the public hearing on these issues.

3.1

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

MEMORANDUM

TO: **Honorable Mayor and City Council**

THROUGH: **Tom Muehlenbeck, City Manager**

FROM: **Mark D. Israelson, Assistant to the City Manager** MDI

DATE: **November 16, 2005**

SUBJECT: **Verizon Wireless Ground Space Agreements**

There is a current City project being conducted by Intergovernmental Relations and the Legal Departments investigating cellular attachments to TXU power lines. For each attachment, ground equipment has been necessary for the cellular company to house equipment and draw power, however, the City has not been involved in the approval process for any of the ground equipment and no company, to date, has requested a license agreement with the City.

Late in the Spring of 2005, Verizon Wireless ("Verizon") approached the City about attaching cellular equipment to the City's Tennyson water tower. At that time, staff informed Verizon there were two existing ground equipment sites, believed to be owned by Verizon, that were being investigated by the City for unauthorized use of ground space. Staff informed Verizon that the resolution of the two ground sites was necessary prior to proceeding with the water tower site. Verizon and staff spent several months reviewing easements where the equipment is located and were able to agree that a Communications Facilities License Agreement would be necessary for each site, Jack Carter Park and Wellington.

It is important to note, that both of the sites being considered have existed for several years. No new construction will be necessary, however additional landscaping, as established in a ground lease agreement earlier this year, will be required. Intergovernmental Relations staff feels that the approval of this project would fall directly within section 12.1 of the technology section of the comprehensive plan in establishing efficient communications. The proposed use of this site is consistent with facilities already located in the area and along the power lines.

On September 6, 2005, I presented to the Parks and Recreation Board two proposed agreements between the City of Plano and Verizon for the ground equipment to support a cellular antenna that are attached to the TXU transmission lines. The presentation to the Board was not required by statute, but is made according precedent established earlier in the year to assure inclusion of the Board on this type of project. The board approved both agreements, and also informed staff that the additional sites under investigation would not require additional Board approval provided the equipment was similar and staff requirements were consistent.

The approval of this project would set an important precedent for the City and the cellular providers in the City of Plano. This precedent would require wireless companies to enter into an agreement with the City prior to attaching to TXU power lines.

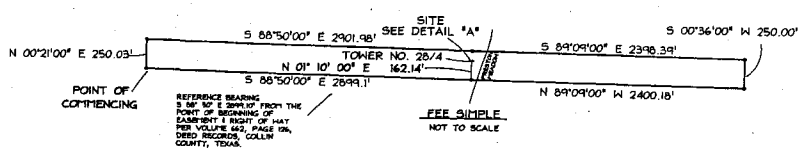
BASIS OF BEARING:
NAD-27 GRID NORTH

NS

Site Name: WELLINGTON, Site ID #: R0052C

Collin County, Texas

AS-BUILT SURVEY FOR WIRELESS COMMUNICATIONS ANTENNA AND ACCESSORY CABINET



LEGAL DESCRIPTION
TEXAS POWER & LIGHT COMPANY EASEMENT
VOLUME 662, PAGE 126
DEED RECORDS, COLLIN COUNTY, TEXAS

All that certain tract of land in the Jessie Stitt Survey, Abstract No. 798 and the Mary and Catherine Ousara Survey, Abstract No. 672, Collin County, Texas, containing 30.417 acres, being part of a 547.118 acre tract of land, described in deed dated July 11, 1964, from Edna Davis Hawkins, et al, to First E. Tucker, JR. and Gordon G. Tucker, recorded in Volume 638, Page 111, Deed Records of Collin County, Texas. The tract hereby conveyed being described by metes And bounds as Follows:

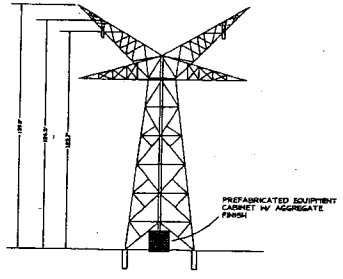
BEGINNING at a point in the West boundary line of the above referred to 547.118 acre tract of land, a fence, said point being 1466 feet North 00 degrees 21 minutes East from the Southwest corner of said tract;

THENCE with the above described West boundary line, a fence, North 00 degrees 21 minutes East 250.03 feet to corner;

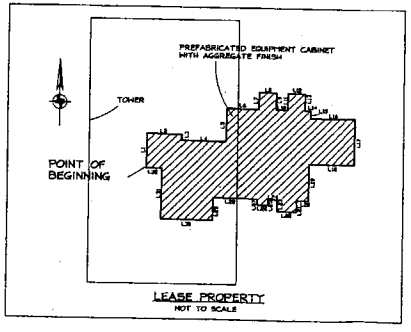
THENCE South 88 degrees 50 minutes East 2901.98 feet and South 89 degrees 09 minutes East 2398.39 feet to corner located in the East boundary line of the Mary and Catherine Ousara Survey, Abstract No. 672, located in the center line of a road;

THENCE with said common boundary line and along the center line of a road, South 00 degrees 36 minutes West 250 feet to corner;

THENCE North 89 degrees 09 minutes West 2400.18 feet and North 88 degrees 50 minutes West 2899.1 feet to the PLACE OF BEGINNING, being a strip of land 250 feet in width, located as above described and covering an area of 30.417 acres.



EAST TOWER ELEVATION
NOT TO SCALE
GROUND ELEVATION (AMSL) = 706.2' (NGVD 29)
NAD27 LATITUDE : 33° 03' 38.50" N
LONGITUDE : 96° 48' 43.90" W



LEASE BOUNDARY LINE TABLE

NUMBER	DIRECTION	DISTANCE
L1	N 0°54'00" E	3.00'
L2	S 89°01'00" E	3.00'
L3	S 0°54'00" W	0.50'
L4	S 89°01'00" E	3.90'
L5	N 0°54'00" E	2.90'
L6	S 89°01'00" E	2.80'
L7	N 0°54'00" E	1.50'
L8	S 89°01'00" E	1.50'
L9	S 0°54'00" W	1.50'
L10	S 89°01'00" E	1.00'
L11	N 0°54'00" E	1.50'
L12	S 89°01'00" E	1.50'
L13	S 0°54'00" W	1.50'
L14	S 89°01'00" E	0.50'
L15	S 0°54'00" W	0.60'
L16	S 89°01'00" E	4.00'

NUMBER	DIRECTION	DISTANCE
L17	S 0°54'00" W	4.00'
L18	N 89°01'00" W	4.00'
L19	S 0°54'00" W	3.20'
L20	N 89°01'00" W	1.00'
L21	S 0°54'00" W	1.00'
L22	N 89°01'00" W	1.70'
L23	N 0°54'00" E	1.00'
L24	N 89°01'00" W	0.80'
L25	S 0°54'00" W	0.50'
L26	N 89°01'00" W	0.90'
L27	N 0°54'00" E	0.50'
L28	N 89°01'00" W	3.90'
L29	S 0°54'00" W	1.97'
L30	N 89°01'00" W	4.50'
L31	N 0°54'00" E	4.37'
L32	N 89°01'00" W	1.40'

LEASE SITE

BEING a 0.00776 acre tract of land situated in the City of Plano, Collin County, Texas in the Mary and Catherine Ousara Survey, Abstract No. 672 and being part of that called 30.417 acre tract as described for use as an easement and right-of-way by deed recorded in Volume 662, Page 126, Deed Records, Collin County, Texas and being more particularly described as follows:

COMMENCING at the southeast corner of said 30.417 acre tract;

THENCE South 88 degrees 50 minutes East a distance of 2899.10 feet to a point in the south line of said 30.417 acre tract;

THENCE North 01 degree 10 minutes East a distance of 162.14 feet to the PLACE OF BEGINNING at the southeast corner of an existing PRIMECO PERSONAL COMMUNICATIONS concrete base;

THENCE North 00 degrees 54 minutes 00 seconds East along the west side of said concrete base, a distance of 3.00 feet to the northwest corner of said concrete base;

THENCE South 89 degrees 01 minute 00 seconds East along the north side of said concrete base, a distance of 3.00 feet to the northeast corner of said concrete base;

THENCE South 00 degrees 54 minutes 00 seconds West along the east side of said concrete base, a distance of 0.50 feet to the place where the wave guide intersects the concrete base;

THENCE South 89 degrees 01 minute 00 seconds East along the north side of said wave guide, a distance of 3.90 feet to the west side of an existing PRIMECO PERSONAL COMMUNICATIONS cabinet;

THENCE North 00 degrees 54 minutes 00 seconds East along the west side of said cabinet, a distance of 2.90 feet to the northwest corner of said cabinet;

THENCE South 89 degree 01 minute 00 seconds East along the north side of said cabinet, a distance of 2.80 feet to the northeast corner of said cabinet;

THENCE North 00 degrees 54 minutes 00 seconds East, a distance of 1.50 feet, to a point for corner;

THENCE South 89 degrees 01 minute 00 seconds East, a distance of 1.50 feet, to a point for corner;

THENCE South 00 degrees 54 minutes 00 seconds West, a distance of 1.50 feet, to a point for corner;

THENCE South 89 degrees 01 minute 00 seconds East, a distance of 1.00 feet, to a point for corner;

THENCE North 00 degrees 54 minutes 00 seconds East, a distance of 1.50 feet, to a point for corner;

THENCE South 89 degrees 01 minute 00 seconds East, a distance of 1.50 feet, to a point for corner;

THENCE South 00 degrees 54 minutes 00 seconds West, a distance of 1.50 feet, to a point for corner;

THENCE South 89 degrees 01 minute 00 seconds East, a distance of 0.50 feet, to the northeast corner of said cabinet;

THENCE South 00 degrees 54 minutes 00 seconds West, a distance of 0.60 feet, to a point for corner;

THENCE South 89 degrees 01 minute 00 seconds East, a distance of 4.00 feet, to a point for corner;

THENCE South 00 degrees 54 minutes 00 seconds West, a distance of 4.00 feet, to a point for corner;

THENCE North 89 degrees 01 minute 00 seconds West, a distance of 4.00 feet, to a point for corner;

THENCE South 00 degrees 54 minutes 00 seconds West, a distance of 8.20 feet, to a point for corner;

THENCE North 89 degrees 01 minute 00 seconds West, a distance of 1.00 feet, to a point for corner;

THENCE South 00 degrees 54 minutes 00 seconds West, a distance of 1.00 feet, to a point for corner;

THENCE North 89 degrees 01 minute 00 seconds West, a distance of 1.70 feet, to a point for corner;

THENCE North 00 degrees 54 minutes 00 seconds East, a distance of 1.00 feet, to a point for corner;

THENCE North 89 degrees 01 minute 00 seconds West, a distance of 0.80 feet, to a point for corner;

THENCE South 00 degrees 54 minutes 00 seconds West, a distance of 0.50 feet, to a point for corner;

THENCE North 89 degrees 01 minute 00 seconds West, a distance of 0.90 feet, to a point for corner;

THENCE North 00 degrees 54 minutes 00 seconds East, a distance of 0.50 feet, to a point for corner;

THENCE North 89 degrees 01 minute 00 seconds West, a distance of 3.90 feet, to a point for corner;

THENCE South 00 degrees 54 minutes 00 seconds West, a distance of 1.97 feet, to a point for corner;

THENCE North 89 degrees 01 minute 00 seconds West, a distance of 4.50 feet, to a point for corner;

THENCE North 00 degrees 54 minutes 00 seconds East, a distance of 4.37 feet, to a point for corner;

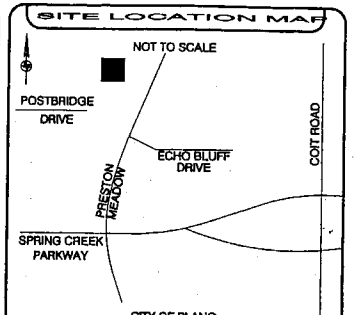
THENCE North 89 degrees 01 minute 00 seconds West, a distance of 1.40 feet, to the Point of Beginning containing 120.4 square feet or land more or less.

I, JAMES P. KEENE, a Registered Professional Land Surveyor of the State of Texas, have prepared this plat from an actual survey made on the ground under my personal supervision.

This site is not located in a 100 year flood plain, as defined by the U.S. Department of Housing and Urban Development, pursuant to the Flood Disaster Protection Act of 1973, as amended, as reflected by Flood Insurance Rate Map, which each map covers the area in which the property is situated.

REGISTERED PROFESSIONAL LAND SURVEYOR NO. 5166

SITE LOCATION MAP



GEOGRAPHIC COORDINATES

ALL COORDINATES BASED ON THE NORTH AMERICAN DATUM OF 1927

GENERAL NOTES:

THIS SURVEY IS VALID ONLY WITH ORIGINAL SIGNATURE IN BLACK INK

AS-BUILTSURVEY
FOR WIRELESS COMMUNICATIONS ANTENNA AND ACCESSORY CABINET

WELLINGTON
SITE # R0052C
TOWER # 28/4
TD36095 MI 13
PRESTON MEADOW DRIVE
PLANO, COLLIN COUNTY, TEXAS
MAPSCO # 556-D

PRECISE LAND SURVEYING, INC.
4616 GUS THOMASSON MESQUITE, TEXAS 75150
(972) 681-7072 FAX (972) 279-1508

REVISIONS
DATE:

DATE: 12-10-97
SCALE: 1" = 20'
DRAWN BY: SD
CHECKED BY: PLS
FILE NAME: 36R0311.dwg

3 of 3

CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☐ Yes	☐ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☐ Yes	☐ Not Applicable
Council Meeting Date:	11/28/05	Reviewed by Legal	☒ Yes	☐ Not Applicable
Department:	Intergovernmental Relations		Initials	Date
Department Head	Mark Israelson	Executive Director		
Dept Signature:		City Manager		11/21/05
Agenda Coordinator (include phone #):	**Mark Israelson ext 5440**			

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

CAPTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A COMMUNICATIONS FACILITIES LICENSE AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS AND DALLAS MTA, L.P., A TEXAS LIMITED PARTNERSHIP, D/B/A VERIZON WIRELESS, TO LOCATE, PLACE, ATTACH, INSTALL, AND OPERATE, TELECOMMUNCIATIONS GROUND EQUIPMENT IN CERTAIN SPECIFIC PORTIONS OF THE PUBLIC RIGHTS-OF-WAY IN THE CITY OF PLANO NEAR PRESTON MEADOW DRIVE IDENTIFIED AS THE WELLINGTON SITE; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR, IN HIS ABSENCE, AN EXECUTIVE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE.

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☐ OPERATING EXPENSE ☒ REVENUE ☐ CIP

FISCAL YEAR: 05/06	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0

FUND(S): GENERAL FUND

COMMENTS: This item will provide additional revenue of $6,000 per year for five years, and a one time payment for past considerations of $21,000.

SUMMARY OF ITEM

This Resolution approves a Communications Facilities License Agreement with Dallas MTA, L.P., d/ba/ Verizon Wireless for communications faciliites on the Wellington Site near Preston Meadow Drive.

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

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A COMMUNICATIONS FACILITIES LICENSE AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS AND DALLAS MTA, L.P., A TEXAS LIMITED PARTNERSHIP, D/B/A VERIZON WIRELESS, TO LOCATE, PLACE, ATTACH, INSTALL, AND OPERATE, TELECOMMUNCIATIONS GROUND EQUIPMENT IN CERTAIN SPECIFIC PORTIONS OF THE PUBLIC RIGHTS-OF-WAY IN THE CITY OF PLANO NEAR PRESTON MEADOW DRIVE IDENTIFIED AS THE WELLINGTON SITE; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR, IN HIS ABSENCE, AN EXECUTIVE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council has been presented a proposed Communications Facilities License Agreement by and between the City of Plano, Texas and Dallas MTA, L.P., a Texas Limited Partnership, d/b/a Verizon Wireless., (hereinafter called "Agreement"), a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference; and

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

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

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

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

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

DULY PASSED AND APPROVED on this the ____ day of _____, 2005.

_____
Pat Evans, MAYOR

ATTEST:

_____
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

City Site ID: _____
Licensee Site ID: WELLINGTON Location: 105494

STATE OF TEXAS §
§ **COMMUNICATIONS FACILITIES**
§ **LICENSE**
COUNTY OF COLLIN §

KNOW ALL BY THESE PRESENTS:

This non-exclusive License for Communications Facilities ("Agreement") is made by and between the **CITY OF PLANO, TEXAS**, a home rule municipal corporation (hereinafter referred to as the "CITY") and **DALLAS MTA, L.P., a Texas Limited Partnership, d/b/a VERIZON WIRELESS** (hereinafter referred to as "LICENSEE"), for the use of certain premises and/or facilities according to the following terms and conditions:

W I T N E S S E T H:

WHEREAS, CITY desires to provide LICENSEE with facilities for housing and operating certain communications equipment, including the installation of antennas or antenna systems and the space required to run cable between the equipment and the antenna or antenna systems; and

WHEREAS, LICENSEE is a communications services company duly authorized to provide certain telecommunications services and desires to lease certain property owned by CITY for installation and operation of IMPROVEMENTS, as defined herein, to operate a communications facility and all related purposes; and

WHEREAS, CITY owns the premises and facilities described below and desires to allow LICENSEE to enter and utilize designated areas of the facilities and premises.

NOW, THEREFORE, in consideration of the terms and conditions hereinafter set forth, the Parties agree as follows:

1. Location

1.1 The premises and facilities (hereinafter referred to as the "PREMISES") provided by CITY are described in the SITE PLAN attached hereto and incorporated herein as **Appendix "A"**. Included upon the PREMISES shall be an existing transmission tower (the "Tower"), LICENSEE's Equipment Compound, the Antenna Facilities, as defined herein, and the cabling run

4-4

between the Antenna Facilities and the Equipment Compound (hereinafter referred to as "IMPROVEMENTS"). As a part of the SITE PLAN, LICENSEE shall provide to CITY a map that identifies all of LICENSEE's cell sites within the City of Plano and within a one-mile radius of the boundaries of the City of Plano. As used herein, the term "Equipment Compound" means all equipment, shelters and similar structures located on the PREMISES and identified on **Appendix "A"**. The license authorized under the terms of this Agreement shall be a license for the use of that portion of the PREMISES designated for use by LICENSEE on the SITE PLAN.

1.2 **Site Plan**. The SITE PLAN must be approved by CITY prior to the execution of this Agreement, with approval or disapproval not to be unreasonably withheld, conditioned or delayed. The SITE PLAN shall describe and illustrate the location of the IMPROVEMENTS under this Agreement. The SITE PLAN shall include a scale drawing and inventory analysis of the proposed installations, as well as an elevation of the PREMISES with the proposed installations. Performance under this Agreement shall be in strict compliance with the SITE PLAN. If LICENSEE's installation, maintenance and operation of the IMPROVEMENTS fail to comply with the approved SITE PLAN, at any time, as reasonably determined by CITY, then CITY shall have the right to terminate this Agreement upon notice to LICENSEE, who has an opportunity to cure as provided under Section 5 herein. Any proposed material modifications to LICENSEE's SITE PLAN must be approved in writing by CITY before LICENSEE may make any changes to its SITE PLAN as originally approved by CITY.

1.3 LICENSEE has inspected, examined and investigated the status of the title and condition of the PREMISES to the extent that LICENSEE has deemed necessary, and LICENSEE understands, acknowledges and agrees that it is entering into this Agreement to acquire a leasehold interest in the PREMISES "AS IS" in reliance solely upon the results of any inspection, examination and investigation of the status of title and condition of the PREMISES that LICENSEE has conducted and not as a result of any representation, warranty, assurance, guaranty or promise of CITY or any person purporting to act on behalf of CITY, other than those which may be expressly set forth in this Agreement.

1.4 LICENSEE UNDERSTANDS, ACKNOWLEDGES AND AGREES THAT NEITHER CITY NOR ANY AGENT, EMPLOYEE OR OTHER PERSON ACTING ON BEHALF OF THE CITY, HAS MADE ANY, AND THE CITY EXPRESSLY DISCLAIMS EVERY, REPRESENTATION, WARRANTY (INCLUDING WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE AND HABITABILITY), ASSURANCE, GUARANTY OR PROMISE, EXPRESS OR IMPLIED, CONCERNING THE STATUS OF THE TITLE OR CONDITION OF THE PREMISES WHICH ARE NOT EXPRESSLY SET FORTH IN THIS AGREEMENT AND THAT NO AGENT OR EMPLOYEE OF THE CITY OR

City Site ID: _____
Licensee Site ID: WELLINGTON Location: 105494

OTHER PERSON HAS ANY AUTHORITY TO MAKE OR DELIVER ANY REPRESENTATION, WARRANTY, ASSURANCE, GUARANTY OR PROMISE WHICH IS NOT SET FORTH IN THIS AGREEMENT.

2. Use of Premises

2.1 **Permitted Use.** CITY agrees to allow installment of LICENSEE's IMPROVEMENTS, in accordance with the terms of this Agreement. LICENSEE's use shall be non-exclusive and shall be for the purpose of the installation, operation, and maintenance of its IMPROVEMENTS, for the transmission, reception, and operation of a communications facility and all related purposes thereto. LICENSEE shall obtain the written approval of the City prior to installation of any IMPROVEMENTS on the PREMISES, which approval shall not be unreasonably withheld, conditioned or delayed. LICENSEE understands, acknowledges and agrees that the use of the PREMISES by LICENSEE in conjunction with the terms of this Agreement is to be for the installation, operation and maintenance of communications equipment, in strict compliance with the Agreement and the attached SITE PLAN. LICENSEE shall not use the PREMISES for any other purpose whatsoever, including the storage or placement of debris, storage of replacement IMPROVEMENTS, or any other item, without first obtaining the prior written consent of CITY, which may be given or withheld for any reason or for no reason, in the CITY'S sole, absolute and unrestricted discretion.

2.2 **Prohibited Use.** LICENSEE shall not use the PREMISES in any manner that constitutes waste or nuisance, or that violates any applicable law, ordinance or governmental regulation in any respect. LICENSEE shall neither do nor permit to be done anything that would violate any certificate of occupancy applicable to the PREMISES or would render void or uncollectible any insurance then in force with respect to the PREMISES, or that would in any way increase the premiums payable by CITY for fire, liability or any other insurance coverage on the PREMISES or the contents of any improvements thereon.

2.3 **Subletting of Use Premises or Improvements.** LICENSEE may not sublet to or license others to use the PREMISES or LICENSEE's IMPROVEMENTS without the prior written consent of CITY. Any such attempt by LICENSEE shall be without effect and may at CITY's option result in the termination of this Agreement.

2.4 **Maintenance, Repair or Replacement of Improvements.** LICENSEE may update, maintain, repair, or replace the IMPROVEMENTS located upon the PREMISES from time to time without CITY's approval, provided that the total of all IMPROVEMENTS do not require more space than the existing IMPROVEMENTS. Any change in the location of improvements on the PREMISES must be satisfactory to CITY, such approval not to be unreasonably

4-6

withheld, conditioned or delayed. LICENSEE shall submit to CITY for approval, a detailed proposal for any substantial replacement of IMPROVEMENTS and any supplemental materials for CITY's evaluation and written approval, such approval not to be unreasonably withheld, conditioned or delayed. As used herein, substantial replacement shall mean any replacement that (i) involves the parking of a "semi" truck on the premises, or (ii) involves a material change-out or alteration of Licensee's equipment. Notwithstanding the foregoing and any other provision herein to the contrary and further notwithstanding the frequencies set forth elsewhere herein, Licensee shall have the right, at any time during the term of this Agreement as the same might be extended, to change or add additional frequencies without the consent of CITY; provided, however that Licensee shall provide CITY with advance written notice of any such change or addition and provided further that Licensee agrees to comply with the terms and provisions of Section 9 herein with respect to interference in connection with such change or addition of frequencies. A current and accurate SITE PLAN must be submitted to CITY by LICENSEE and maintained on file with CITY for the entire term of this Agreement and all renewals thereof.

3. Term

3.1 This Agreement shall be for an initial term of five (5) years, commencing on the Effective Date. The Effective Date shall be the date LICENSEE moves materials or other equipment onto the PREMISES or begins construction on the PREMISES or the 1st day of January, 2006, whichever occurs first. For a period not to exceed one hundred eighty (180) days following the Effective Date, LICENSEE shall have the right to terminate this Agreement by giving thirty (30) days written notice to CITY of such termination if LICENSEE is unable to obtain all licenses and permits or authorizations required for LICENSEE's use of the PREMISES from all applicable government and/or regulatory entities (the "Governmental Approvals") for LICENSEE's intended use of and improvements to the PREMISES.

3.2 LICENSEE is granted the option to renew this license for five (5) additional five (5) year terms, after the initial term expires. Unless LICENSEE gives written notice of its decision not to exercise the renewal option within 90 days prior to the expiration of the current term or period, this Agreement will automatically renew for each said renewal term as long as LICENSEE remains in full compliance with all other provisions of this Agreement. All the terms and covenants of this Agreement apply to all extension periods, subject to amendment by the mutual agreement of the Parties, in writing and signed by both Parties. If LICENSEE continues to possess the PREMISES following the expiration of all of the extension periods provided herein, and this Agreement has not been renewed or superseded, this Agreement (1) shall be deemed to be a holdover tenancy at will but shall not itself constitute a renewal or extension of any term, (2) shall continue from month to month under the terms and conditions

set forth herein and (3) may be terminated by either party upon at least thirty (30) days written notice to the other party. All the terms and covenants of this Agreement apply to all holdover tenancy periods.

4. Payment Terms and Conditions

4.1 **Rent Payment.** In consideration for providing the PREMISES for use by LICENSEE, the LICENSEE shall pay rent to CITY annually, with the first payment being due within thirty (30) days following the Effective Date of this Agreement. Thereafter payment shall be due annually on the anniversary of the Effective Date throughout the initial term and all renewal terms hereof and prorated for any partial term. LICENSEE shall pay rent to CITY annually in advance, without prior notice or demand, without any abatement, setoff, reduction, deduction, counterclaim or recoupment whatsoever, in the amount of Six Thousand and No/100 Dollars ($6,000.00) per annum for the term of this Agreement **("Rent Payment")**. Interest on late payments shall accrue at the then prime interest rate. If this Agreement is terminated at a time other than the last day of the calendar year of the term for any reason other than a default by LICENSEE, all Rent Payments shall be prorated as of the date of termination and all prepaid Rent Payments shall be refunded to LICENSEE.

4.2 **Rent Adjustment.** The Rent Payment shall be increased by three percent (3%) at the beginning of each Lease Year (as herein defined) following the first Lease Year of the Lease Term or the first Lease Year. For purposes of this Lease Agreement, the term **"Lease Year"** shall mean the twelve-month period which commences on the first day of the calendar month in which the Effective Date occurs (if the Effective Date occurs on the first day of a calendar month) or on the first day of the calendar month following the calendar month in which the Effective Date occurs (if the Effective Date occurs on a day other than the first day of a calendar month). The dollar increase in the Rent Payment shall be determined by multiplying the Rent Payment (as previously adjusted) payable during the preceding Lease Year by three percent (3%). The sum of the dollar increase required by this multiplication plus the Rent Payment (as previously adjusted) payable for and on account of the preceding Lease Year (i.e., one hundred three percent (103%) of the prior Lease Year's Rent shall be the Rent Payment for the Lease Year of the adjustment.

4.3 **Holdover Rent.** The Rent Payment, as defined in Subsection (a) above, due during any holdover period shall be equal to one hundred fifty percent (150%) of the Rent Payment due during the immediately preceding Initial term or any renewal term.

4.4 **Additional Fees.** CITY may assess, in addition to the Rent Payment, additional payments by LICENSEE to cover CITY's additional costs **("Additional Fees")**, which include but are not limited to: (i) costs of utilities

4-8

associated with the day-to-day operation and maintenance of the Premises; (ii) costs incurred by CITY for providing access to the Premises outside of normal business hours; and (iii) applicable taxes, including property taxes, or business taxes levied on the PREMISES. CITY shall notify LICENSEE of amounts due in Additional Fees in writing, and LICENSEE shall pay Additional Fees simultaneously with the next monthly Rent Payment due on the Premises, or, if notice of Additional Fees occurs within ten (10) days of the due date of the next monthly Rent Payment, simultaneous with the Rent Payment due for the next month. The foregoing shall be subject to the provisions of Section 16 herein.

4.5 **Payment Address.** Rent Payments and Additional Fees shall be made payable to City of Plano, C/O Intergovernmental Relations Department, PO Box 860358, Plano, Texas 75086.

4.6 **Lawful Currency.** Rent Payments and Additional Fees shall be made according to paragraph 4.5 above in lawful money of the United States of America without any abatement, setoff, reduction, deduction, counterclaim or other recoupment whatsoever. Rent Payments shall be free and clear of any business license tax or fee which is measured upon the size of the PREMISES. In no event will LICENSEE be obligated to pay any general income taxes measured upon the income of the City. In the event any federal, state, county, municipal or other governmental authority hereafter imposes or levies any such business license tax or fee, LICENSEE shall pay to CITY an amount equal to any and all amounts so imposed or levied as a component of Additional Fees. This Section does not preclude the assessment of lawful fees pursuant to a franchise or other agreement that the City may have with Licensee or its parent or any subsidiary or affiliate.

4.7 **Dishonored Checks.** Any dishonored check shall incur a service charge of ten percent (10%) of its face amount. Subsequent to the first dishonored check received by CITY for any payment, all subsequent payments, including Rent Payments and Additional Fees, shall be made by cashier's check.

4.8 **Consideration for Rent in Prior Periods**. As compensation to City for LICENSEE'S use of the Premises prior to execution of this Agreement, LICENSEE agrees to pay to City a lump sump total of TWENTY ONE THOUSAND and No/100 ($21,000).

5. Termination

5.1 **Termination for Cause.** Upon the occurrence of any one or more of the events listed below (hereinafter referred to as "Event of Default"), or as provided elsewhere in this Agreement, CITY may, without penalty, at its option and without prejudice to any other remedy to which it may be entitled at law or equity, or otherwise under this Agreement, terminate use or occupancy under

this Agreement at any time, either in whole or in part, by giving at least sixty (60) days prior written notice thereof to LICENSEE with the understanding that all use of the PREMISES being terminated shall cease upon the date specified on such notice. LICENSEE shall equitably compensate CITY in accordance with the terms of this Agreement for the use of the PREMISES prior to the date specified in such notice, following inspection and acceptance of same by CITY. LICENSEE shall not, however, be entitled to any damages, including but not limited to, lost or anticipated profits should CITY choose to exercise its option to terminate.

5.2. **Event of Default**. Any of the following occurrences, conditions, or acts shall be deemed an "Event of Default" under this Agreement:

(a) if LICENSEE fails to pay amounts due under this Agreement within fifteen (15) days of receipt of written notice that such payments are overdue;

(b) if either party fails to observe or perform its obligations under this Agreement other than as provided in Section 5.2(a) above and does not cure such failure within thirty (30) days from the party's receipt of written notice of breach or such longer period as may be mutually reasonably agreed upon by the Parties to complete a cure commenced within the 30 day period.

5.3 **Termination by LICENSEE**. This Agreement may be terminated by LICENSEE, without penalty or further liability, as follows:

(a) upon written notice, if LICENSEE is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Communication Facility as now and hereafter intended by LICENSEE; or if LICENSEE determines in its sole discretion that the cost of obtaining or retaining the same is commercially unreasonable;

(b) on sixty (60) days written notice for any reason, other than 5.2(a) or (b) above, so long as LICENSEE pays CITY a termination fee equal to six (6) months rent at the current rate or rent at the current rate prorated to the end of CITY's fiscal year in which the termination occurs, whichever is greater.

5.4 **Notice and Opportunity to Cure**. Upon the occurrence of an Event of Default, CITY shall deliver to LICENSEE a Notice of Intent to Terminate that identifies in detail the Event of Default. If the Event of Default remains uncured for thirty (30) calendar days after delivery of such notice, CITY may

4-10

terminate this Agreement and the license granted herein by delivering to the LICENSEE a Notice of Termination that identifies the effective date of the termination, which date shall not be less than sixty (60) days after the date of delivery of the Notice of Intent to Terminate; provided, however, that the time periods for notice of termination specified in this Section shall not apply to a default pursuant to Section 5.2(b).

5.5 **Primary Function of PREMISES.** The parties understand and agree that the primary function of the PREMISES is to serve as a public park for the City of Plano and that the interests of LICENSEE are superseded by the public health, safety, and welfare of the citizens of Plano served by the public park. In the event that the Plano City Council or the Plano City Manager declares a public emergency or if there exists a threat to the public park facilities that would detrimentally impact public health, safety and welfare such that immediate action is necessary, LICENSEE shall, within thirty (30) days following receipt of written notice of such emergency and need to relocate and/or remove its IMPROVEMENTS from the PREMISES. In the event that LICENSEE is not able to timely respond, CITY may remove LICENSEE's IMPROVEMENTS without incurring any liability for damages of any type. Costs of removal and reattachment of IMPROVEMENTS shall be borne by LICENSEE.

5.6 **Removal of Improvements.** If LICENSEE's IMPROVEMENTS must be removed, whether or not such removal is done pursuant to Section 5.5 above, LICENSEE shall have the right to set up a portable mounted antenna, a cell on wheels (COW), and/or some other similar temporary structure approved by CITY, such approval not to be unreasonably withheld, conditioned or delayed, on CITY premises to allow LICENSEE to continue to provide communications services and all related purposes. LICENSEE may maintain its COW for a period of thirty (30) days past the date of removal of IMPROVEMENTS. To maintain the temporary antenna, COW, or other temporary structure for a period in excess of thirty (30) days, LICENSEE must obtain written approval from CITY, such approval not to be unreasonably withheld, conditioned or delayed. If the PREMISES are not in such condition as to be utilized by LICENSEE at the end of the initial thirty (30) day period, CITY shall provide as many additional thirty (30) day extensions for such temporary structures as are necessary to allow LICENSEE to continue its operations as authorized by this Agreement.

6. City's Right of Entry Onto Premises

6.1 CITY and CITY's agents, employees or contractors may enter upon the PREMISES, except LICENSEE's secured areas, for the purpose of performing repairs and maintenance work to the PREMISES. If maintenance work is required, CITY agrees to provide LICENSEE with reasonable notice prior to commencing such work to allow LICENSEE to remove the affected IMPROVEMENTS. Decisions as to the extent to which LICENSEE will be

required to remove such IMPROVEMENTS shall be within the reasonable discretion of CITY. If, however, in the reasonable discretion of CITY, repair or maintenance requires immediate action on the part of CITY, CITY will take reasonable efforts to notify LICENSEE, but may enter the PREMISES, except LICENSEE's secured areas, and take such action as is required, except any action to remove any or all IMPROVEMENTS made by LICENSEE. In no event shall CITY be liable for any expenses associated with LICENSEE's removal of IMPROVEMENTS or for lost or anticipated profits. LICENSEE, at its expense and exclusive use, may use any and all reasonable and appropriate means of restricting access to the LICENSEE's equipment shelter, as identified in the SITE PLAN.

7. Access

7.1 LICENSEE shall have the non-exclusive right to access the aforementioned PREMISES at any time, by contacting and providing notice to CITY. LICENSEE must be accompanied by CITY personnel at all times when accessing the PREMISES. If CITY is contacted by LICENSEE after the normal business hours of CITY for the purpose of accessing the aforementioned location, LICENSEE agrees to reimburse CITY for the actual cost of any CITY staff involvement necessary for this access.

7.2 LICENSEE's right of access is a contractual right for the benefit of LICENSEE only and nothing contained in this Agreement shall be construed to constitute a dedication or an easement. However, in the event this Agreement is assigned in accordance and in compliance with Section 22.9 herein, such right of access shall inure to the benefit of LICENSEE's assignee.

8. Damages to Property

8.1 **Damage and Restoration of Property.** LICENSEE shall immediately notify CITY of any and all damages resulting from, arising out of, or caused to, the PREMISES and CITY property surrounding the PREMISES, including but not limited to structural damages, electrical damages, damages to fencing, irrigation systems or landscaping by LICENSEE's operations, by LICENSEE, its officers, agents, employees and invitees. LICENSEE shall be solely responsible for the costs and the repair of all such damages and such repairs and/or replacements shall be completed within thirty (30) calendar days and shall be completed in a manner reasonably acceptable to CITY.

8.2 **Failure to Restore Property**. If LICENSEE does not make or perform any required maintenance or repairs to the PREMISES within the time period provided in Section 8.1, CITY shall have the right, but not the obligation, to make such repairs and to perform such maintenance, in which event LICENSEE shall pay CITY the cost thereof, plus an administrative fee of ten

4-12

percent (10%) of the cost of the repairs, within thirty (30) calendar days of demand. Within thirty (30) days following the expiration or earlier termination of this Agreement, LICENSEE shall restore the PREMISES to the condition in which the PREMISES existed on the Effective Date of this Agreement, ordinary wear and tear and loss due to other casualty beyond LICENSEE's control excepted.

9. Electrical, Radio and Intermodulation Interference

9.1 LICENSEE shall operate its IMPROVEMENTS in a manner that will not cause radio frequency interference to the CITY or other licensees of the SITE in their use of any equipment or their conduct of any activity on the SITE pursuant to agreements which pre-date the installation and operation of LICENSEE's IMPROVEMENTS. LICENSEE's installation and operation of the IMPROVEMENTS shall be in compliance with all FCC requirements.

9.2 Prior to installation of any IMPROVEMENTS on the PREMISES, LICENSEE shall conduct bandwidth testing of its IMPROVEMENTS and CITY equipment to check bandwidth conflict between CITY's monitoring control system and LICENSEE's system. If such conflict occurs, LICENSEE shall take all steps necessary to resolve the conflict to the reasonable satisfaction of CITY. If the conflict cannot be remedied to the reasonable satisfaction of CITY, CITY may terminate this Agreement upon thirty (30) days written notice to LICENSEE.

9.3 LICENSEE shall not cause electrical, radio or intermodulation interference to CITY or to any other licensee who is using the PREMISES prior to or at the time of LICENSEE's installation of its IMPROVEMENTS. Should such interference occur, LICENSEE will promptly take all steps necessary to correct such interference within ten (10) days notice of the problem and, if such interference cannot be eliminated within thirty (30) days of such notice, LICENSEE shall suspend operations (transmissions) at the site, except for brief periods for testing, while such interference problems are studied and a means to eliminate the problem is determined. Any such method for correction of an interference problem must be reasonably acceptable to both CITY and LICENSEE. If the interference complained of cannot be eliminated after ninety (90) additional days, despite its good faith efforts, LICENSEE will remove the equipment which caused the interference from the PREMISES, or at its option, terminate this Agreement.

9.4 LICENSEE shall not cause electrical, radio or intermodulation interference to CITY at anytime during or after installation or operation of LICENSEE's IMPROVEMENTS. Moreover, LICENSEE's use will not in any material way adversely affect or interfere with CITY's signal operation or its communication system. Should such interference occur, LICENSEE will promptly take all steps necessary to correct such interference within ten (10)

days notice of the problem and, if such interference cannot be eliminated within thirty (30) days of such notice, LICENSEE shall suspend operations (transmissions) at the site, except for brief periods for testing, while the interference problems are studied and a means to eliminate the problem is found. Any such method for correction of an interference problem must be reasonably acceptable to both CITY and LICENSEE. If the interference complained of cannot be eliminated after ninety (90) additional days, despite its good faith efforts, LICENSEE will remove the equipment which caused the interference from the PREMISES, or at its option, terminate this Agreement.

9.5 CITY will not grant a license to any other party for the use of CITY's PREMISES without including in that license a provision stating that the party's use will not in any way adversely affect or interfere with LICENSEE's signal operation or its communication system. Such provision shall be similar to the provisions required of LICENSEE herein. Furthermore, license agreements with third parties will state that prior to installation of improvements, such third parties shall be required to conduct bandwidth testing of its equipment and the equipment of LICENSEE to check bandwidth conflict between third-party equipment and LICENSEE's equipment. If such conflict occurs, CITY shall take all steps necessary to resolve the conflict caused by such third-party to the reasonable satisfaction of LICENSEE. If the conflict cannot be remedied to the reasonable satisfaction of LICENSEE, CITY shall terminate such third-party's license upon thirty (30) days written notice to such third-party. LICENSEE shall have the right to terminate this Agreement upon ten (10) days written notice to CITY if another user of the PREMISES causes interference with LICENSEE's operations, and such interference is not corrected within thirty (30) days following the notice to such third party user causing the interference. In the event that LICENSEE experiences interference caused by a third-party licensee, LICENSEE agrees that it shall seek recourse solely from such third party. No compensation shall be due from CITY for damages, including, but not limited to, lost or anticipated profits.

9.6 LICENSEE shall have the sole burden of, and be responsible for all costs associated with, alleging and proving that another user of the PREMISES is causing significant interference. CITY shall not be responsible for the costs associated with the resolution of any dispute between users of the PREMISES, but shall be responsible for the enforcement of any of LICENSEE's rights provided by Section 9.5 of this Agreement.

9.7 Upon report to LICENSEE, and all other third parties with communications equipment on that CITY-owned property, of interference with any CITY-owned/operated radio emergency system, LICENSEE shall, within six (6) hours after such notification, perform an assessment of the source of the interference. In the event such interference results from LICENSEE's operations, LICENSEE agrees, within twelve (12) hours of first notification, to

4-14

propose a plan of action to eliminate such interference. CITY and LICENSEE agree to provide a technician or other qualified representative to assist in testing, formulating and coordination of a plan for resolution.

9.8 If such interference results from LICENSEE's operations, LICENSEE must correct such interference within twenty-four (24) hours of CITY's original notification to LICENSEE or shall discontinue all use of LICENSEE's IMPROVEMENTS upon the PREMISES. LICENSEE's IMPROVEMENTS cannot be reactivated until LICENSEE can demonstrate that the cause of such interference has been eliminated.

9.9 Each party agrees to provide the other with a telephone number through which that party can contact a representative of the other on a 24-hour per day, 7 days a week basis for the purpose of implementing the requirements of this paragraph.

10. Condition of Premises

10.1 CITY shall maintain the PREMISES in compliance with all applicable statutes, ordinances, regulations and rules required for CITY uses of the PREMISES and surrounding property, and in a manner which will not interfere with LICENSEE's reasonable use of the PREMISES. Upon expiration, cancellation, or termination of this Agreement, LICENSEE will have the right to remove its IMPROVEMENTS from the PREMISES at LICENSEE's cost and expense. Title to all remaining improvements shall belong to CITY. However, upon vacation of the PREMISES, LICENSEE shall surrender the PREMISES in substantially the same condition as received, except for ordinary wear and tear and loss due to other casualty beyond LICENSEE's control, as determined by CITY. If, as determined by CITY, the PREMISES are not surrendered in satisfactory condition, the LICENSEE shall pay CITY within thirty (30) business days of demand an amount equal to the actual cost to restore the PREMISES to substantially the same condition as received plus an administrative fee of ten percent (10%) of the restoration costs..

10.2 LICENSEE shall have sole responsibility for the maintenance, repair, and security of its IMPROVEMENTS, and shall keep same in good repair and condition during the term and all renewals and holdover tenancies of this Agreement.

10.3 Landscaping. LICENSEE will be required to provide a "landscape buffer" around the perimeter of the of the ground lease area. The planting material to be use will be Elderica Pine with a minimum separation of ten feet. It is understood that the LICENSEE will be required to maintain the "landscape buffer", including affected turf, throughout the term of the Agreement. LICENSEE will not be responsible for installing and maintaining an automatic

underground irrigation system in order to maintain the ground lease area. LICENSEE agrees to replace any landscaping that dies during the term of the Agreement.

10.4 LICENSEE shall keep the PREMISES free of debris and anything reasonably determined to be of a dangerous, noxious, or offensive nature or which would create a hazard or undue vibration, heat, noise, or interference.

10.5 In the event CITY or any other licensee undertakes painting, construction, or other alterations on the PREMISES, LICENSEE shall take reasonable measures at LICENSEE's cost to cover all of LICENSEE's IMPROVEMENTS and protect such from paint and debris fallout which may occur during the painting, construction, or alteration process. CITY shall not be responsible for any damages or costs incurred by LICENSEE due to the actions or omissions of any third-party licensees upon the PREMISES. CITY shall provide thirty (30) business days written notice to all licensees upon the PREMISES prior to CITY undertaking such painting, construction, or other alterations.

10.6 By taking possession of the PREMISES, LICENSEE accepts the PREMISES in the condition existing as of the Effective Date. CITY makes no representation or warranty with respect to the condition of the PREMISES and CITY shall not be liable for any latent or patent defect in the PREMISES. CITY agrees to notify LICENSEE of the existence of any latent defects of which the CITY has knowledge.

11. Construction, Installation and Operation

11.1 **Construction, Installation and Operation.** LICENSEE may, at its sole cost and expense, construct, install, operate, maintain, monitor, reconfigure and repair its IMPROVEMENTS. Not less than thirty (30) days prior to the date on which LICENSEE intends to commence construction of its IMPROVEMENTS, LICENSEE shall provide to the CITY for its approval, such approval not to be unreasonably withheld, conditioned or delayed, a proposal containing: (i) a written notice and plan describing in reasonable detail, the steps necessary to complete LICENSEE's construction and installation; (ii) a list and description of all IMPROVEMENTS to be installed on the PREMISES; (iii) a list of all contractors, subcontractors and other entities that will perform LICENSEE's construction and installation work; and (iv) copies, certificates or other proof that LICENSEE or LICENSEE's contractors and subcontractors have obtained all necessary permits and licenses for the performance of LICENSEE's work. CITY's failure to respond in writing to LICENSEE's proposal within twenty (20) days of CITY's receipt of the proposal shall constitute CITY's rejection of the proposal, and LICENSEE shall not commence LICENSEE's work. CITY's grant of approval under this Section shall not be construed as an assumption of liability or indemnification; nor shall such approval replace or constitute any approval

4-16

that LICENSEE is required to obtain from any duly authorized local authorities for any construction, installation or other element of LICENSEE's work.

11.2 **Marking and Lighting Requirements**. LICENSEE acknowledges that it shall be responsible for compliance with all tower or building marker and lighting requirements which may be required by the Federal Aviation Administration or the Federal Communication Commission in conjunction with LICENSEE's installation and maintenance of IMPROVEMENTS under this Agreement, as well as any expenses, fees or fines associated with the compliance or the non-compliance of LICENSEE's installation or maintenance of IMPROVEMENTS under this Agreement. If the LICENSEE does not cure a condition of noncompliance within the time-frame allowed by the citing agency, CITY may thereafter terminate this Agreement upon thirty (30) days written notice to LICENSEE.

11.3 **Inspection and Tests.** Upon the Effective Date and for the term of this Agreement, LICENSEE shall have reasonable access as provided in Section 7 above to the SITE and PREMISES as are necessary and approved by CITY for the purpose of inspection and planning. LICENSEE shall retain, or shall cause to be retained, at its sole cost and expense, certified and insured structural engineers to perform such an inspection and provide a structural report as to the structural integrity of the PREMISES, its maximum load capacity, and other aspects of the PREMISES, as appropriate. LICENSEE shall provide to CITY a copy of the report. LICENSEE shall not conduct construction, installation, operation, maintenance or repair of IMPROVEMENTS in a manner inconsistent with the structural report.

11.4 **Payment, No Mechanics Liens.** LICENSEE shall make full and prompt payment of all sums necessary to pay the costs of all installation, repairs and alterations, improvements, changes and other work done by LICENSEE in or to the PREMISES. Title to the IMPROVEMENTS shall be held by LICENSEE. CITY shall not be responsible for or with respect to the performance of LICENSEE's Work. LICENSEE shall pay or cause to be paid all costs associated with LICENSEE's work. LICENSEE shall not suffer or permit to be enforced against any portion of the SITE or PREMISES any (i) mechanic's, materialman's, contractor, subcontractor or other lien or claim arising from or in any way related to LICENSEE's work, or (ii) any other claim, mortgage, security interest, encumbrance, lien or other charge. Within thirty (30) days after recordation of any lien, encumbrance, judgment or similar item which affects the SITE or PREMISES in any way, LICENSEE shall obtain the complete discharge and release thereof at LICENSEE's sole expense or expenditure (without any cost being imposed upon CITY.) However, LICENSEE shall have the right to contest, in good faith, any mechanic's or materialman's lien upon the condition that LICENSEE provides a bond or other form of security reasonably acceptable to CITY in an amount sufficient to hold CITY fully and completely harmless from any and all liability therefor or on account thereof.

11.5 **Improvements to Premises; Removal.** All IMPROVEMENTS constructed, installed and operated by or on behalf of LICENSEE shall remain LICENSEE's personal property and are not fixtures. LICENSEE shall remove all IMPROVEMENTS at its sole expense within thirty (30) days following the expiration or earlier termination of this Agreement, and LICENSEE shall repair any damage to the PREMISES or SITE caused by such removal and fully restore the PREMISES or SITE to the same condition as existed prior to such damage at its sole cost and expense. LICENSEE shall provide to CITY in writing, by not later than the end of the prescribed thirty (30)-day period, notice that all IMPROVEMENTS have been removed in accordance with this Section. Failure of LICENSEE to remove any or all IMPROVEMENTS from the PREMISES and SITE within the prescribed thirty (30) days shall be construed as holdover pursuant to this Section, and all obligations and requirements, including payment of Rent Payments, shall continue to apply unless and until LICENSEE removes all IMPROVEMENTS and so notifies CITY.

11.6 **Liability for Damage/Outages.** LICENSEE shall be solely responsible for any damage caused by LICENSEE, its agents and/or contractors on or to the PREMISES or SITE that causes an interruption or outage in the services, operations or utilities of another licensee, and shall indemnify and hold harmless CITY, Signal Sites, Inc., and all of their respective partners, employees, agents, successors and assigns from all claims or actions for damages, including actual, incidental and consequential damages, brought by another licensee as a result of LICENSEE's, or its employees', contractors', agents', assigns' or licensees', willful, reckless or gross negligence or other conduct.

12. Communication Tower

12.1 This provision shall be implemented only in the instances where LICENSEE will be leasing ground space from the CITY and constructing a suitable support structure ("Communication Tower") upon which LICENSEE will install, operate, maintain, and repair LICENSEE's IMPROVEMENTS.

12.2 The LICENSEE shall have the right to construct a suitable support structure to be structurally capable of supporting up to three (3) wireless communications carriers. Structural design shall be provided to CITY for review and shall be in compliance with approved Site Plan reference para. 1.2. Possession of the Communication Tower remains that of LICENSEE. LICENSEE agrees to receive and reasonably negotiate requests of other wireless communications carriers ("COLLOCATEES"), according to then current Master Lease Agreement ("MLA") between LICENSEE and the COLLOCATEE, if applicable, to collocate their communications equipment at the PREMISES, but LICENSEE retains the sole right of approval for said COLLOCATEES, including

4-18

but not limited to, type and placement of antennas and ancillary coax cable runs. and will not unreasonably withhold, condition or delay approval of COLLOCATEES. LICENSEE agrees to pay the CITY forty percent (40%) of any compensation received by LICENSEE from all such COLLOCATEES. LICENSEE shall not allow any carrier to use space designated by LICENSEE for LICENSEE's own use. In the event CITY leases ground space to any COLLOCATEE, CITY shall retain one hundred percent (100%) of the rental compensation derived therefrom.

12.3 LICENSEE shall have the right to perform necessary tests including, but not limited to, Radio Frequency tests, and a structural analysis on such Communication Tower. Such costs shall be paid by the COLLOCATEE. A copy of any such structural analysis shall be provided to CITY.

12.4 CITY will provide notice to LICENSEE at least thirty (30) days prior to the commencement of co-location construction. LICENSEE shall not unreasonably withhold or obstruct access to such Communication Tower for the purposes of co-location.

13. Compliance with Laws

13.1 **By LICENSEE** LICENSEE, its employees, agents, designees, contractors, subcontractors, customers, invitees and licensees, shall comply in all respects and at all times with all applicable local, state and federal laws, statutes, ordinances, regulations, rulings, requirements, conditions, orders, licenses, permits, covenants, restrictions, approvals and consents pertaining to LICENSEE's services, LICENSEE's construction, installation and operation work, IMPROVEMENTS and LICENSEE's use of the PREMISES. Without limiting the generality of the preceding sentence, LICENSEE shall fully and timely observe and comply with applicable laws, regulations, policies and requirements concerning health and/or public safety, including standard industry equipment safety regulations (*e.g.*, NEBs, IEEE, Federal Communications Commission ("**FCC**") and BellCore standards) and shall not use the PREMISES or operate the IMPROVEMENTS in any manner which is inconsistent therewith. LICENSEE shall, at LICENSEE's sole cost and expense, promptly apply for and use its best efforts to obtain and maintain all necessary licenses, permits, approvals and consents required or necessary for the construction and operation of the IMPROVEMENTS. In the event LICENSEE fails to obtain any required license, permit, approval or consent to construct and operate the IMPROVEMENTS, through no fault of LICENSEE, LICENSEE shall have the right to terminate this Agreement in accordance with Section 5 of this Agreement.

13.2 **By CITY.** CITY shall comply in all material respects, and shall exercise commercially reasonable efforts to cause its employees, agents, designees, contractors, subcontractors, customers, invitees and licensees to

comply in all material respects with all laws, ordinances, orders, rules and regulations of all governmental or judicial authorities having jurisdiction thereof, whether state, federal or local, relating to CITY's leasehold interest in the SITE.

14. Complaint Resolution

If either LICENSEE or CITY receives a written complaint regarding LICENSEE's operations and such complaint, if reasonably determined by the City to be valid and if the cause of such complaint would cause LICENSEE to be in default of this Agreement, LICENSEE shall respond within twenty-four (24) hours of receipt of such written complaint. LICENSEE shall respond with a written explanation to each such complaint with detail of its investigation into the incident upon which the complaint was based (the "Incident") and the actions that LICENSEE has taken to resolve the Incident including, when necessary, all future actions LICENSEE will take to fully resolve the Incident or prevent a recurrence of the Incident. If the Incident cannot be resolved to the reasonable satisfaction of the complainant within fifteen (15) days, LICENSEE shall provide a schedule for completion of its plan to resolve or prevent the Incident, such schedule is subject to CITY approval, such approval not to be unreasonably withheld, conditioned or delayed. If future action is necessary, LICENSEE shall include a schedule for completion of its plan to correct or prevent the Incident, such schedule is subject to CITY approval, such approval not to be unreasonably withheld, conditioned or delayed. If CITY must step in and resolve a complaint regarding LICENSEE's operations, LICENSEE shall reimburse CITY for all reasonable expenses incurred. If CITY imposes upon LICENSEE a resolution to an Incident that does not involve a breach of the Agreement by LICENSEE, the breach by LICENSEE of any federal, state, or local law or ordinance or the commission by LICENSEE of any negligent or intentional act or omission to a person that causes bodily injury or property damage and LICENSEE does not wish to resolve the Incident in the manner directed by CITY, LICENSEE may terminate this Agreement upon thirty (30) days notice without penalty.

15. Utility Easements and Utility Cost

15.1 LICENSEE shall pay directly to all public utility service companies, before delinquency, all charges for the electricity, water and other utility services that LICENSEE consumes in connection with the installation and operation of LICENSEE's IMPROVEMENTS and which are separately metered and charged to LICENSEE by any public utility service company, without any expense therefor being imposed upon CITY.

15.2 If LICENSEE first obtains CITY's written consent, which may be given or withheld for any reason or no reason in the CITY's sole discretion, LICENSEE shall have the right to obtain electricity and other public utility services from the existing outlets available at the PREMISES. Absent such

4-20

consent, LICENSEE shall obtain separate public utility services from any company that will provide such services to the PREMISES (which services may include an approved battery-powered or diesel standby power generator located on the PREMISES for LICENSEE's exclusive use).

15.3 LICENSEE shall not permit any charges for public utility services to accumulate or become a lien on the SITE. If LICENSEE fails to pay any such charge required to be paid by LICENSEE pursuant to this Section, CITY may, but shall not be required to, pay such charge on LICENSEE's behalf. If CITY pays any such charge on behalf of LICENSEE or incurs any cost with respect to any grant of any public utility service easement for the benefit of LICENSEE pursuant to this Section, LICENSEE shall reimburse and pay to CITY an amount equal to all such charges so paid and all such easement costs so incurred, within thirty (30) days after receipt of CITY's demand, as Additional Fees.

15.4 **Additional Utility/Power Equipment.** In the event that LICENSEE is required to or otherwise decides to install, operate and use additional equipment to provide electricity or other utility services required for the operations of LICENSEE's IMPROVEMENTS, such installation, operation and use shall comply in all respects with the terms and conditions set forth in this Agreement.

16. Taxes

16.1 LICENSEE agrees to timely reimburse CITY for all taxes that are assessed against CITY, if any, due to the real property taxes attributable to LICENSEE's IMPROVEMENTS or use of the PREMISES and IMPROVEMENTS constructed or maintained by LICENSEE on or about the PREMISES; provided, however, CITY shall use its best efforts to provide prior notification of any taxes for which LICENSEE is to be charged, so LICENSEE will have the opportunity to appear before the taxing authority and contest any assessment.

16.2 If LICENSEE fails to pay any such taxes after such contest of any assessment and for which LICENSEE is obligated, CITY may, but shall not be required to, pay such taxes on LICENSEE's behalf. If CITY pays any such taxes on behalf of LICENSEE pursuant to the preceding sentence, LICENSEE shall reimburse and pay to CITY an amount equal to any such taxes so paid, plus an administrative fee of ten percent (10%) of the taxes, within thirty (30) days after demand as Additional Rent.

17. Liability and Indemnification

17.1 LICENSEE shall at all times comply with all laws and ordinances and all applicable rules and regulations of municipal, state and federal government authorities relating to the installation, maintenance, height, location,

use, operation, and removal of the IMPROVEMENTS, authorized herein, and, **except for the negligence or willful misconduct of CITY, its officers, officials, agents, servants or employees**, shall fully release, defend, indemnify and hold harmless CITY, its officers, officials, agents, servants or employees against any and all claims, damages, lawsuits, losses, costs, or expenses which may be sustained or incurred by CITY, its officers, officials, agents, servants or employees as a result of LICENSEE's installation, operation, or removal of such IMPROVEMENTS.

17.2 LICENSEE undertakes and assumes for its officers, agents, employees, servants, affiliates, contractors and subcontractors, all risk of dangerous conditions, if any on or about the PREMISES, and, **except for the negligence or willful misconduct of CITY, its officers, officials, agents, servants or employees**, LICENSEE hereby agrees to release, defend, indemnify and hold harmless CITY, its officers, officials, agents, servants and employees against and from any claim asserted or liability imposed upon CITY, its officers, officials, agents, servants, and employees for personal injury or property damage to any person arising out of LICENSEE's installation, operation, maintenance, condition or use of the PREMISES or LICENSEE's IMPROVEMENTS or LICENSEE's failure to comply with any applicable federal, state, or local statute, ordinance or regulation.

17.3 LICENSEE represents and warrants that its use of the PREMISES herein will not generate any hazardous substance, and it will not store or dispose on the PREMISES nor transport to or over the PREMISES any hazardous substance. The storage of acid storage batteries on the Premises as necessary for use in the event of a power outage, and the installation on the premises of a diesel or propane generator for emergency use to provide electricity in the event of a power outage shall not be a violation of this Section 17. LICENSEE further agrees to release, defend, indemnify, and hold CITY, its officers, officials, agents, servants and employees, harmless from and against any damage, loss, or expense or liability resulting from the generating, transporting, storage or disposal of such hazardous substances including all attorneys' fees, costs and penalties incurred as a result thereof. "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term by any applicable federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death, or disease, including diesel and propane fuel.

4-22

City Site ID: _____
Licensee Site ID: WELLINGTON Location: 105494

18. Insurance

18.1 LICENSEE shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension or renewal thereof, at LICENSEE's sole expense, liability insurance and workers' compensation insurance, and a certificate of insurance shall be submitted to and approved by CITY prior to the Effective Date of this Agreement. LICENSEE must provide insurance in compliance with **Appendix "B",** attached hereto and incorporated herein for all purposes. At the time of an extension or renewal of this license agreement, LICENSEE shall provide a certificate of insurance for the added term that shows LICENSEE meets all insurance requirements under Appendix B.

18.2 In the event that LICENSEE uses third-party contractors or subcontractors to provide services or to perform work upon the PREMISES, LICENSEE shall include in all contracts, subcontracts, and bid documents with such third parties, the requirement that: (a) each such third party shall provide CITY with separate certificates of insurance or such other documentation as is reasonably required by CITY to evidence that each such third party obtains and maintains insurance coverage consistent with the insurance requirements of this Agreement throughout the term of its contract with LICENSEE; and (b) such third party shall execute the Contractor Agreement, a copy of which is attached hereto and incorporated herein as **Appendix "B-1"**,. All such insurance certificates and other documents evidencing coverage shall contain an affirmative statement of the contractor, subcontractor, or other third party that such third party shall notify the City of Plano in the event that the policy lapses or is canceled for any reason.

19 Notice

19.1. Any notice or demand required or desired to be given to any Party pursuant to this Agreement shall be in writing, shall be delivered to the address set forth below and shall be deemed validly served, given, delivered or made only if (i) personally delivered (including delivery by a commercially-recognized courier which provides service between the point-of-origin and the point-of-destination); or (ii) deposited in the United States mail, certified or registered, postage prepaid, return receipt requested. Service by United States mail shall be deemed made on the date actually received.

CITY	LICENSEE
City of Plano c/o Intergovernmental Relations Department PO Box 860358 Plano, Texas 75086	Dallas MTA, L.P. d/b/a Verizon Wireless 180 Washington Valley Road Bedminster, New Jersey 07921 Attn: Network Real Estate

CITY or LICENSEE may from time to time designate any other address for this purpose by written notice to the other party.

20. Remedies

20.1 LICENSEE's failure to timely remit payments due hereunder three times within a 12-month period shall be a breach of this Agreement for which LICENSEE shall be given fifteen (15) days from receipt of written notice from CITY (that such payment is overdue for the third time within such 12-month period) to cure. If LICENSEE fails to make payment as required; if LICENSEE abandons or vacates the PREMISES; or if LICENSEE becomes insolvent; and has not filed for bankruptcy, CITY shall have the right, at its option, in addition to and not exclusive of any other remedy CITY may have hereunder or by operation of law, with fifteen (15) days notice, require LICENSEE to re-enter the PREMISES and remove the IMPROVEMENTS therefrom. Under no circumstances shall CITY or anyone acting on CITY's behalf attempt to remove LICENSEE's communications equipment, except as provide for in Section 5.5 herein. Upon such occurrence, CITY may either (a) declare this Agreement and license granted herein at an end, in which event LICENSEE shall immediately pay CITY a sum of money equal to the total of (i) the amount of Rental Fees accrued through the date of termination; (ii) the amount by which the Rental Fees reserved for the balance of the term exceeds the amount of such rental loss that the LICENSEE proves could be reasonably avoided (net of the costs of such reletting); and (iii) any other reasonable amounts necessary to compensate CITY for all detriment proximately caused by LICENSEE's failure to perform its obligations under this Agreement, or (b) without terminating this Agreement, relet the PREMISES, or any part thereof, for the account of LICENSEE upon such terms and conditions as CITY may deem advisable, and any moneys received from such reletting shall be applied first to the expenses of such reletting and collection, including reasonable attorneys' fees, any real estate commissions paid; and, thereafter, toward payment of all sums due or to become due to CITY hereunder, and if a sufficient sum shall not be thus realized to pay such sums and other charges, LICENSEE shall pay CITY any deficiency monthly, notwithstanding that CITY may have received Rental Fees in excess of the Rental Fees stipulated in this Agreement in previous or subsequent months, and CITY may bring an action therefor as such monthly deficiency shall arise.

20.2 No re-entry and taking of possession of the PREMISES by CITY shall be construed as an election on CITY's part to terminate this Agreement, regardless of the extent of renovations and alterations by CITY, unless a written notice of such intention is given to LICENSEE by CITY.

4-24

21. Force Majeure

21.1 Notwithstanding any other provision in this Agreement to the contrary, neither Party will have any liability to the other with respect to its failure to perform its obligations under this Agreement, except for the payment of amounts due, if such failure is due to any of the following events (each a "Force Majeure" event): (i) the failure of any equipment or software under the control of a person, firm or entity not affiliated with such Party; (ii) fire, flood, earthquake, law or government regulation; or (iii) any other cause beyond the reasonable control of such Party. In any such case, the Parties' time for performance under this Agreement and the term hereof, to the extent affected by any of the foregoing, shall be correspondingly extended; provided, however, that if such condition shall continue in effect for more than 180 days, either Party shall have the right to terminate this Agreement upon thirty (30) days notice.

22. Miscellaneous Provisions

22.1 **Modifications**. LICENSEE's operations and all CITY approved modifications to the PREMISES must at all times comply with the terms of this Agreement, all applicable federal, state and local laws and ordinances and all amendments thereto.

22.2 **Entire Agreement**. This Agreement, together with all Appendices attached hereto and incorporated herein constitutes the entire agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written agreement between the Parties that in any manner relates to the subject matter of this Agreement.

22.3 **Capacity**. Both LICENSEE and CITY represent that they have full capacity and authority to grant all rights and assume all obligations they have granted and assumed under this Agreement.

22.4 **Governing Law**. The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the Parties, shall be governed by the laws of the State of Texas, and exclusive venue for any action concerning this Agreement shall be **in a court with jurisdiction over** Collin County, Texas.

22.5 **Amendment**. This Agreement may only be amended by the mutual written agreement signed by the parties hereto.

22.6 **Legal Construction; Severability**. In the event that any one or more of the provisions contained in the Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or

unenforceability shall not affect the other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

22.7 **Nonwaiver**. No right or remedy granted herein or reserved to the parties is exclusive of any right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every right or remedy given hereunder. No covenant or conditions of this Agreement may be waived without consent of the Parties. It is further agreed that one (1) or more instances of forbearance by a Party in the exercise of its rights herein shall in no way constitute a waiver thereof.

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

22.9 **Successors and Assigns**.

(a) CITY and LICENSEE each bind themselves, their successors, executors, administrators and assigns to the other party to this Agreement. Neither CITY nor LICENSEE will assign, sublet, subcontract or transfer any interest in this Agreement without the written consent of the other party. No assignment, delegation of duties or subcontract under this Agreement will be effective without the written consent of CITY. LICENSEE shall not assign, sublet, subcontract, transfer or allow the use of any interest in the PREMISES or any use of LICENSEE's IMPROVEMENTS, including but not limited to equipment, lines, channels or frequencies, on the PREMISES without the prior written consent of CITY. CITY's consent may be conditioned upon LICENSEE successfully obtaining contracts from such third parties wherein those parties agree to directly compensate CITY for all benefits incurred by the use of the PREMISES.

(b) Notwithstanding anything in Section 22.9(a) to the contrary, LICENSEE may assign this Agreement to any parent, subsidiary or affiliate, or any entity that acquires all or substantially all of LICENSEE's assets in the market where the Premises are located

4-26

without CITY'S consent. Notwithstanding any assignment permitted under this Section or otherwise under this Agreement, LICENSEE shall remain absolutely and unconditionally primarily liable to pay and perform each and all of the obligations set forth in this Agreement prior to said assignment and shall be relieved of all future performance, liability and obligations after said assignment.

(c) If CITY shall, at any time, relinquish its ownership or otherwise dispose of the PREMISES, CITY shall be automatically released from all obligations under and pursuant to this Agreement that accrue after such disposition; provided, however, that such relinquishment of ownership or disposition of the PREMISES shall be subject to LICENSEE's rights under this Agreement. If the PREMISES are so disposed of, LICENSEE shall not disavow any of LICENSEE's obligations pursuant to this Agreement but shall attorn to the purchaser or transferee thereof for the performance of CITY's obligations under this Agreement.

22.10 **Applicable Laws**. This Agreement is entered into subject to the charter and ordinances of CITY as they may be amended from time to time, and is subject to and is to be construed, governed and enforced under all applicable federal and state laws.

22.11 **Subordination to Mortgage**. As to any mortgage now or subsequently placed upon any property of which the PREMISES are a part, of which CITY shall notify LICENSEE in writing, shall be deemed to be prior in time and senior to the rights of the LICENSEE under this Agreement. LICENSEE subordinates all of its interest in the Premises created by this Agreement to the lien of any such mortgage. CITY and LICENSEE shall, at the other Party's request, execute any additional documents necessary to indicate this subordination, provided that such mortgage shall not disturb possession of LICENSEE hereunder.

22.12 **Contract Interpretation**. Both parties have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement.

City Site ID: _____
Licensee Site ID: WELLINGTON Location: 105494

EXECUTED on the _____ day of _____, 200___.

LICENSEE:

DALLAS MTA, L.P., a Texas Limited Partnership, d/b/a VERIZON WIRELESS

BY: Verizon Wireless Texas, LLC, a Texas Limited Liability Company, Its General Partner

BY: _____
Hans F. Leutenegger
Area Vice President – Network, South Area

CITY:

CITY OF PLANO, TEXAS, a home rule municipal corporation

BY: _____
Thomas H. Muehlenbeck
CITY MANAGER
1520 Avenue K
P.O. Box 860358
Plano, TX 75086-0358

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

CITY'S TAX ID#: 75-6000640

4-28

City Site ID: _____
Licensee Site ID: WELLINGTON Location: 105494

ACKNOWLEDGMENTS

STATE OF NORTH CAROLINA §
§
COUNTY OF MECKLENBURG §

This instrument was acknowledged before me on the _____ day of _____, 2005, by **HANS F. LEUTENEGGER**, Area Vice President – Network, South Area of **Verizon Wireless Texas, LLC**, a Texas Limited Liability Company, General Partner of **DALLAS MTA, L.P.**, a Texas Limited Partnership, d/b/a Verizon Wireless, on behalf of said limited liability company and said partnership.

_____
Notary Public, State of Texas

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2005, by **THOMAS H. MUEHLENBECK**, City Manager of the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, on behalf of said corporation.

_____
Notary Public, State of Texas

City Site ID: _____
Licensee Site ID: WELLINGTON Location: 105494

APPENDIX "A"

SITE PLAN

(See attached)

4-30

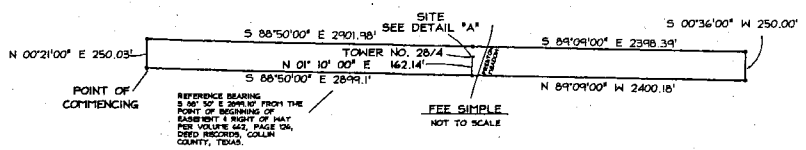
BASIS OF BEARING:
NAD-27 GRID NORTH

NS

Site Name: WELLINGTON, Site ID #: R0052C

Collin County, Texas

AS-BUILT SURVEY FOR WIRELESS COMMUNICATIONS ANTENNA AND ACCESSORY CABINET



LEGAL DESCRIPTION
TEXAS POWER & LIGHT COMPANY EASEMENT
VOLUME 662, PAGE 126
DEED RECORDS, COLLIN COUNTY, TEXAS

All that certain tract of land in the Jessie Stitt Survey, Abstract No. 798 and the Mary and Catherine Owens Survey, Abstract No. 672, Collin County, Texas, containing 30.47 acres, being part of a 547.118 acre tract of land, described in deed dated July 11, 1961, from Edna Davis Houston, et al, to Fred E. Tedsen, JR. and Gordon G. Tucker, recorded in Volume 638, Page 111, Deed Records of Collin County, Texas. The tract hereby conveyed being described by metes And bounds as follows:

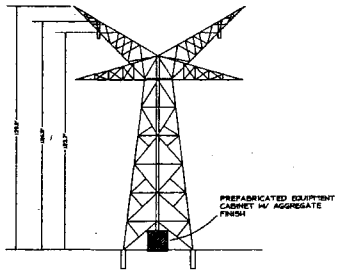
BEGINNING at a point in the West boundary line of the above referred to 547.118 acre tract of land, a fence, said point being 1466 feet North 00 degrees 21 minutes East from the Southwest corner of said tract;

THENCE with the above described West boundary line, a fence, North 00 degrees 21 minutes East 250.03 feet to corner;

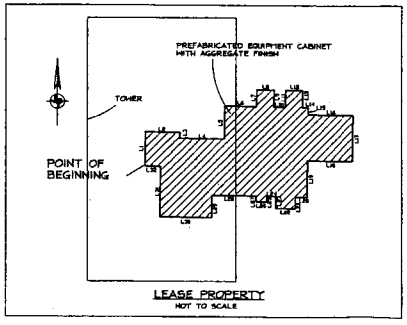
THENCE South 88 degrees 50 minutes East 2901.98 feet and South 89 degrees 09 minutes East 2398.39 feet to corner located in the East boundary line of the Mary and Catherine Owens Survey, Abstract No. 672, located in the center line of a road;

THENCE with said common boundary line and along the center line of a road, South 00 degrees 36 minutes West 250 feet to corner;

THENCE North 89 degrees 09 minutes West 2400.18 feet and North 88 degrees 50 minutes West 2899.1 feet to the PLACE OF BEGINNING, being a strip of land 250 feet in width, located as above described and covering an area of 30.47 acres.



EAST TOWER ELEVATION
NOT TO SCALE
GROUND ELEVATION (AMSL) = 706.2' (NGVD 29)
NAD27 LATITUDE : 33° 03' 38.50" N
LONGITUDE : 96° 46' 43.90" W



LEASE PROPERTY
NOT TO SCALE

LEASE BOUNDARY LINE TABLE

NUMBER	DIRECTION	DISTANCE
L1	N 0°59'00" E	3.00'
L2	S 89°01'00" E	3.00'
L3	S 0°59'00" W	0.50'
L4	S 89°01'00" E	3.90'
L5	N 0°59'00" E	2.90'
L6	S 89°01'00" E	2.80'
L7	N 0°59'00" E	1.50'
L8	S 89°01'00" E	1.50'
L9	S 0°59'00" W	1.50'
L10	S 89°01'00" E	1.00'
L11	N 0°59'00" E	1.50'
L12	S 89°01'00" E	1.50'
L13	S 0°59'00" W	1.50'
L14	S 89°01'00" E	0.50'
L15	S 0°59'00" W	0.60'
L16	S 89°01'00" E	4.00'

NUMBER	DIRECTION	DISTANCE
L17	S 0°59'00" W	4.00'
L18	N 89°01'00" W	4.00'
L19	S 0°59'00" W	3.20'
L20	N 89°01'00" W	1.00'
L21	S 0°59'00" W	1.00'
L22	N 89°01'00" W	1.70'
L23	N 0°59'00" E	1.00'
L24	N 89°01'00" W	0.80'
L25	S 0°59'00" W	0.50'
L26	N 89°01'00" W	0.90'
L27	N 0°59'00" E	0.50'
L28	N 89°01'00" W	3.90'
L29	S 0°59'00" W	1.97'
L30	N 89°01'00" W	4.50'
L31	N 0°59'00" E	4.37'
L32	N 89°01'00" W	1.40'

LEASE SITE

BEING a 0.00776 acre tract of land situated in the City of Plano, Collin County, Texas in the Mary and Catherine Owens Survey, Abstract No. 672 and being part of that called 30.47 acre tract as described for use as an easement and right-of-way by deed recorded in Volume 662, Page 126, Deed Records, Collin County, Texas and being more particularly described as follows:

COMMENCING at the southwest corner of said 30.47 acre tract;

THENCE South 88 degrees 50 minutes East a distance of 2899.10 feet to a point in the west line of said 30.47 acre tract;

THENCE North 01 degree 10 minutes East a distance of 162.14 feet to the PLACE OF BEGINNING at the southeast corner of an existing PRIFECO PERSONAL COMMUNICATIONS concrete base;

THENCE North 00 degrees 54 minutes 00 seconds East along the west side of said concrete base, a distance of 8.00 feet to the northeast corner of said concrete base;

THENCE South 89 degrees 01 minute 00 seconds East along the north side of said concrete base, a distance of 3.00 feet to the northeast corner of said concrete base;

THENCE South 00 degrees 54 minutes 00 seconds West along the east side of said concrete base, a distance of 0.50 feet to the place where the wave guide intersects the concrete base;

THENCE South 89 degrees 01 minute 00 seconds East along the north side of said wave guide, a distance of 3.90 feet to the west side of an existing PRIFECO PERSONAL COMMUNICATIONS cabinet;

THENCE North 00 degrees 54 minutes 00 seconds East along the west side of said cabinet, a distance of 2.90 feet to the northwest corner of said cabinet;

THENCE South 89 degrees 01 minute 00 seconds East along the north side of said cabinet, a distance of 2.80 feet to the northeast corner of said cabinet;

THENCE North 00 degrees 54 minutes 00 seconds East, a distance of 1.50 feet, to a point for corner;

THENCE South 89 degrees 01 minute 00 seconds East, a distance of 1.50 feet, to a point for corner;

THENCE South 00 degrees 54 minutes 00 seconds West, a distance of 1.50 feet, to a point for corner;

THENCE South 89 degrees 01 minute 00 seconds East, a distance of 1.00 feet, to a point for corner;

THENCE North 00 degrees 54 minutes 00 seconds East, a distance of 1.50 feet, to a point for corner;

THENCE South 89 degrees 01 minute 00 seconds East, a distance of 1.50 feet, to a point for corner;

THENCE South 00 degrees 54 minutes 00 seconds West, a distance of 1.50 feet, to a point for corner;

THENCE South 89 degrees 01 minute 00 seconds East, a distance of 0.50 feet, to the northeast corner of said cabinet;

THENCE South 00 degrees 54 minutes 00 seconds West, a distance of 0.60 feet, to a point for corner;

THENCE North 89 degrees 01 minute 00 seconds East, a distance of 4.00 feet, to a point for corner;

THENCE South 00 degrees 54 minutes 00 seconds East, a distance of 4.00 feet, to a point for corner;

THENCE North 89 degrees 01 minute 00 seconds West, a distance of 4.00 feet, to a point for corner;

THENCE South 00 degrees 54 minutes 00 seconds West, a distance of 5.20 feet, to a point for corner;

THENCE North 89 degrees 01 minute 00 seconds West, a distance of 1.00 feet, to a point for corner;

THENCE South 00 degrees 54 minutes 00 seconds West, a distance of 1.00 feet, to a point for corner;

THENCE North 89 degrees 01 minute 00 seconds West, a distance of 1.70 feet, to a point for corner;

THENCE North 00 degrees 54 minutes 00 seconds East, a distance of 1.00 feet, to a point for corner;

THENCE North 89 degrees 01 minute 00 seconds West, a distance of 0.80 feet, to a point for corner;

THENCE South 00 degrees 54 minutes 00 seconds West, a distance of 0.50 feet, to a point for corner;

THENCE North 89 degrees 01 minute 00 seconds West, a distance of 0.90 feet, to a point for corner;

THENCE North 00 degrees 54 minutes 00 seconds East, a distance of 0.50 feet, to a point for corner;

THENCE North 89 degrees 01 minute 00 seconds West, a distance of 3.90 feet, to a point for corner;

THENCE South 00 degrees 54 minutes 00 seconds West, a distance of 1.97 feet, to a point for corner;

THENCE North 89 degrees 01 minute 00 seconds West, a distance of 4.50 feet, to a point for corner;

THENCE North 00 degrees 54 minutes 00 seconds East, a distance of 4.37 feet, to a point for corner;

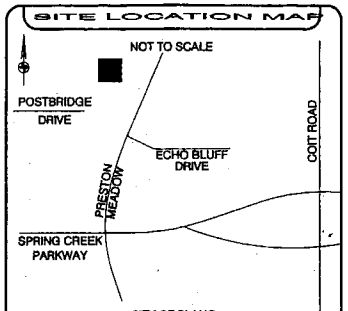
THENCE North 89 degrees 01 minute 00 seconds West, a distance of 1.40 feet, to the Point of Beginning containing 120.4 square feet or land more or less.

I, JAMES P. KEENE, a Registered Professional Land Surveyor of the State of Texas, have prepared this plat from an actual survey made on the ground under my personal supervision.

This site is not located in a 100 year flood plain, as defined by the U.S. Department of Housing and Urban Development, pursuant to the Flood Disaster Protection Act of 1973, as amended, as reflected by Flood Insurance Rate Map, which each map covers the area in which the property is situated.

REGISTERED PROFESSIONAL LAND SURVEYOR NO. 5100

SITE LOCATION MAP



GEOGRAPHIC COORDINATES

ALL COORDINATES BASED ON THE NORTH AMERICAN DATUM OF 1927

GENERAL NOTES:

THIS SURVEY IS VALID ONLY WITH ORIGINAL SIGNATURE IN BLACK INK

AS-BUILTSURVEY
FOR WIRELESS COMMUNICATIONS ANTENNA AND ACCESSORY CABINET

WELLINGTON
SITE # R0052C
TOWER # 28/4
TD38395 MI 13
PRESTON MEADOW DRIVE
PLANO, COLLIN COUNTY, TEXAS
MAPSCO # 556-D

PRECISE LAND SURVEYING, INC.
4915 GUS THOMASSON MESQUITE, TEXAS 75150
(972) 681-7072 FAX (972) 279-1508

REVISIONS
DATE:

DATE: 12-10-97
SCALE: 1" = 20'
DRAWN BY: SD
CHECKED BY: PLS
FILENAME: 38403T1.dwg

13-4

City Site ID: _____
Licensee Site ID: WELLINGTON Location: 105494

APPENDIX "B"
INSURANCE

Licensee shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Licensee, Licensee's agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. ISO Form Number GL 0002 (Ed 1/72) or equivalent forms covering Comprehensive General Liability and ISO Form Number GL 0404 covering Broad Form Comprehensive General Liability; or ISO Commercial General Liability coverage ("occurrence" Form CG 0001). "Claims made" form is unacceptable except for professional liability.

2. Automobile liability shall include all owned, hired and non-owned vehicles.

3. Workers' Compensation insurance as required by the Labor Code of the State of Texas, including Employers' Liability Insurance.

B. Minimum Limits of Insurance

Licensee shall maintain limits not less than:

1. Commercial General Liability: $5,000,000 per occurrence for bodily injury, personal injury and property damage. $10,000,000 Aggregate Policy will include coverage for (a) Premises-Operations; (b) Broad Form Contractual Liability; (c) Products and Completed Operations; (d) Use of Contractors and Subcontractors; (e) Personal Injury; (f) Broad Form Property Damage; (g) Explosion Collapse and Underground (XCU) Coverage, Fire Damage, Medical Expense.

2. Automobile liability: $1,000,000 combined single limit per accident, for bodily injury and property damage.

4-32

City Site ID: _____
Licensee Site ID: WELLINGTON Location: 105494

3. Workers' Compensation and Employer's Liability: Workers' Compensation limits as required by the Labor Code of the State of Texas and Statutory Employer's Liability Limits.

C. Deductibles and Self-Insured Retentions

N/A

D. Other Insurance Provisions

The policies are to contain, or be generic endorsements with standard certificates for general and automobile liability coverage to contain the following provisions:

1. General Liability and Automobile Liability Coverage

(a) The City, its officers, officials, employees, Boards and Commissions and volunteers are to be added as "Additional Insureds" as respects liability arising out of activities performed by or on behalf of the Licensee, products and completed operations of the Licensee, premises owned, occupied or used by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers. It is understood that the business auto policy under "Who is Insured" automatically provides liability coverage in favor of the City as an additional insured.

(b) The Licensee's insurance coverage shall be primary insurance as respects Licensee's operations. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be excess of the Licensee's insurance and shall not contribute with it in this respect.

(c) [INTENTIONALLY DELETED]

(d) The Licensee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insured's liability.

2. Workers' Compensation and Employer's Liability Coverage

   The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by the Licensee for the City.

3. All Coverages

   Each insurance program required by this clause shall be directed to state that coverage shall not be suspended, voided, canceled or non-renewed, reduced in coverage or in limits, except after ten (10) days prior written notice by mail has been given to the City.

E. Acceptability of Insurers

The City prefers that Insurance be placed with insurers with an A.M. Best's rating of no less than A-:VI, or, A or better by Standard & Poors. This requirement will be waived for workers' compensation coverage only for those Licensees whose workers' compensation coverage is placed with companies who participate in the State of Texas Workers' Compensation Assigned Risk Pool. Professional Liability carriers will need to be approved by the Risk Manager.

F. Verification of Coverage

Contractor shall furnish the City with certificates of insurance effecting coverage required. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be on standard insurance certificate forms and are to be received and approved by the City before work commences.

City Site ID: _____
Licensee Site ID: WELLINGTON Location: 105494

APPENDIX "B-1"

CONTRACT BY AND BETWEEN
CITY OF PLANO, TEXAS
AND
_____, d/b/a _____

THIS CONTRACT is made and entered by and between and _____ **d/b/a** _____, hereinafter referred to as "Licensee," _____, hereinafter referred to as "Contractor," and the **CITY OF PLANO, TEXAS**, hereinafter referred to as "City," to be effective subsequent to execution by the Plano City Manager or his designee.

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

I.
SCOPE OF WORK

Contractor shall provide all supervision, labor, materials and equipment necessary for the performance of all obligations required under the terms of the contract between Licensee and _____(Contractor's name) dated _____, 200_.

II.
THIRD PARTY INTEREST

It is agreed by and between the parties that the City has an interest in the proper performance of this Contract, and that the City may bring suit for failure to comply with the specifications.

Contractor acknowledges that Licensee has no property interest in the premises provided by the City, and agrees that Contractor will not file any Lien against the City's premises should a dispute arise between Licensee and Contractor.

Contractor agrees that it shall not provide any work or services of any nature unless Contractor has obtained the insurance coverage as specified herein.

City Site ID: _____
Licensee Site ID: WELLINGTON Location: 105494

III.
VENUE

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

IV.
INDEPENDENT CONTRACTOR

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

V.
INSURANCE AND CERTIFICATES OF INSURANCE

Contractor shall procure and maintain for the duration of the contract insurance as set forth below.

Licensee shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Licensee, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the Contractor's bid.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. ISO Form Number GL 0002 (Ed 1/72) covering Comprehensive General Liability and ISO Form Number GL 0404 covering Broad Form Comprehensive General Liability; or ISO Commercial General Liability coverage ("occurrence" Form CG 0001). "Claims made" form is unacceptable except for professional liability.

2. Automobile liability shall include all owned, hired and non-owned vehicles.

4-36

3. Workers' Compensation insurance as required by the Labor Code of the State of Texas, including Employers' Liability Insurance.

4. Professional Liability (when applicable).

B. Minimum Limits of Insurance
Licensee shall maintain limits not less than:

1. Commercial General Liability: $500,000 per occurrence for bodily injury, personal injury and property damage. $1,000,000 Aggregate Policy will include coverage for (a) Premises - Operations; (b) Broad Form Contractual Liability; (c) Products and Completed Operations; (d) Use of Contractors and Subcontractors; (e) Personal Injury; (f) Broad Form Property Damage; (g) Explosion Collapse and Underground (XCU) Coverage (when applicable), Fire Damage, Medical Expense. NOTE: The aggregate loss limit applies to each project.

2. Automobile liability: $500,000 combined single limit per accident, for bodily injury and property damage.

3. Workers' Compensation and Employer's Liability: Workers' Compensation limits as required by the Labor Code of the State of Texas and Statutory Employer's Liability Limits.

4. Professional Liability.

C. Deductibles and Self-Insured RetentionsAny deductible or self-insured retentions must be declared to and approved by the City.

D. Other Insurance Provisions
The policies are to contain, or be endorsed to contain the following provisions:

1. General Liability and Automobile Liability Coverages

(a) The City, its officers, officials, employees, Boards and Commissions and volunteers are to be added as "Additional Insureds" as respects liability arising out of activities performed by or on behalf of the Licensee, products and completed operations of the Licensee, premises owned, occupied or used by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers. It is understood that the business auto policy under "Who is an Insured" automatically provides liability coverage in favor of the City.

(b) The Licensee's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be excess of the Licensee's insurance and shall not contribute with it.

(c) Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the City, its officers, officials, employees, Boards and Commissions or volunteers.

(d) The Licensee's insurance shall apply separately to each insured against who claim is made or suit is brought, except with respect to the limits of the insured's liability.

2. Workers' Compensation and Employer's Liability Coverage
The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by the Licensee for the City.

3. All Coverages
Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled or non-renewed by either party, reduced in coverage or in limits except after ten (10) days prior written notice by certified mail, return receipt requested, has been given to the City..

E. Acceptability of Insurers
The City prefers that Insurance be placed with insurers with an A.M. Best's rating of no less than A-:VI, or, A or better by Standard & Poors. This requirement will be waived for workers' compensation coverage only for those Licensees whose workers' compensation coverage is placed with companies who participate in the State of Texas Workers' Compensation Assigned Risk Pool. Professional Liability carriers will need to be approved by the Risk Manager.

F. Verification of Coverage
Contractor shall furnish the City with certificates of insurance effecting coverage required. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be on forms provided by the City and are to be received and approved by the City before work commences. The City

reserves the right to require complete, certified copies of all required insurance policies, at any time.

VI.
AFFIDAVIT OF NO PROHIBITED INTEREST

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

VII.
SEVERABILITY

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

VIII.
ENTIRE AGREEMENT

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

IX.
CONTRACT INTERPRETATION

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

X.
SUCCESSORS AND ASSIGNS

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

XI.
HEADINGS

City Site ID: _____
Licensee Site ID: WELLINGTON Location: 105494

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

XII.
THIRD PARTY BENEFIT

The parties to this Contract agree that Contractor will obtain and maintain insurance coverage as specified herein until completion of all work and services by Contractor for Licensee. Contractor shall release, defend, indemnify and hold harmless City from all damages, attorneys' fees and costs of any kind incurred by City due to Contractor's breach of its obligations hereunder. The parties further agree that this Contract is intended to benefit the City of Plano, its officials, officers, employees, agents, successors and assigns, each of which may enforce its terms in a court of competent jurisdiction either individually or collectively.

[SIGNATURE PAGE FOLLOWS]

4-40

City Site ID: _____
Licensee Site ID: WELLINGTON Location: 105494

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

_____,
d/b/a _____

BY: _____
Name:
Title:

CONTRACTOR:

BY:_____
Name:_____
Title:_____

CITY OF PLANO, TEXAS

Date: _____

BY:_____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

City Site ID: _____
Licensee Site ID: WELLINGTON Location: 105494

ACKNOWLEDGMENTS

STATE OF TEXAS §
§
COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of _____, 200_, by _____, of _____ a Texas corporation, on behalf of said corporation as general partner of _____, dba _____.

_____
Notary Public in and for
The State of _____

STATE OF TEXAS §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the ___ day of _____, 2002 by _____, _____ of _____, a _____ corporation, on behalf of said corporation.

_____
Notary Public in and for the
State of Texas

4-42

City Site ID: _____
Licensee Site ID: WELLINGTON Location: 105494

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me on the ___ day of _____, 200__ by **THOMAS H. MUEHLENBECK**, City Manager of the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, on behalf of said corporation.

_____
Notary Public in and for the
State of Texas

City Site ID: _____
Licensee Site ID: WELLINGTON Location: 105494

EXHIBIT "A"

AFFIDAVIT OF NO PROHIBITED INTEREST

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

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

_____
Name of Contractor

By:_____
(Signature)

_____
(Printed Name)

_____
(Title)

Date:_____

STATE OF TEXAS §
§
COUNTY OF _____ §

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 200__.

_____
Notary Public, State of Texas

CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☒ Yes	☐ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☒ Yes	☐ Not Applicable
Council Meeting Date:	11/28/05	Reviewed by Legal	☒ Yes	☐ Not Applicable
Department:	Engineering		Initials	Date
Department Head	Alan L. Upchurch	Executive Director		11/22/05
Dept Signature:		City Manager		11/23/05
Agenda Coordinator (include phone #):	Pegues (7198)		(Project No. 5542)	

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

CAPTION

Approval of contract to approve the terms and conditions of an engineering services contract by and between the City and Jacobs Civil, Inc. in the amount of $1,289,300.00 for the Parker Road and U.S. 75 Interchange Design and authorizing the City Manager or his designee to execute all necessary documents.

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☒ CIP

FISCAL YEAR: 2005-06	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	234,856	1,015,144	5,000,000	**6,250,000**
Encumbered/Expended Amount	-234,856	0	0	**-234,856**
This Item	0	-1,289,300	0	**-1,289,300**
BALANCE	0	-274,156	5,000,000	**4,725,844**

FUND(S): STREET IMPROVEMENT CIP

COMMENTS: This project is included in the 2005-06 Street Improvement CIP. This item, in the amount of $1,289,300, will exceed the current year balance of $274,156 for the Parker Road and U.S. 75 Interchange Project. The overage will be funded through savings and reallocation of funds from other Street Improvement CIP projects.

STRATEGIC PLAN GOAL: Service road improvement relate to the City's Goal of Safe, Efficient Travel.

SUMMARY OF ITEM

This agreement with Jacobs Civil, Inc. is for the engineering design of the Parker Road and U.S. 75 Interchange (Single Point Urban Interchange-SPUI). Jacobs Civil, Inc. had previously completed the Design Schematic and Environmental Analysis for this interchange.

The contract fee is for $1,289,300.00 and is detailed as follows:

Design Survey	$ 45,340.00
Geotechnical Investigation	$ 23,436.00
Aesthetics-Landscape	$ 35,906.00
PS&E-Design	$1,155,553.00
Deliverables and Direct Costs	$ 8,281.00
Meetings	$ 20,784.00
TOTAL	$1,289,300.00

Funding is available from the Street Improvement Community Investment Program. Staff feels the fee is reasonable for this project estimated to cost $17,000,000.00.

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
Engineering Services Agreement	N/A
Location Map	

PARKER ROAD & U.S. 75 INTERCHANGE

PROJECT NO. 5542

ENGINEERING SERVICES AGREEMENT

THIS AGREEMENT is made and entered by and between the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, hereinafter referred to as "City", and **JACOBS CIVIL, INC.**, a **MISSOURI** Corporation, hereinafter referred to as "Engineer", to be effective from and after the date as provided herein.

W I T N E S S E T H:

WHEREAS, the City desires to engage the services of the Engineer to prepare construction plans, specifications, details and special provisions and to perform other related engineering services in connection with the **PARKER ROAD & U.S. 75 INTERCHANGE** project located in the City of Plano, Collin County, Texas, hereinafter referred to as the "Project"; and

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

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

I. Employment of the Engineer

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

II. Scope of Services

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

III. Schedule of Work

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

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

IV. Compensation and Method of Payment

The parties agree that Engineer shall be compensated for all services provided pursuant to this Agreement in the amount and manner described and set forth in the Payment Schedule attached hereto and incorporated herein as Exhibit "C". The contract amount specified in Exhibit "C" shall not be exceeded without the written permission of the City.

V. Information to be Provided by the City

The City agrees to furnish, prior to commencement of work, all that information requested by Engineer and available in City's files.

VI. Insurance

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

VII. Indemnity

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

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

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

VIII. Independent Contractor

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

IX. Assignment and Subletting

The Engineer agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of the City. The Engineer further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the Engineer from its full obligations to the City as provided by this Agreement.

X. Audits and Records/Prohibited Interest

The Engineer agrees that at any time during normal business hours and as often as City may deem necessary, Engineer shall make available to representatives of the City for examination all of its records with respect to all matters covered by this Agreement, and will permit such representatives of the City to audit, examine, copy and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement, all for a period of one (1) year from the date of final settlement of this Agreement or for such other or longer period, if any, as may be required by applicable statute or other lawful requirement.

The Engineer agrees that it is aware of the prohibited interest requirements of the City Charter and Code of Conduct and will abide by the same. Further, a lawful representative of Engineer shall execute the affidavit shown in Exhibit "E". Engineer understands and agrees that the existence of a prohibited interest during the term of this contract will render the contract voidable.

XI. Contract Termination

The parties agree that City shall have the right to terminate this Agreement with or without cause upon thirty (30) days written notice to Engineer. In the event of such termination, Engineer shall deliver to City all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items prepared by Engineer in connection with this Agreement. Engineer shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to termination.

XII. Engineer's Opinion of Probable Construction Costs

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

XIII. Ownership of Documents

Original drawings and specifications are the property of the Engineer; however, the Project is the property of the City and Engineer may not use the drawings and specifications therefor for any purpose not relating to the Project without City's consent. City shall be furnished with such reproductions of drawings and specifications as City may reasonably require. Upon completion of the work or any earlier termination of this Agreement under Article XI, Engineer will revise drawings to reflect changes made during construction and he will promptly furnish the City with one (1) complete set of reproducible record prints. Prints shall be furnished, as an additional service, at any other time requested by City. All such reproductions shall be the property of the City who may use them without Engineer's permission for any proper purpose including, but not limited to, additions to or completion of the Project. However, use of the documents for other than their intended purpose shall be at the sole risk of the City.

XIV. Complete Contract

This Agreement, including the Exhibits lettered "A" through "E", constitute the entire agreement by and between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous written or oral understandings. This

Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument.

XV. Mailing of Notices

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

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

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

F. Russell Kelly, P.E.
Project Engineer
6688 N. Central Expressway #400, MB14
Dallas TX 75206

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

XVI. Miscellaneous

A. Paragraph Headings:

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

B. Contract Interpretation:

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

C. Venue/Governing Law:

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

D. Successors and Assigns:

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

E. Severability:

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

F. Effective Date:

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

SIGNED on the date indicated below.

JACOBS CIVIL, INC.
A Missouri Corporation

DATE: _____ BY: _____
MARK G. GOODE, P.E.,
DIRECTOR – TEXAS OPERATIONS

CITY OF PLANO, TEXAS

DATE: _____ BY: _____
THOMAS H. MUEHLENBECK
CITY MANAGER

APPROVED AS TO FORM:

_____
Diane C. Wetherbee
CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS §
§
COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of _____, _____, by **MARK G. GOODE, P.E., DIRECTOR – TEXAS OPERATIONS,** of **JACOBS CIVIL, INC.** a **MISSOURI** corporation, on behalf of said corporation.

_____
Notary Public, State of Texas

STATE OF TEXAS §
§
COUNTY OF COLLIN §

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

_____
Notary Public, State of Texas

Exhibit A
Scope of Services
US 75 Corridor Improvements – Parker Road
Plans, Specifications and Estimates (Phase III-B)
11/07/05

PROJECT DESCRIPTION

Since late 2001, Jacobs Civil Inc., **the Consulting Engineer**, and others have been working with the City of Plano developing ramp and auxiliary lane improvement options for the US 75 (North Central Expressway) corridor. Through the analysis process and public meetings in Phase I, a total of 22 separate improvements were recommended, which were then ranked and organized into seven "Improvement Clusters" and presented in *Ramp Improvement Study, US 75 Corridor* (March 6, 2002, JE Sverdrup, now known as Jacobs Civil Inc.). The Plano City Council approved the study on February 4, 2002, which allowed the next step of the implementation process, Phase II-A, to continue.

During *Phase II-A*, documents required by TxDOT for the approval and implementation were prepared, including an Alternatives Analysis for the Parker Road Interchange area, Traffic Projections Report, Programming Assessment and other work.

Phase II-B continued the implementation process and prepared - the **schematic designs** and **environmental analysis and documents** predicated on the requirements and practices of state and federal agencies (TxDOT, FHWA, etc.) for the ramps and auxiliary lanes. That phase of the project also developed more details for the options for the Parker Road Interchange, and was presented to TxDOT for review and comments.

Phase II-C further developed the design of the Parker Road Interchange. In this phase **schematic designs** and **environmental analysis documents** for the **Parker Road interchange** were developed in accordance with state and federal agencies requirements. Of the options presented in the previous phase, the Single Point Urban Interchange (SPUI) option had been and was the type of interchange used in the schematic design.

Phase III-A entered the final stages of the improvement process for the ramp improvements portion. The work to be performed by the **Consulting Engineer** under this task consists of providing engineering services for the preparation of Plans, Specifications and Estimates (PS&E) and other engineering and technical work in accordance with the schematic design and other documents developed during Phase II-

B. The improvements are located along US 75 between George Bush Turnpike and Spring Creek Parkway in Plano, Texas.

Phase III-B As described **in this scope** is the final stages of the Parker Road Interchange improvements. The work to be performed by the **Consulting Engineer** under this task consists of providing engineering services for the preparation of Plans, Specifications and Estimates (PS&E) and other engineering and technical work in accordance with the schematic design and other documents developed during Phase II-C.

PHASE III-B

The **Consulting Engineer** shall collect, review and evaluate the available existing data pertaining to the project. The project consists of PS&E for four new left turn ramps and four new right turn ramps to connect Parker Road to the Frontage Roads along US 75; two U-Turns connecting at the left turn ramps; New Bridge structure along Parker Road; New roadway along Parker Road along either approach to the new bridge; New roadways along both North and Southbound Frontage Roads in the vicinity of Parker Road; removal of existing roadways and bridge; sequencing of construction.

The Engineer shall prepare plans, details and compute quantities for the project to include roadway design, bridge, grading, paving, drainage, aesthetics, signing, pavement markings, high mast lighting, traffic control plans, storm water pollution prevention plans, demolition plans, retaining walls, specifications, and cost estimates. The Engineer will provide surveying, and other minor ancillary design elements necessary to complete the design.

The PS&E will be prepared in accordance with TxDOT standards and requirements

TASK 1000 – GENERAL APPROACH TO WORK, PROJECT MANAGEMENT AND QUALITY CONTROL

The **Consulting Engineer** shall provide design and technical services as further described herein predicated by the needs of the project, and consistent with industry and Texas Department of Transportation (TxDOT) standards and practices. The references and/or tools for the design shall be nationally recognized by the industry, and shall include, but are not limited to the recent edition of the *Highway Capacity Manual (HCM) published by the Transportation Research Board*; traffic analysis computer programs such as Synchro, HCS, HCM/Cinema, etc.; computer aided design programs such as CADD (Microstation format); survey computer programs such as GEOPAK; the recent edition of *A Policy on Geometric Design of Highways and Streets*

published by AASHTO; the recent edition of the *Texas Manual of Uniform Traffic Control Devices*; the *Roadway Design Manual, October 2005 by TxDOT*; Bridge Design Manual, December 2001 by TxDOT, Plans, Specifications and Estimates Preparation Manual, April 2005 by TxDOT and city ordinances, standards, and practices as indicated by City Staff.

The **Consulting Engineer** will provide a principal-in-charge, a working project manager, and a working deputy project manager, all within the same company. All three aforementioned individuals must be registered professional engineers in the State of Texas with adequate experience in engineering pertinent to this project. The **Consulting Engineer** will provide other adequate technical, professional, and clerical staff he deems necessary for the project.

It is understood and agreed that the **Consulting Engineer's** contract is with the **City** and that all services will be performed under the direct supervision of the appropriate **City** staff, and that **City** and **Consulting Engineer** will both manage the project. However, sub-consultants will be fully managed by the **Consulting Engineer**.

The **Consulting Engineer** will maintain proactive communications and coordination with the **City** for the duration of the Project including teleconferences and in-house meetings.

To facilitate the implementation and approval of this project, the **Consulting Engineer** will establish and maintain adequate communications with pertinent agencies and other parties involved in the **Project** - including, but not limited to - Texas Department of Transportation (**TxDOT**), Federal Highway Administration (**FHWA),** North Central Texas Council of Governments (**NCTCOG**), Collin County and North Texas Tollway Authority (**NTTA**). The consultant will provide adequate documentation of significant communications with outside parties. Formal summaries of pertinent staff communications and public meeting summaries will be prepared by the **Consulting Engineer** and will be suitable for use as reference in future implementation efforts.

The Consulting Engineer will provide quality control over the technical elements of the project including data, surveying, analysis, calculation, design, cost estimating, specifications, computer and other drafting. The **Consulting Engineer** will provide quality control on the content, format, grammar, compactness, and overall effectiveness of the memos and other written materials and graphical materials produced under this scope. The consultant engineer shall sign and seal the final version of the construction plans and specifications under this scope.

The **City** staff will provide adequate personnel for the project management for the work, and will assist the consultant with gathering available data and other specified tasks. The **Consulting Engineer** is responsible for maintaining and using, as needed, information and data from previous phases of this project, in electronic or paper format.

TASK 2000 – PLANS, SPECIFICATIONS AND ESTIMATES FOR PARKER ROAD IMPROVEMENTS

2100 GENERAL PLAN, SPECIFICATION & ESTIMATE DEVELOPMENT; DATA COLLECTION

The **Consulting Engineer** shall use CADD (Microstation format) to fully develop all drawings that shall be compatible with the State standards.

The PS&E shall be developed in English units. The final plan sheets shall be 4 mil-double matte opaque mylars, size 11" x 17", signed, sealed and dated by a Professional Engineer registered in the State of Texas. The plans shall be noted as copyrighted with the State's logo.

The PS&E shall be complete and suitable for the bidding and awarding of a construction contract, and in accordance with the latest State policies and procedures, TxDOT's *PS&E Checklist*, and general industry standards.

The **Consulting Engineer** shall provide draft documents for review and comment at the nominal completion stages of 60%, 90% and final milestone PS&E submittals in accordance with the latest State policies and procedures. The draft documents will be submitted to the City and State for review and comment. The **Consulting Engineer** shall reply to each comment and submit the replies with the next scheduled submittal. Review meetings between the State and the **Consulting Engineer** will be scheduled by mutual agreement to discuss comments and replies. The **Consulting Engineer** shall make all agreed upon changes to the submitted documents before the next scheduled submittal. The **Consulting Engineer** has sole responsibility for reaching consensus with State staff on the resolution of review comments.

The **Consulting Engineer** shall review and evaluate design criteria developed by the State and adopt criteria applicable to this project. Whenever applicable, the State's standard drawings, standard specifications, or previously approved special provisions and/or special specifications shall be used. If a new special provision or a special specification must be developed for this project, it shall be in the State's format and, to the extent possible, incorporate references to approved State test procedures. Any specifications developed by the **Consulting Engineer** shall be submitted to the State for approval prior to inclusion in the PS&E. The **Consulting Engineer** shall sign, seal, and date all project specific modifications to standard drawings.

In addition to field survey work, the **Consulting Engineer** shall collect, review and evaluate data pertinent and necessary to perform the work described herein. The vast majority of this effort is described below:

1. Data from the State, including "as-built plans", existing schematics, right-of-way maps, Subsurface Utility Engineering (SUE) mapping, existing cross sections, existing planimetric mapping, environmental documents, existing channel and drainage easement data, current unit bid price information, current special provisions, special specifications, and standard drawings.
2. Documents for existing and proposed development along proposed route from local municipalities and local ordinances related to project development.
3. Utility plans and documents from appropriate municipalities and agencies.

The **Consulting Engineer** shall conduct field reconnaissance and collect data including a photographic record (maintain in **Consulting Engineer's** office) of notable existing features.

The **Consulting Engineer** with the assistance of the **City** as required shall be responsible for Coordinating with the Utility companies regarding relocation requirements.

2200 RIGHT-OF-WAY DATA

The **Consulting Engineer** shall review and evaluate existing right-of-way map to verify that all construction staging and alignment considerations have been taken into account. The **Consulting Engineer** shall make every effort to prevent detours from extending beyond the existing Right-of-Way lines. If it is necessary to obtain additional construction easements and/or right-of-entry, the **Consulting Engineer** shall notify the City in writing of the need and justification for such action. **Refer to Section 4000 for information on the preparation of plats, field notes, or exhibits necessary for acquiring additional easements.**

2300 ROADWAY DESIGN

The **Consulting Engineer** shall design, prepare, and provide roadway plan and profile drawings using CADD standards as required by the State. The drawings shall consist of a planimetric file of existing features and files of the proposed improvements. The roadway base map shall contain line work that depicts existing surface features obtained from the schematic drawing and survey work herein. Existing major subsurface and surface utilities (within the impacted area) shall be shown to the extent their locations could impact project design and construction activities. Existing and approximate proposed right-of-way lines shall be shown.

The plan view shall contain the following design elements:

1. Calculated roadway centerlines for ramps and frontage roads. Horizontal control points shall be shown. The alignments shall be calculated using GEOPAK.
2. Pavement edges for all improvements (mainlanes, bridges, ramps, driveways and frontage roads).
3. Lane and pavement width dimensions.
4. The geometrics of ramps, and auxiliary lanes.
5. Direction of traffic flow on all roadways. Lane lines and/or arrows indicating the number of lanes shall also be shown.
6. ROW lines and easements.
7. Begin/end superelevation transitions and cross slope changes.
8. Limits of riprap, block sod, and seeding.
9. Existing utilities (based on available information) and structures.
10. Benchmark and survey control information.
11. Radii callouts, curb location, CTB, guard fence, crash safety items and Americans with Disabilities Act Accessibility Guidelines (ADAAG).
12. Other minor or ancillary design elements necessary to achieve the project.

The profile view shall contain the following design elements as a minimum:

1. Calculated profile grade for new ramps, cross streets and frontage roads. Vertical curve data, including "K" values shall be shown.
2. Drawing vertical scale to be 1"=10' or 1"=20'.

Typical sections shall be required for all proposed and existing roadways. Typical sections shall include as a minimum width of travel lanes, shoulders, outer separations, border widths, curb offsets, and ROW. The typical section shall also include PGL, centerline, pavement design (as supplied by TxDOT), longitudinal joints, side slopes, sodding/seeding limits, concrete traffic barriers, station limits, common proposed/existing structures including retaining walls, riprap, limits of embankment excavation, etc. All stationing will be along the US75 centerline stationing.

Cross Sections shall be required for all proposed Roadways. Cross sections will be provided on 11" X 17" sheets at 50 foot intervals. Cross sections shall include Existing and proposed ground lines, Pavement widths, Limits of right-of-way as required, retaining walls, cross slopes, PGL locations. The original Geopak electronic file of the cross sections will be provided to TxDOT to facilitate their review.

The **Consulting Engineer** shall provide the design of Parker Road interchange along with improvements to the frontage roads. The design shall be consistent with the schematic, the design criteria defined in this section, and the *October 2005* TxDOT *Roadway Design Manual.*

The **Consulting Engineer** shall develop an **earthwork** analysis to determine cut and fill quantities and provide final design cross sections at 50 foot intervals. The **Consulting Engineer** shall provide input files used to generate the design cross sections. The **Consulting Engineer** shall provide earthwork cross-section data files in a GEOPAK format. The State cross section criteria files will be used to generate design cross sections.

The **Consulting Engineer** shall use the pavement design developed by the State for this project. The **Consulting Engineer** will initially assume a US 75 mainlane and ramp pavement design of 13" CRCP (Continuously Reinforced Concrete Pavement), 5" HMAC (Hot Mix Asphalt Concrete), and 8" LTS (Lime Treated Subgrade), and a frontage road pavement design of 9" CRCP, 5" HMAC and 8" LTS. The pavement for Parker Road will be 8" RCP consistent with the schematic design. The final pavement design may vary from this assumption to accommodate the technical design needs of the project.

2400 DRAINAGE DESIGN

The **Consulting Engineer** shall develop drainage designs that minimize the interference with the passage of traffic or incur damage to the highway and local property. The **Consulting Engineer** shall provide layouts, drainage area maps, and design of all drainage components. The **Consulting Engineer** shall design all conventional storm drainage and cross drainage in conformance with the State *Hydraulic Manual*, and specific program guidance provided by the State. Storm drain design shall be performed using WinStorm 3.1 or GEOPAK Drainage. The **Consulting Engineer** shall perform the following:

1. Prepare drainage area maps.
2. Prepare plan/profile sheets for storm drain systems.
3. Select standard details from State or District's list of standards for items such as inlets, manholes, junction boxes and end treatment, etc. Prepare details for non-standard inlets, manholes and junction boxes.
4. Prepare drainage details for outlet protection, outlet structures and utility accommodation structures.
5. Identify pipe strength requirements.
6. Prepare drainage facility quantity summaries.
7. Identify potential utility conflicts and design around them, wherever possible, or otherwise propose design solutions.
8. Take into consideration pedestrian facilities, utility impacts, driveway grades, retaining wall and concrete traffic barrier drainage impacts.

The **Consulting Engineer** shall develop Storm Water Pollution Prevention Plans (SWPPP) per Dallas District sheet layout requirements, on separate sheets in

conformance with the Traffic Control Plan (TCP), to minimize potential impact to receiving waterways. The SWPPP shall include text describing the plan, quantities, type, phase and locations of erosion control devices and any required permanent erosion control measures. The City and/or State will provide the Notice of Intent.

2500 SIGNING, MARKINGS, SIGNALIZATION AND ILLUMINATION

A. Signing.

The **Consulting Engineer** shall prepare drawings, specifications and details for all traffic signs as part of a permanent traffic control plan on plan sheets. The signs will include small signs, "way-finding signs" along US75 frontage roads, and large guide signs. The **Consulting Engineer** shall coordinate with the State as required. Sign detail sheets shall be prepared for large guide signs and "way-finding" signs showing dimensions, lettering, shields, borders, corner radii, etc., and a summary of large and small signs shall be provided. The **Consulting Engineer** shall also designate the shields to be attached to guide signs. The proposed signs shall be illustrated and numbered on plan sheets. Signs structures, foundations and special mounting details for signs shall be selected from State Standards or designed by the **Consulting Engineer** where necessary. All signs shall be designed in accordance with TMUTCD and State Standards. All plans will be signed and sealed by a Texas Registered Professional Engineer.

The **Consulting Engineer** shall provide the following information on permanent traffic control plan:

1. Roadway layout.
2. Center line with station numbering.
3. ROW lines.
4. Designation of arrow used on exit direction signs.
5. Existing signs to remain, to be removed, or to be relocated.
6. Proposed signs (illustrated and numbered).
7. Existing overhead sign bridges to remain, to be revised, removed or relocated.
8. Proposed overhead sign bridges, indicating location by plan.
9. Small sign mount details on bridge.

B. Pavement Markings. The Engineer shall detail permanent pavement markings and channelization devices on plan sheets. The Engineer shall coordinate with the State and City as needed. Pavement markings shall be selected from the latest State and City of Plano standards.

The Engineer shall provide the following information on sign/pavement marking layouts:

1. Roadway Layout
2. Center Line with station numbering
3. ROW lines
4. Proposed markings (illustrated and quantified) which include pavement markings, object markers and delineation.
5. Direction of traffic flow on all roadways.

C. **Traffic Signals.** The Engineer shall perform engineering for the proposed Single Point Urban Interchange (SPUI) Traffic signal at Parker Rd and US75 interchange. The Consulting Engineer shall confirm the power source for the traffic signal and coordinate with the appropriate utility agency. Traffic Signal Plans shall be signed and sealed by a Texas Registered Professional Engineer. The Consulting Engineer shall develop all quantities and incorporate appropriate agency standards required to complete construction. Traffic signal fixtures, signs, and lighting shall be designed per the State's recommendations and standards.
The following information shall be provided in the Traffic Signal Plans:

(1) List of all bid items and quantities
(2) Traffic Signal Bridge Details
(3) Signal locations
(4) Conductor and Cable Layout
(5) Pull Box and Conduit layout
(6) Video Detection System
(4) Applicable standards sheets
(2) Signal indications
(3) Phase diagram
(4) Signal sequence table

Illumination. The **Consulting Engineer** shall provide illumination layout plans, electrical circuit plans and details for roadway and bridge underpass lighting. The **Consulting Engineer** shall tabulate all quantities and provide summary sheets. Lighting poles, fixtures, and attachment details shall be designed per the State's recommendations and standards.

2600 TEMPORARY TRAFFIC CONTROL AND CONSTRUCTION PHASING

Traffic Control Plan. The **Consulting Engineer** shall prepare Traffic Control Plans (TCP). These plans shall also be prepared in accordance with the *Texas Manual on Uniform Traffic Control Devices for Streets and Highways* (2003).

The **Consulting Engineer** shall coordinate with the State to develop the overall temporary traffic control including identifying construction phases and other temporary strategies, as well as identifying temporary pavement, temporary ramps, and other temporary structures. Temporary pavement markings shall be selected from the latest State standards where applicable. The **Consulting Engineer** shall be responsible for the design of all temporary ramps as needed for traffic phasing. All the temporary ramps shall be included in the traffic control and phasing plans.

The **Consulting Engineer** shall provide the following information on the temporary traffic control plan as a minimum.

1. Proposed temporary signs and markings (illustrated and quantified) which include tabs, removable and non-removable pavement markings, and raised pavement markings.
2. Quantities of existing signs and pavement markings to be removed.
3. The location of mainlanes, grade separations, frontage roads and ramps.
4. The number of lanes in each section of proposed highway and the location of changes in numbers of lanes.
5. ROW limits.
6. Direction of traffic flow on all roadways
7. Temporary ramps as needed

The **Consulting Engineer** shall provide a document using written narrative and graphics as necessary of the construction sequencing and work activities per phase and determine the existing and proposed traffic control devices (regulatory signs, warning signs, guide signs, route markers, construction pavement markings, barricades, flag personnel, temporary traffic signals, etc.) to be used to handle traffic including at-grade intersections during each construction sequence. Continuous, safe access to all properties during all phases of construction is a primary goal. Traffic control and phasing plans will be designed to minimize impacts to the properties along the frontage road corridor.

The **Consulting Engineer** shall provide an estimated schedule for length of construction time.

2600 ESTIMATE.

The **Consulting Engineer** shall independently develop and report quantities in standard State bid format compatible to the State's system at the 60% submittal. The estimate will be of a content and format that TxDOT staff can utilize to finalize the cost estimates. The initial estimate will represent the engineer's opinion of the probable construction costs.

2700 SPECIFICATIONS AND GENERAL NOTES

The **Consulting Engineer** shall identify, prepare and provide the necessary standard specifications, special specifications, special provisions and the appropriate reference items at the 60% completion level. The specification will be of a content and format that TxDOT staff can utilize to finalize the specifications. The specifications and other similar written material shall follow the State standards and practices. The specifications and similar written material of significant length shall be prepared for an 8.5" X 11" page format and be divided into appropriate sections and subsections.

The **Consulting Engineer** shall prepare General Notes (provide red-lined mark-up) from the Dallas District's *Master List of General Notes*, Special Specifications and Special Provisions for inclusion in the plans and bidding documents to the 60% completion level. The general notes will be of a content and format that TxDOT staff can utilize to finalize the document. The **Consulting Engineer** shall provide General Notes, Special Specifications and Special Provisions in Rich Text format (as required by TxDOT).

2800 MISCELLANEOUS

Retaining Walls. It is assumed that all permanent retaining walls shall be mechanically stabilized earth or Concrete Masonry Unit (CMU) retaining walls. The **Consulting Engineer** shall provide layouts (scale 1"=50' on 11"X17"), elevations, quantity estimate, summary of quantities, typical cross sections and structural details of all retaining walls within the project.

1. Layout Plan
   - o Designation of reference line
   - o Beginning and ending retaining wall stations
   - o Offset from reference line
   - o Horizontal curve data
   - o Total length of wall
   - o Indicate face of wall
   - o All wall dimensions and alignment relations (alignment data as necessary)
   - o Bore hole locations

2. Elevation:
   - Horizontal scale: 1"=40', vertical scale: 1"=10' on 11"X17"
   - Top of wall elevations
   - Existing and finished ground line elevations
   - Limits of measurement for payment
   - Type, limits and anchorage details of railing (If applicable)
   - Bore hole data including material type and blow counts
   - Crossing structures i.e. storm sewers and utilities

Retaining wall layouts shall conform to the latest revision of the Dallas District wall preparation guidelines.

In addition to the 60%, 90% and 100% submittals, preliminary layout drawings shall be provided for all retaining walls with a height of 25' or greater.

The **Consulting Engineer** will review the retaining wall layouts to determine if the above retaining wall types are appropriate for each specific location. An addendum to the contract will be required if a different type of wall is required. Known areas of concern include the walls in front of the abutments of the bridge and the wall along Eastbound Parker Road.

2900 STRUCTURES

The **Consulting Engineer** shall perform the following services with the standard practices of the Texas Department of Transportation (TxDOT). All bridge structures will be designed as prestressed concrete I-beam girders with composite bridge decks in accordance with the AASHTO Standard Specifications for Highway and Bridges, 2002 edition, TxDOT Bridge Design Manual, and TxDOT Detailer's Manual.

All signal and sign supports will be designed in accordance with AASHTO Standard Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals, 4th Edition, with 2002 and 2003 Interims. It is assumed that all sign support structures will be per the TxDOT standard designs details. It is also assumed the design and details for the signal supports shall be per City of Plano standard designs and details.

All bridge structures shall be designed for HS 20 loading.

The **Consulting Engineer** shall prepare bridge layouts, typical sections, structural details, and estimated quantities for the Parker Road Bridge over US 75.

Additional design due to Aesthetic considerations is **not included**. Additional design may be required for aesthetic treatments and shall be included as an addendum to the contract. Areas likely to require additional design consideration include, but not limited

to, non standard Signal supports, non standard overhead sign structures, or other aesthetic structures on the bridge.

The **Consulting Engineer** shall prepare signal and sign support structural details and estimated quantities for signal and sign support structures.

Specific services shall include the following:

A. Preliminary Design

The **Consulting Engineer will not provide** alternate superstructure solution or design for this project. Alternative structure types or layouts may be investigated at the request of the **City** as an additional scope of services. All bridge structures will be designed as prestressed concrete I-beam girders with composite bridge decks.

B. Final Design

The **Consulting Engineer** shall prepare bridge layout plans and elevations in accordance with the latest edition of the state's bridge manuals.

The **Consulting Engineer** shall provide demolition plans, and structural details associated with phased construction.

The **Consulting Engineer** shall make final design calculations and final detail drawings in accordance with standard requirements of the State.

The final plan shall include anchorages for structural supports for all signs, signals, and lighting fixtures mounted on the structure.

C. Deliverables

I addition to the submittals for the complete plan sets , the **Consulting Engineer** shall provide a 30% submittal showing the layout and typical section of the bridge structure which will be submitted to TxDOT Bridge Division in Austin. The Engineer shall also provide type and location of signal and sign support structures. **Unless otherwise directed by the City, Final Design of the bridge structure will not begin until approval has been obtained from TxDOT Bridge Division.**

The **Consulting Engineer** shall provide a 60% submittal that shows a completed bridge layout, items required for estimate and summary,

construction phasing, final sign and signal support locations, and progress update on structural design and detail.

The **Consulting Engineer** shall provide a completed structural plan for the city's review at 90% submittal.

The **Consulting Engineer** shall provide completed structural drawings, signed and sealed by a registered professional engineer.

TASK 3000 – GEOTECHNICAL INVESTIGATION

Field Investigation

We propose to explore the subsurface conditions at the subject site by drilling and sampling 2 borings, B-1 and B-2, to a depth of 40 feet or 15 feet into the bedrock within the proposed bridge area. In addition, 12 borings, R-1 through R-12, will be drilled to a depth of 20 feet or 5 feet into the bedrock for the fill walls. Retaining wall borings will be spaced approximately 250 feet apart in each of the north and southbound directions to comply with the Texas Department of Transportation subsurface exploration guidelines. Retaining walls will extend approximately 800 feet to the north and south of the interchange on the north and southbound directions.

The borings will be advanced with a truck-mounted drilling rig. Undisturbed cohesive soil samples will be obtained using 3-inch diameter, thin walled tube samplers pushed into the soil. The subsurface will be evaluated in situ using Texas Department of Transportation cone penetration tests at 5-foot intervals.

Field personnel will stake the boring locations using hand-held GPS or normal taping procedures. Both methods provide an accuracy of 20 to 50 feet. Locations will be shown on the plan of borings. Precise surveying of boring locations and elevations is not included in the cost estimate. These services may be provided upon request. At the completion of drilling operations, borings will be backfilled and plugged at the surface.

Field Investigations shall follow TxDOT Dallas District Guidelines.

Laboratory Investigation

The engineering properties of the soil or rock will be evaluated in the laboratory using tests performed on selected representative samples. The samples will be visually examined and classified. Representative samples will be selected for classification,

strength, and swell or compressibility testing. Considering the nature of the project, we recommend the following tests be performed:

1. Moisture content and/or dry unit weight;
2. Liquid and plastic limit (Plasticity Index);
3. Percent passing a No. 200 sieves;
4. Unconsolidated undrained triaxial compression on soil;
5. Unconfined compressive strength of soil; and
6. Consolidated Drained Direct Shear.

Engineering Services

1. Plan of borings, boring logs, and groundwater level observations;
2. Laboratory test results;
3. General soil and groundwater conditions at the boring locations;
4. Evaluation of the swell characteristics of the soils;
5. Design recommendations for:
   a. Foundation type, depth, and allowable loading;
   b. Foundation construction considerations;
   c. Earthwork; and
   d. Bearing Capacity and Global Stability of retaining walls.

Four copies of the report will be provided unless otherwise requested.

TASK 4000 - FIELD SURVEYING

The **Consulting Engineer** shall provide supplemental field surveying services as necessary to locate and tie existing utilities (drainage structures) to the project baseline and to update topography. Coordinate geometry shall be based on and tied into the State plane surface coordinate system.

- Locate existing control and set additional control, so that there are at least two (2) control points on either side of US 75 along Parker Road. Set additional control along US 75 so that there are at least two (2) control points North and South of the Parker Road bridge. All new control set will be tied into the previously established control network along US 75.

- Locate and tie to the control points any property corner monuments located in the field along the South and North right-of-way (ROW) lines of Parker Road from approximate 21+60 to approximate station 40+35 and along the North bound frontage road and South bound frontage road of US 75 from approximate centerline station 675+00 to approximate station 710+00 working sketches and all property ownership research will be done by SAM, Inc.

- Prepare up to three (3) parcel maps, field note descriptions, and closure sheets for additional Right-of-Way (ROW) to acquire. Prepare ROW maps for US 75 within the design area. If additional parcel maps are required, addendum to the contract will be required.

- Provide copies of all deeds, field sketches, elevation loops, and any computations performed by SAM, Inc.

- Provide the project manager with six (6) copies of each document to be submitted to the City of Plano or the Texas Department of Transportation.

- Complete a topographic survey of East bound Parker Road at approximate station 21+60.

- Complete a topographic survey of West bound Parker Road at approximate station 23+02.

- Detailed survey of the two (2) existing entry drives at approximate station 13+33 and approximate station 14+72 of the east bound exit ramp from Parker Road to Southbound frontage road of US 75.

- Detailed survey of the top surface of Parker Road bridge over US 75.

- Detailed survey of the single entry drive at approximate station 12+06 of the exit ramp from the Northbound frontage road of US 75 to East bound Parker Road.

- Complete a topographic survey of East and West bound Parker Road at approximate station 40+35.

- Complete a topographic survey of Northbound frontage road US 75 ramp at approximate station 8+36 to 15+89.

- Complete a topographic survey of North bound frontage road US 75 at approximate station 15+00 just South of Ozark to approximate station 18+00.

- Detailed survey of the Northbound underside of the Parker Road bridge over US 75.

- Complete a topographic survey of Northbound frontage road US 75 ramp at approximate station 17+73 to approximate station 25+33.

- Complete a topographic survey of Northbound frontage road US 75 approximate station 149+28.

- Complete a topographic survey of Southbound frontage road US 75 ramp at approximate station 23+04 to approximate station 18+06.

- Complete a topographic survey of South bound frontage road US 75 at approximate station 2148+89.

- Detailed survey of the Southbound underside of the Parker Road bridge over US 75.

- Complete a topographic survey of South bound frontage road US 75 at approximate existing station 2148+48.

- Complete a topographic survey of South bound frontage road US 75 ramp at approximate station 14+20 to approximate station 10+00.

- Locate and tie the drainage structures in the four (4) quadrants of TxDOT ROW.

- Locate and tie the overhead electric line from the Southwest quadrant to the Southeast quadrant.

- Locate and tie the underground electric from the Northwest quadrant to the Northeast quadrant.

At Parker Road the existing TxDOT aerial survey will be updated. New fields information will take precedent over previous surveys.

Information to be furnished by the City of Plano:

- Available plats and plans as necessary to determine intersecting street Right-of-Way width.
- Existing Utility information as required.

TASK 5000 – AESTHETICS

The **Consulting Engineer** shall prepare aesthetic plans and details in concurrence with the general aesthetic layout in the area. The aesthetic concept will address the entire Parker Road interchange area including landscaping, retaining wall, bridge structure, decorative paving and possible treatment on top of bridge structure similar to that

developed on US75 south of LBJ. These plans will be further developed into construction documents.

In order to further clarify our scope of work, the following are listed:

- Attend meetings with City of Plano, TXDOT and design team
- Prepare presentation/renderings of landscape concept including planting at Parker Road Interchange (4 quadrants) and architectural treatment of retaining wall along US 75, bridge column treatment, and decorative paving at intersections (2)
- Prepare design development and construction documents for approved conceptual plans for landscape components
- Develop and issue planting plans (4), plant list (1), irrigation plans (4), paving plan (1), paving details (1)
- Use TXDOT details where applicable for paving, planting, irrigation; provide custom details where TXDOT details are not available
- Preparation of Quantity Sheet
- Select, design architectural finish/aesthetic treatment of MSE retaining wall elevation, bridge column
- Recommend possible architectural treatment for top roadway level of bridge;
- Respond to TXDOT, Plano comments and revise documents accordingly

TASK 6000 - DELIVERABLES

Deliverables will be prepared in accordance with the requirements and practices of the TxDOT and the City of Plano.

Plan Sets will be prepared based on TxDOT's and industry standards and practices. All electronic files shall be in Microstation format in compliance with TxDOT CADD requirements. All construction plans shall be of 11" X 17" format, including a coversheet, index of drawings, locator map, and list of symbols. The final mylars will be bound. The following plans sets will be provided at each submission. A preliminary drawing list is attached.

- 60% - 10 sets of 11"x17" drawings
- 90% - 10 sets of 11x17" drawings
- 100% - 1 mylar set of 11"x17" drawing, 10 sets of 11"x17" drawings, electronic files of all drawings on a compact disk.

In addition to the submittals listed above, preliminary bridge layout drawings will be provided as indicated under task 2900. Also, preliminary layouts of all retaining walls with a height of 25' or greater shall be submitted for approval prior to final design.

Specifications shall follow TxDOT standards and practices. It is our understanding that most of the pay items required for this task will comply with TxDOT's 2004

specification book. Any special specifications and similar written material of significant length shall be prepared for an 8.5" X 11 page format and be divided into appropriate sections and subsections.

- 60% - none
- 90% - 10 sets of 8.5"x11" sections
- 100% - 10 sets of 8.5"x11" sections, electronic files of all applicable special specification on a compact disk.

Cost Estimates will be prepared using Estimator software and will include all TxDOT bid item numbers. The Bid Item costs will reflect the information from similar projects within the DFW area. Preliminary cost estimates for the improvements shall be included at the following submittals. The estimates shall be exclusive of franchise utilities relocation costs. The following sets of cost estimates will be provided at each submission.

- 60% - 1 set of pdf document
- 90% - 1 set of pdf document
- 100% - 1 set of pdf document. It is our understanding that TxDOT will take this estimate and modify it to meet their needs.

It was advised by TxDOT that their Collin County Area Office will complete the Spec List, General Notes, and Estimate before letting based on current knowledge of projects in the area and recent bid information.

Other written materials and exhibits will use standard usage English in a technical writing style that uses narrative where appropriate and achieves compactness where possible. Documents of a large enough size may require an executive summary at the request of **City** Staff.

- Generally, the preparation of all text-based documents should anticipate two drafts before a final. For each document produced, **TEN (10)** copies plus a reproducible original in paper and electronic form will be provided to the City unless the **City** requests less. Electronic written originals should be of a suitable format to use and print in the word processing program WORD.

TASK 7000 - MEETINGS AND MISCELLANEOUS

The total project meetings and public meetings outlined herein are **EIGHT (8)**, and those meetings may be interchanged between tasks. Additionally, the **Consulting Engineer** will attend **FOUR (4)** in-house meetings and participate various telecommunications. The total meetings may be interchanged between tasks. A minimum of TWO (2) members of the consultant staff will participate at any given meeting, although other key staff, and other staff not listed may also attend.

EXHIBIT B

Activity ID	Activity Description	Early Start	Early Finish
01	Notice To Proceed	25OCT04A	
TPD	Total Project Duration	25OCT04A	24MAR09
Design schematic 50% design			
Subto		27OCT04A	23SEP05A
	50% Design Schematic (75%	27OCT04A	09FEB05A
50CR	50% Schem Review By City	10FEB05A	21MAR05A
50AR	50% Schem Review By Area	04APR05A	08JUN05A
	Address Review Comments by	08JUN05A	26JUL05A
50DR	Initial Schem Review By District	26JUL05A	23SEP05A
100% design			
Subto		23SEP05A	07DEC05
	Final 100%design schematic	23SEP05A	28OCT05
	100% design schematic review by	31OCT05	30NOV05
	100% Resubmittal	01DEC05	07DEC05
Environmental Analysis			
DEA	Prepare Draft Environmental	12JUL05A	04AUG05A
DEACR	Draft Ea Review by City and Area	04AUG05A	08AUG05A
MAPO	Meeting with Affected Property		05OCT05A
FEA	Final EA Preparation	12OCT05A	17OCT05A
PUB1	Public Meeting		12OCT05A
FEADR	Final EA review by district	26OCT05	06DEC05
FEAFR	Revise Final EA per district	07DEC05	21DEC05
FM	EA Approval by District		21DEC05
	Final Approval of EA		15FEB06
PS&E			
	Notice to Proceed on PS&E	07DEC05	
	50% PS&E Preparation	07DEC05	23MAY06
	Review of 50% PS&E	24MAY06	20JUN06
	100% PS&E Preparation	21JUN06	07NOV06
	Review of 100% PS&E	08NOV06	05DEC06
	Final PS&E Preparation	06DEC06	19DEC06
	Submit Final PS&E to District		19DEC06
	Submit Final PS&E to Austin		02JAN07
Construction			
	Contract Letting		27MAR07
	Construction	28MAR07	24MAR09

Exhibit B (rev.1)

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US 75/Parker Road Interchange

JACOBS

Table C-1
Engineering Cost Estimate
Phase III-A - Plans, Specifications and Estimates

Work Element	Manhour Estimate								
	PRINICPAL	PROJECT MANAGER	SENIOR PROJECT ENG	DEPUTY PM	PROJECT ENGR I	ENGINEER IN TRAINING	ENG/CADD TECH	ADMIN STAFF	Total
Task 1000 - Project Management	14	152	0	128	60	0	8	80	$50,636
Task 2000 - PS&E for Parker Road Improvements	8	36	687	735	5110	788	3404	22	$1,104,917
Task 3000 - Geotechnical (FUGRO & JACOBS)	0	4	0	8	0	8	0	0	$23,436
Task 4000 - Survey (SAM INC. & JACOBS)	0	4	0	8	0	16	0	0	$45,340
Task 5000 - Aesthetics (CAYE COOK & JACOBS)	2	4	0	8	16	8	0	0	$35,906
Task 6000 - Deliverables and Direct Costs									$8,281
Task 7000 - Meetings	16	32	16	32	32	32	0	16	$20,784
TOTAL	22	192	687	871	5170	796	3412	102	$1,289,300

EXHIBIT "D"

ENGINEERING

INSURANCE

INSURANCE: (Review this section carefully with your insurance agent prior to bid or proposal submission. See "Insurance Checklist" on the last page or specific coverages applicable to this contract).

1. General Insurance Requirements:

1.1 The Engineer (hereinafter called "Engineer") shall not start work under this contract until the Engineer has obtained at his own expense all of the insurance called for here under and such insurance has been approved by the City. Approval of insurance required of the Engineer will be granted only after submission to the Purchasing Agent of original, signed certificates of insurance or, alternately, at the City's request, certified copies of the required insurance policies.

1.2 All insurance policies required hereunder shall be endorsed to include the following provision: "It is agreed that this policy is not subject to cancellation, non-renewal, material change, or reduction in coverage without first providing the Risk Manager, City of Plano, at least ten (10) days prior written notice."

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

1.3 No acceptance and/or approval of any insurance by the City shall be construed as relieving or excusing the Engineer from any liability or obligation imposed upon the provisions of the Contract.

1.4 The City of Plano (including its elected and appointed officials, agents, volunteers, and employees) is to be named as an additional insured under Engineer's General Liability Policy, and the certificate of insurance, or the certified policy, if requested, must so state. Coverage afforded under this paragraph shall be primary as respects the City, its elected and appointed officials, agents and employees.

1.4.1 The following definition of the term "City" applies to all policies issued under the contract:

The City Council of the City of Plano and any affiliated or subsidiary Board, Commission Authority, Committee, or Independent Agency (including those newly constituted), provided that such affiliated or subsidiary Board Commission, Authority, Committee, or Independent Agency is either a Body Politic created by the City Council of the City of Plano, or one in which controlling interest is vested in the City of Plano; and City of Plano Constitutional Officers.

1.5 The Engineer shall provide insurance as specified in the "Insurance Checklist" (Checklist) found on the last page of the bid or proposal form. Full limits of insurance required in the

Checklist of this agreement shall be available for claims arising out of this agreement with the City of Plano.

1.6 Engineer agrees to defend and indemnify the City of Plano, its officers, agents and employees as provided in Paragraph VII. of this contract.

1.7 Insurance coverage required in these specifications shall be in force throughout the Contract Term. Should the Engineer fail to provide acceptable evidence of current insurance within seven (7) days of written notice at any time during the Contract Term, the City shall have the absolute right to terminate the Contract without any further obligation to the Engineer, and the Engineer shall be liable to the City for the entire additional cost of procuring performance and the cost of performing the incomplete portion of the Contract at time of termination.

1.8 Written requests for consideration of alternate coverages must be received by the City Purchasing Manager at least ten (10) working days prior to the date set for receipt of bids or proposals. If the City denies the request for alternative coverages, the specified coverages will be required to be submitted.

1.9 All required insurance coverages must be acquired from insurers authorized to do business in the State of Texas and acceptable to the City. The City prefers that all insurers also have a policyholder's rating of "A-" or better, and a financial size of "Class VI" or better in the latest edition of A.M. Best, or A or better by Standard and Poors, unless the City grants specific approval for an exception.

1.10 Any deductibles shall be disclosed in the Checklist and all deductibles will be assumed by the Engineer. Engineer may be required to provide proof of financial ability to cover deductibles, or may be required to post a bond to cover deductibles.

2. <u>Engineer's Insurance - "Occurrence" Basis:</u>

2.1 The Engineer shall purchase the following insurance coverages, including the terms, provisions and limits shown in the Checklist.

2.1.1 Commercial General Liability - Such Commercial General Liability policy shall include any or all of the following as indicated on the Checklist:

i. General aggregate limit is to apply per project;

ii. Premises/Operations;

iii. Actions of Independent Contractors;

iv. Contractual Liability including protection for the Engineer from claims arising out of liability assumed under this contract;

v. Personal Injury Liability including coverage for offenses related to employment;

vi. Explosion, Collapse, or Underground (XCU) hazards; if applicable. This coverage required for any and all work involving drilling, excavation, etc.

2.1.2 Business Automobile Liability including coverage for any owned, hired, or non-owned motor vehicles and automobile contractual liability.

2.1.3 Workers' Compensation - statutory benefits as required by the State of Texas, or other laws as required by labor union agreements, including Employers' Liability coverage.

2.2 Professional Errors and Omissions

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

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

ENGINEERING

City of Plano - Insurance Checklist

("X" means the coverage is required.)

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

___ 18. Garagekeepers' Legal $_____- Comprehensive
$_____- Collision

___ 19. Owners Protective Liability $500,000 Combined single limits

_X_ 20. City named as additional insured on General Liability policy.. This coverage is primary to all other coverages the City may possess.

___ 21. City provided with Waiver of Subrogation on Workers' Compensation or Alternative program if applicable.

_X_ 22. Ten (10) days notice of cancellation, non-renewal, material change or coverage reduction endorsement required. The words "endeavor to" and "but failure" (to end of sentence) are to be eliminated from the Notice of Cancellation provision on standard ACORD certificates.

_X_ 23. The City of Plano prefers an A.M. Best's Guide Rating of "A-", "VI" or better or Standard and Poors Rating AA or better; Authorized to do business in the State of Texas (not applicable for workers' compensation assigned through pool or alternative compensation programs).

_X_ 24. The Certificate must state project title and project number.

_X_ 25. Other Insurance Required:

INSURANCE AGENT'S STATEMENT

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

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

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

_X_ 27. Liability policies are (indicate):

OCCURRENCE [ ] CLAIMS MADE [ ]

_____ _____
Signature Date

_____
Insurance Agent (Print)

_____
Name of Insured

_____
Date

EXHIBIT "E"

AFFIDAVIT OF NO PROHIBITED INTEREST

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

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

_____
Name of Engineering Firm

By:_____
Signature

_____
(Print Name)

_____
Title

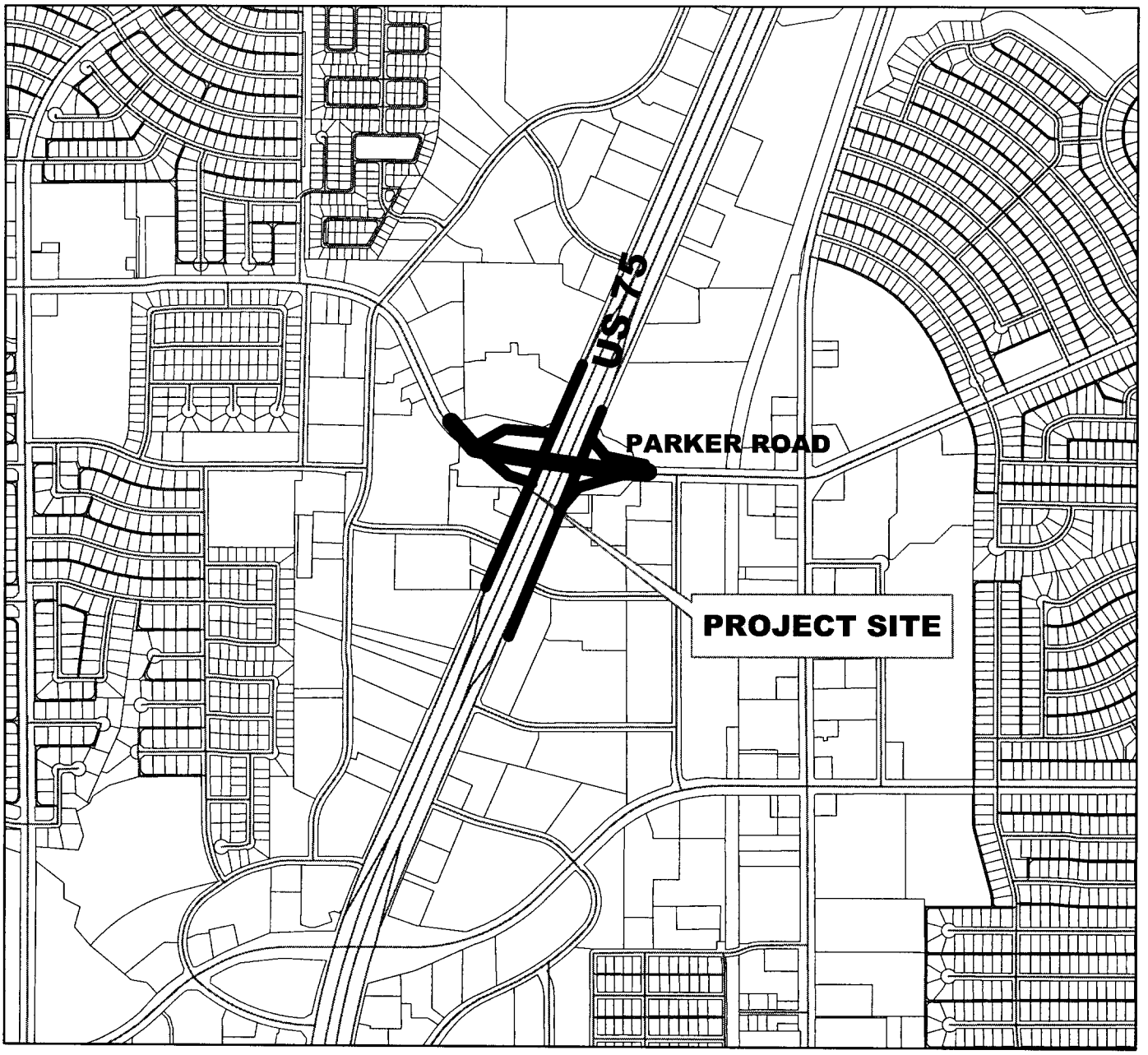
_____
Date

STATE OF TEXAS §
§
COUNTY OF _____ §

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

_____
Notary Public, State of Texas

US 75 INTERCHANGE AT
PARKER ROAD
PROJECT NO. 5542



CITY OF PLANO

ENGINEERING DEPARTMENT

N

0 0.05 0.1 0.2 0.3 0.4
Miles

5-37

DATE: November 8, 2005

TO: Honorable Mayor & City Council

FROM: Carolyn Kalchthaler, Chairman, Planning & Zoning Commission

SUBJECT: Results of Planning & Zoning Commission Meeting of November 7, 2005

AGENDA ITEM NO. 7 - PUBLIC HEARING
ZONING CASE 2005-26
APPLICANT: CITY OF PLANO

DESCRIPTION:

A request to amend Planned Development-65-Central Business-1, located at the northeast and southeast corners of Dallas North Tollway and Legacy Drive, regarding signage and townhouse regulations and ground floor retail uses. Tabled 08/01/05, 09/06/05, and 10/17/05.

APPROVED: 7-0 **DENIED:** _____ **TABLED:** _____

LETTERS RECEIVED WITHIN 200 FOOT NOTICE AREA: **SUPPORT:** 0 **OPPOSE:** 0

LETTERS RECEIVED OUTSIDE 200 FOOT NOTICE AREA: **SUPPORT:** 0 **OPPOSE:** 0

PETITION(s) RECEIVED: N/A **# OF SIGNATURES:** N/A

STIPULATIONS:

The following amendments to PD-65-CB-1 are recommended. Additions are in bold and underlined and deletions are struck through.

Specific Provisions of the Planned Developments

1. Building Design

   a. **On the south side of Legacy Drive**, buildings fronting on ~~the Retail Blvd. (Road "A" on zoning exhibit)~~ Bishop Road must be designed to accommodate ground floor retail uses **from Legacy Drive south to Martin Road. On the north side of Legacy Drive, retail, office, and live/work space is allowed on the ground floor of all multifamily buildings but is not required.** Ground floor activities of nonresidential buildings shall be oriented to the street and shall have access directly from the street. Ground floor is defined as that portion of a building from the street-level finish floor elevation and extending 12.5 feet above the street-level finish floor elevation.

2. Residential Development Standards

   c. Standards relating to single-family residence attached development

xviii. Rear entry drives are required. The distance from the garage to the travel lane of the alley shall be ~~five~~ **ten** or less feet in length or shall be 20 feet or greater in length. The distance from the garage to the mews street shall be in accordance with the attached mews street section.

6. Signage Regulations

In addition to signs permitted by Section 3.1600 of the Zoning Ordinance, the following additional signs and/or revised sign definitions and standards are permissible:

Freestanding Identification Sign - Freestanding identification signs may be installed at the ~~locations specified on the attached zoning exhibit~~ **following locations** and shall comply with the Dallas North Tollway Overlay District signage requirements.

- **The intersections of Type D and larger thoroughfares**
- **The intersection of Bishop Road and Type D and larger thoroughfares**

Freestanding identification signs are exempt from the requirement that they be located at least 30 feet from a private property line.

Portals - General

- A portal is an entry feature, which may be freestanding, span across an area, or attached to a building or structure.
- Portals may be located at the **following** locations, ~~specified on the attached zoning exhibit~~.

  1. The intersections of Bishop Road and Type D and larger thoroughfares
  2. The intersection of Henry Cook Boulevard and Parkwood Boulevard.

- Portals which span across the public right-of-way may be erected subject to city approval.

Directory Map

a. General

- A directory map is a noncommercial map listing the occupants within a shopping center, retail district, office district, or commercial site.
- A directory map may be freestanding, mounted to a wall, mounted to a vertical support, **incorporated into a kiosk,** or anchored within the public right-of-way.

6-2

- A directory map is used to provide wayfinding information for pedestrians.

b. Sign Size - a directory map, mounted to a vertical support, shall not exceed ~~eight~~ **40** square feet.

Kiosks

a. General

- **Freestanding kiosk structures may be anchored within the public right-of-way or erected on individual lots. If anchored in the public right-of-way, kiosks are limited to 15 feet in height, and all accessibility and visibility requirements must be met for public sidewalks and streets. A maximum of four freestanding kiosks may be installed in the public right-of-way, two in the portion of the PD district south of Legacy Drive and two in the portion north of Legacy Drive.**

- **Kiosks in the public right-of-way may display directory maps, artwork, or messages that pertain to the district or special events but shall not be used for commercial advertising signs. Kiosks located on private property may display commercial advertising signs.**

b. Sign Size - Signage on all kiosks shall not exceed 40 square feet in the public right-of-way. Signage on kiosks located on private property may not exceed 60 square feet. For multiple-sided kiosks, the gross surface area of each side shall not exceed two times the allowable square footage divided by the number of sign faces.

FOR CITY COUNCIL MEETING OF: November 28, 2005 (To view the agenda for this meeting, see www.planotx.org)

PUBLIC HEARING - ORDINANCE

CDD/slc

xc: Lynn Woodall, Administrative Support Supervisor

6-3

CITY OF PLANO

PLANNING & ZONING COMMISSION

November 7, 2005

Agenda Item No. 7

Public Hearing: Zoning Case 2005-26

Applicant: City of Plano

DESCRIPTION:

A request to amend Planned Development-65-Central Business-1, located at the northeast and southeast corners of Dallas North Tollway and Legacy Drive, regarding signage and townhouse regulations and ground floor retail uses. Tabled 08/01/05, 09/06/05, and 10/17/05.

REMARKS:

This item must be removed from the table.

At its June 6, 2005, meeting, the Planning & Zoning Commission called a public hearing to consider making several amendments to the regulations contained within Planned Development-65-Central Business-1 (PD-65-CB-1), which covers the Legacy Town Center development. As the developer has begun construction on the north side of Legacy Drive and staff has gained more experience with the more urban form of development occurring in this location, there are several amendments to the PD stipulations that need to be considered.

ISSUES:

Ground Floor Retail Uses

The PD presently requires that buildings fronting on Bishop Road on the south side of Legacy Drive must be designed to accommodate ground floor retail uses. The PD does not address development in the second phase on the north side of Legacy Drive, but Bishop Road will also be the main street serving this area. A mix of retail shops, townhouses, and apartments will line Bishop Road in the second phase of development. It is not practical to require ground floor retail in the townhouses, although a homeowner may choose to operate a home-based business or use the first floor for live/work space. The apartment buildings in phase two will be separated from the main concentration of retail uses along Legacy Drive by townhouses on the east and the cemetery and more townhouses on the west. The success of businesses on the ground floor of the apartment buildings may be questionable given this separation from the core of retail and restaurant activity. For this reason, staff does not recommend that a ground floor space be required on the north side of Legacy Drive. The multifamily developer may choose to include line/work or "flex" space units on the ground floor.

Signage

The stipulations for PD-65 include special signage provisions. The shopping center developer has requested to allow freestanding kiosks in the development, some of which would be within the public right-of-way. These would be similar to the kiosks, sometimes quite large, that are usually seen in large cities and that advertise theater performances, community events, etc. along with standard advertising. Within PD-65, kiosks located in the public right-of-way could display directory maps, artwork, and notices of special events within the development. They could not be used for commercial advertising. Kiosks in the public right-of-way would have to be placed so as to meet accessibility and visibility standards, and the signage or directory map would be limited to 40 square feet. For multiple-sided kiosks, the signage area can be multiplied by two and then divided by the number of sides that the kiosk has. For kiosks on private property, the signs would be limited to 60 square feet.

When PD-65 was created, freestanding identification signs were allowed only at certain locations. The PD only addressed the south side of Legacy Drive and should be amended to specify locations for these signs for the new development now taking place on the north side of Legacy Drive. The proposed PD language now indicates where freestanding identification signs may be located. Because of the arrangement of lot lines in the more dense urban centers, these locations cannot comply with the requirement that signs be located a minimum of 30 feet from a property line. This should be addressed in the PD language as well.

Townhouse Regulations

As staff has worked with the townhouse developer presently building in the town center, we have discovered that additional flexibility is needed in the building setbacks to address a variety of property sizes. Presently, the distance from the rear garage door to the travel lane of the alleys must be five feet or less or 20 feet or greater. These standards were developed to discourage people from parking in the rear alleys. Staff is proposing to increase this standard to ten feet or less or 20 feet or greater. This distance should still discourage head-in parking in front of the garage door.

RECOMMENDATIONS:

The following amendments to PD-65-CB-1 are recommended. Additions are in bold and underlined and deletions are struck through.

Specific Provisions of the Planned Developments

1. Building Design

   a. **On the south side of Legacy Drive**, buildings fronting on ~~the Retail Blvd. (Road "A" on zoning exhibit)~~ Bishop Road must be designed to accommodate ground floor retail uses **from Legacy Drive south to Martin Road. On the north side of Legacy Drive, retail, office, and live/work space is allowed on the ground floor of all multifamily buildings but is not required.** Ground floor activities of nonresidential buildings shall be oriented to the street and shall have access directly from the street. Ground floor is defined as that portion of a building from the street-level finish floor elevation and extending 12.5 feet above the street-level finish floor elevation.

6-5

2. Residential Development Standards

c. Standards relating to single-family residence attached development

xviii. Rear entry drives are required. The distance from the garage to the travel lane of the alley shall be ~~five~~ **ten** or less feet in length or shall be 20 feet or greater in length. The distance from the garage to the mews street shall be in accordance with the attached mews street section.

6. Signage Regulations

In addition to signs permitted by Section 3.1600 of the Zoning Ordinance, the following additional signs and/or revised sign definitions and standards are permissible:

Freestanding Identification Sign - Freestanding identification signs may be installed at the ~~locations specified on the attached zoning exhibit~~ **following locations** and shall comply with the Dallas North Tollway Overlay District signage requirements.

- **The intersections of Type D and larger thoroughfares**
- **The intersection of Bishop Road and Type D and larger thoroughfares**

Freestanding identification signs are exempt from the requirement that they be located at least 30 feet from a private property line.

Portals - General

- A portal is an entry feature, which may be freestanding, span across an area, or attached to a building or structure.
- Portals may be located at the **following** locations, ~~specified on the attached zoning exhibit~~.

  1. The intersections of Bishop Road and Type D and larger thoroughfares
  2. The intersection of Henry Cook Boulevard and Parkwood Boulevard.

- Portals which span across the public right-of-way may be erected subject to city approval.

Directory Map

a. General

- A directory map is a noncommercial map listing the occupants within a shopping center, retail district, office district, or commercial site.
- A directory map may be freestanding, mounted to a wall, mounted to a vertical support, **incorporated into a kiosk,** or anchored within the public right-of-way.
- A directory map is used to provide wayfinding information for pedestrians.

6-6

b. Sign Size - a directory map, mounted to a vertical support, shall not exceed ~~eight~~ **40** square feet.

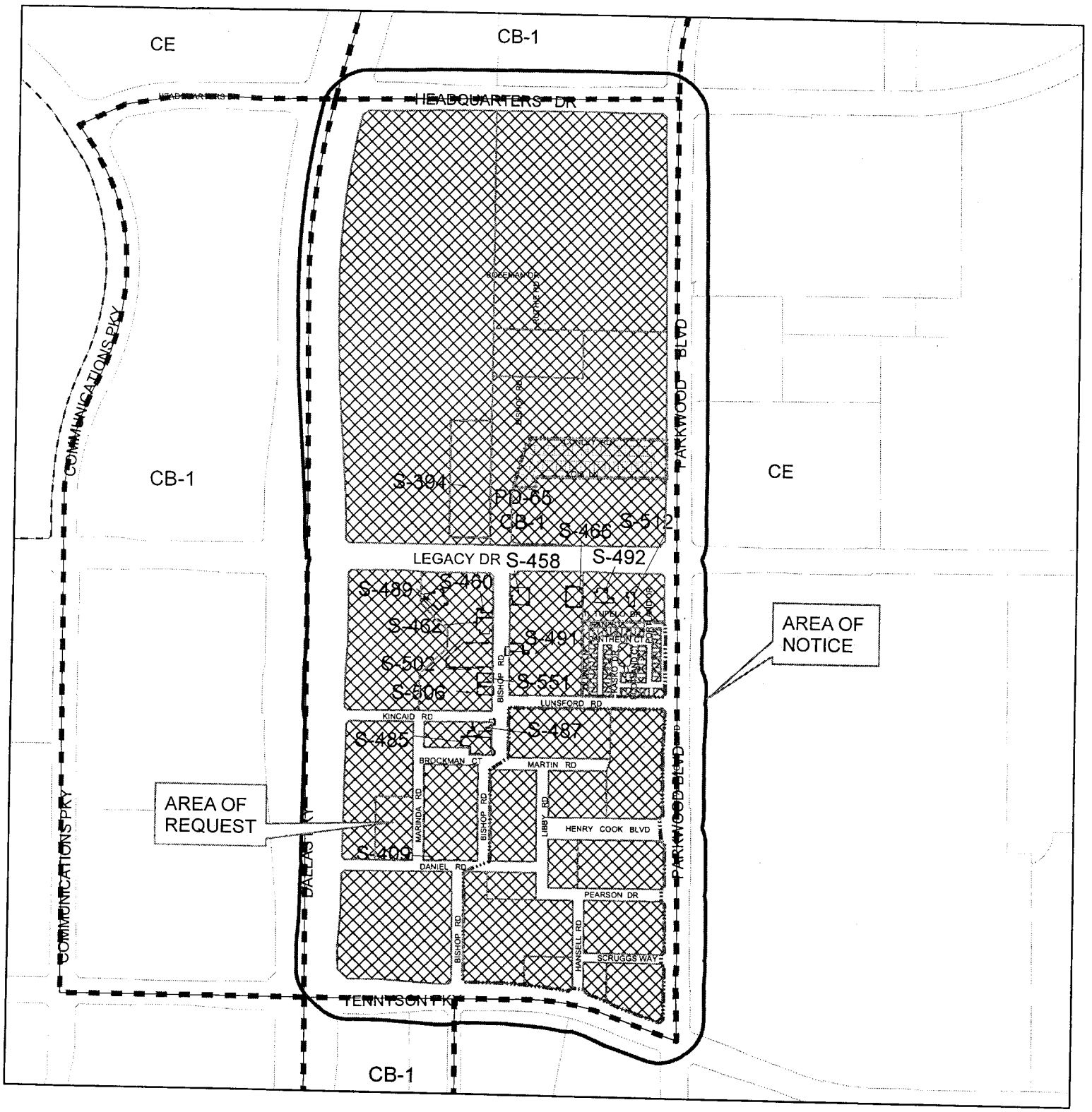
Kiosks

a. General

- **Freestanding kiosk structures may be anchored within the public right-of-way or erected on individual lots. If anchored in the public right-of-way, all accessibility and visibility requirements must be met for public sidewalks and streets. A maximum of four freestanding kiosks may be installed in the public right-of-way, two in the portion of the PD district south of Legacy Drive and two in the portion north of Legacy Drive.**

- **Kiosks in the public right-of-way may display directory maps, artwork, or messages that pertain to the district or special events but shall not be used for advertising signs. Kiosks located on private property may display advertising signs.**

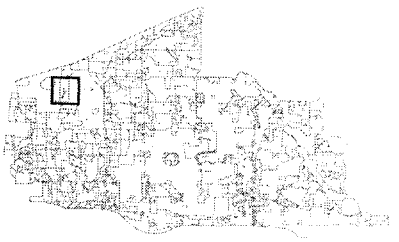
b. Sign Size - Signage on all kiosks shall not exceed 40 square feet in the public right-of-way. Signage on kiosks located on private property may not exceed 60 square feet. For multiple-sided kiosks, the gross surface area of each side shall not exceed two times the allowable square footage divided by the number of sign faces.



plano gis

Zoning Case #: 2005-26

Existing Zoning: PLANNED DEVELOPMENT-65-CENTRAL BUSINESS-1



6-8

○ 200' Notification Buffer

ORDINANCE NO. _____
(Zoning Case 2005-26)

An ordinance of the City of Plano amending the Comprehensive Zoning Ordinance of the City, Ordinance No. 2004-9-37, as heretofore amended, so as to amend Planned Development-65-Central Business-1, containing 75.03± acres of land out of the Maria C. Vela Survey, Abstract No. 935 and the Henry Cook Survey, Abstract No. 183, and 74.62± acres of land out of the Samuel Brown Survey, Abstract No. 108 and the Maria C. Vela Survey, Abstract No. 935, located at the northeast and southeast corners of Dallas North Tollway and Legacy Drive in the City of Plano, Collin County, Texas, regarding signage and townhouse regulations and ground floor retail uses; directing a change accordingly in the official zoning map of the City; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date.

WHEREAS, the City Secretary of Plano, Texas, directed that notices of a hearing be issued, as required by the Zoning Ordinance of the City of Plano and laws of the State of Texas, at a meeting of the City Council, to be held on the 28th day of November, 2005, for the purpose of considering amending Planned Development-65-Central Business-1, containing 75.03± acres of land out of the Maria C. Vela Survey, Abstract No. 935 and the Henry Cook Survey, Abstract No. 183, and 74.62± acres of land out of the Samuel Brown Survey, Abstract No. 108 and the Maria C. Vela Survey, Abstract No. 935, located at the northeast and southeast corners of Dallas North Tollway and Legacy Drive in the City of Plano, Collin County, Texas, regarding signage and townhouse regulations and ground floor retail uses; and

WHEREAS, the City Secretary of the said City accordingly caused to be issued and published the notices required by its Zoning Ordinance and laws of the State of Texas applicable thereto, the same having been published in a paper of general circulation in the City of Plano, Texas, at least fifteen (15) days prior to the time set for such hearing; and

WHEREAS, the City Council of said City, pursuant to such notice, held its public hearing and heard all persons wishing to be heard both for and against the aforesaid change in the Zoning Ordinance, on the 28th day of November, 2005; and

WHEREAS, the City Council is of the opinion and finds that such amendment would not be detrimental to the public health, safety, or general welfare, and will promote the best and most orderly development of the properties affected thereby, and to be affected thereby, in the City of Plano, and as well, the owners and occupants thereof, and the City generally.

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

Section I. The Comprehensive Zoning Ordinance No. 2004-9-37, as the same has been heretofore amended, is hereby further amended so as to amend Planned Development-65-Central Business-1, containing 75.03± acres of land out of the Maria C. Vela Survey, Abstract No. 935 and the Henry Cook Survey, Abstract No. 183, and 74.62± acres of land out of the Samuel Brown Survey, Abstract No. 108 and the Maria C. Vela Survey, Abstract No. 935, located at the northeast and southeast corners of Dallas North Tollway and Legacy Drive in the City of Plano, Collin County, Texas, regarding signage and townhouse regulations and ground floor retail uses, said property being described in the legal description on Exhibit "A" attached hereto.

Section II. The following sections or subsections of the Special Provisions to PD-65-CB-1 are amended to read as follows, the remaining parts of the Special Provisions shall remain as is:

Specific Provisions of the Planned Developments

1. Building Design

   a. On the south side of Legacy Drive, buildings fronting on Bishop Road must be designed to accommodate ground floor retail uses from Legacy Drive south to Martin Road. On the north side of Legacy Drive, retail, office, and live/work space is allowed on the ground floor of all multifamily buildings but is not required. Ground floor activities of nonresidential buildings shall be oriented to the street and shall have access directly from the street. Ground floor is defined as that portion of a building from the street-level finish floor elevation and extending 12.5 feet above the street-level finish floor elevation.

2. Residential Development Standards

   c. Standards relating to single-family residence (attached) development

      xviii. Rear entry drives are required. The distance from the garage to the travel lane of the alley shall be ten or less feet in length or shall be 20 feet or greater in length. The distance from the garage to the mews street shall be in accordance with the attached mews street section.

6. Signage Regulations

   In addition to signs permitted by Section 3.1600 of the Zoning Ordinance, the following additional signs and/or revised sign definitions and standards are permissible:

6-10

Freestanding Identification Sign - Freestanding identification signs may be installed at the following locations and shall comply with the Dallas North Tollway Overlay District signage requirements.

- The intersections of Type D and larger thoroughfares
- The intersection of Bishop Road and Type D and larger thoroughfares

Freestanding identification signs are exempt from the requirement that they be located at least 30 feet from a private property line.

Portals - General

- A portal is an entry feature, which may be freestanding, span across an area, or attached to a building or structure.

- Portals may be located at the following locations:

  1. The intersections of Bishop Road and Type D and larger thoroughfares
  2. The intersection of Henry Cook Boulevard and Parkwood Boulevard.

- Portals which span across the public right-of-way may be erected subject to city approval.

Directory Map

a. General

- A directory map is a noncommercial map listing the occupants within a shopping center, retail district, office district, or commercial site.

- A directory map may be freestanding, mounted to a wall, mounted to a vertical support, incorporated into a kiosk, or anchored within the public right-of-way.

- A directory map is used to provide wayfinding information for pedestrians.

b. Sign Size - A directory map, mounted to a vertical support, shall not exceed 40 square feet.

Kiosks

a. General

- Freestanding kiosk structures may be anchored within the public right-of-way or erected on individual lots. If anchored in the public right-of-way, kiosks are limited to 15 feet in height, and all accessibility and visibility requirements must be met for public sidewalks and streets. A maximum of four freestanding kiosks may be installed in the public right-of-way, two in the portion of the PD district south of Legacy Drive and two in the portion north of Legacy Drive.

- Kiosks in the public right-of-way may display directory maps, artwork, or messages that pertain to the district or special events but shall not be used for commercial advertising signs. Kiosks located on private property may display commercial advertising signs.

b. Sign Size - Signage on all kiosks shall not exceed 40 square feet in the public right-of-way. Signage on kiosks located on private property may not exceed 60 square feet. For multiple-sided kiosks, the gross surface area of each side shall not exceed two times the allowable square footage divided by the number of sign faces.

Section III. It is directed that the official zoning map of the City of Plano (which is retained in electronic record format) be changed to reflect the zoning classification established by this Ordinance.

Section IV. All provisions of the ordinances of the City of Plano in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the Ordinances of the City of Plano not in conflict with the provisions of this Ordinance shall remain in full force and effect.

Section V. The repeal of any ordinance or part of ordinances affectuated by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions of any ordinance at the time of passage of this Ordinance.

Section VI. Any person, firm or corporation found to be violating any term or provision of this Ordinance, shall be subject to a fine in accordance with Section 1-4(a) of the City Code of Ordinances for each offense. Every day a violation continues shall constitute a separate offense.

Section VII. It is the intention of the City Council that this Ordinance, and every provision hereof, shall be considered severable, and the invalidity or partial invalidity of any section, clause or provision of this Ordinance shall not affect the validity of any other portion of this Ordinance.

6-12

Section VIII. This Ordinance shall become effective immediately upon its passage and publication as required by law.

PASSED AND APPROVED THIS THE 28TH DAY OF NOVEMBER, 2005.

_____
Pat Evans, MAYOR

ATTEST:

_____
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

EXHIBIT "A"
LEGAL DESCRIPTION

75.033 Acre Tract

BEING a tract of land located in the Maria C. Vela Survey, Abstract No. 935 and the Henry Cook Survey, Abstract No. 183, in the City of Plano, Collin County, Texas, and being part of those tracts described in deed to Quorum Development Corporation as recorded in Volume 1171, Page 174 of the Deed Records of Collin County, Texas, and being more particularly described by metes and bounds as follows (bearings referenced to the EDS Control Monuments):

BEGINNING at the intersection of the east line of Dallas North Tollway (variable width right-of-way) with the south line of Legacy Drive (variable width right-of-way);

THENCE in an easterly direction along said south line of Legacy Drive as follows:

North, 44° 52' 02" East, a distance of 21.20 feet to a 5/8 inch iron rod capped with "KHA" set for corner;

North, 89° 54' 36" East, a distance of 702.16 feet to a concrete monument with a brass cap found for a corner;

South, 00° 05' 24" East, a distance of 15.00 feet to a 1/2 inch iron rod found for a corner;

North, 89° 54' 36" East, a distance of 121.00 feet to a 5/8 inch iron rod capped with "KHA" set for corner;

North, 00° 05' 24" West, a distance of 15.00 feet to a 5/8 inch iron rod capped with "KHA" set for corner;

North, 89° 54' 36" East, a distance of 709.36 feet to a point for corner, on the westerly southwest corner for the intersection of Legacy and Parkwood Boulevard said point bears North, 16° 30' East, a distance of 0.2 feet from a found 1 inch iron rod;

THENCE South, 45° 05' 22" East, a distance of 21.21 feet to a 5/8 inch iron rod capped with "KHA" set for corner on the west line of Parkwood Boulevard (variable width right-of-way);

THENCE in a southerly direction along said west line of Parkwood Boulevard as follows:

South, 00° 05' 22" East, a distance of 191.50 feet to a 1 inch iron rod found for corner;

6-14

South, 03° 54' 34" East, a distance of 97.72 feet to a 1 inch iron rod found for corner;

South, 00° 05' 22" East, a distance of 1,623.35 feet to a point which bears North, 04° 17' West, 0.3 feet from a found 1 inch iron rod;

South, 03° 43' 29" West, a distance of 97.72 feet to a point which bears North, 00° 05' West, 0.4 feet from a found 1 inch iron rod;

South, 00° 05' 22" East, a distance of 180.00 feet to a 1 inch iron rod found for corner;

THENCE South, 54° 52' 25" West, a distance of 22.98 feet to a 1 inch iron rod found on the northerly line of Tennyson Parkway (variable width right-of-way);

THENCE in a westerly direction along the northerly line of Tennyson Parkway as follows:

North, 70° 09' 50" West, a distance of 301.46 feet to a 5/8 inch iron rod capped with "KHA" set for beginning of a curve to the left same point bears South, 79° 18' East, a distance of 0.6 feet from a bent 1 inch iron rod;

Along said curve to the left having a central angle of 19° 38' 48", a radius of 1,212.00 feet and an arc length of 415.59 to the end of said curve;

North, 89° 48' 37" West, a distance of 2.99 feet to a 5/8 inch iron rod capped with "KHA" set for corner;

North, 89° 46' 07" West, a distance of 396.57 feet to a 5/8 inch iron rod capped with "KHA" set for corner;

North, 85° 57' 12" West, a distance of 285.63 feet to a 5/8 inch iron rod capped with "KHA" set for corner;

North 89° 46' 07" West, a distance of 150.00 feet to a 5/8 inch iron rod capped with "KHA" set for corner;

THENCE North, 46° 58' 45" West, a distance of 69.47 feet to a 5/8 inch iron rod capped with "KHA" set for corner on the previously mentioned east line of Dallas North Tollway;

THENCE in a northerly direction along the east line of Dallas North Tollway as follows:

North, 00° 10' 35" West, a distance of 206.88 feet to a 5/8 inch iron rod capped with "KHA" set for the beginning of a curve to the right;

Along said curve to the right having a central angle of 01° 42' 05", a radius of 3,851.68 feet and an arc length of 114.37 feet to a 5/8 inch iron rod capped with "KHA" set for corner;

North, 01° 31' 30" East, a distance of 1,079.88 feet to a 5/8 inch iron rod capped with "KHA" set for the beginning of a curve to the left;

Along said curve to the left, having a central angle of 01° 40' 53", a radius of 2,874.79 feet and an arc length of 84.36 to a 5/8 inch iron rod capped with "KHA" set for corner;

THENCE North, 00° 10' 35" West, a distance of 471.55 feet to the POINT OF BEGINNING and CONTAINING 75.033 acres of land, more or less.

74.62 Acre Tract

BEING a tract of land located in the Samuel Brown Survey, Abstract No. 108 and the Maria C. Vela Survey, Abstract No. 935 in the City of Plano, Collin County, Texas, and being part of those tracts described by deeds to Quorum Development Corporation as recorded in Volume 1171, Page 174, Volume 1694, Page 823, and Volume 1283, Page 512, all of the Deed Records of Collin County, Texas, and being more particularly described by metes and bounds as follows (bearings referenced to the EDS Control Monuments):

BEGINNING at a 5/8 inch iron rod capped with "KHA" set on the most northwesterly corner of the intersection of the north line of Legacy Drive (a variable width right-of-way) with the east line of Dallas North Tollway (a variable width right-of-way);

THENCE in a northerly direction along the easterly line of Dallas North Tollway as follows:

North, 00° 10' 35" West, a distance of 105.90 feet to a 5/8 inch iron rod capped with "KHA" set at the beginning of a curve to the left;

Along said curve to the left having a central angle of 03° 00' 32", a radius of 2,874.79 feet and an arc length of 150.97 feet to a 5/8 inch iron rod capped with "KHA" set for corner;

North, 03° 11' 07" West, a distance of 541.63 feet to a 5/8 inch iron rod capped with "KHA" set for the beginning of a curve to the right;

Along said curve to the right having a central angle of 03° 00' 32", a radius of 1,890.04 feet and an arc length of 99.25 feet to a 5/8 inch iron rod capped with "KHA" set for corner;

6-16

North, 00° 10' 35" West, a distance of 285.92 feet to a 5/8 inch iron rod capped with "KHA" set at the beginning of a curve to the right;

Along said curve to the right having a central angle of 14° 26' 23", a radius of 3,669.72 feet and an arc length of 924.85 feet to a 5/8 inch iron rod capped with "KHA" set for corner;

THENCE in an easterly and southerly direction departing said east line of Dallas North Tollway, the following:

North, 52° 14' 49" East, a distance of 31.59 feet to a 5/8 inch iron rod capped with "KHA" set for corner;

South, 89° 55' 31" East a distance of 180.00 feet to a 5/8 inch iron rod capped with "KHA" set for corner;

North, 88° 21' 23" East, a distance of 150.07 feet to a 5/8 inch iron rod capped with "KHA" set for corner;

South, 89° 55' 31" East, a distance of 281.99 feet to a 5/8 inch iron rod capped with "KHA" set for corner;

South, 88° 12' 25" East, a distance of 150.07 feet to a 5/8 inch iron rod capped with "KHA" set for corner;

South, 89° 53' 31" East, a distance of 185.00 feet to a 5/8 inch iron rod capped with "KHA" set for corner;

South, 45° 00' 26" East, a distance of 21.24 feet to a 5/8 inch iron rod capped with "KHA" set for corner;

South, 00° 05' 22" East, a distance of 185.00 feet to a point for corner;

South 01° 48' 28" East, a distance of 150.07 feet to a point for corner;

South, 00° 05' 22" East, a distance of 1,423.63 feet to a point for corner;

South, 01°37' 44" West, a distance of 150.07 feet to a point for corner;

South, 00° 05' 22" East, a distance of 175.00 feet to a point for corner;

South, 44° 54' 37" West, a distance of 35.36 feet to a point for corner;

South, 00° 05' 22" East, a distance of 4.50 feet to a point for corner on the north line of Legacy Drive (a variable width right-of-way);

THENCE westerly along said north line, the following:

South, 89° 54' 36" West, a distance of 701.36 feet to a 5/8 inch iron rod capped with "KHA" set for corner;

North, 00° 05' 22" West, a distance of 15.00 feet to a 5/8 inch iron rod capped with "KHA" set for corner;

South, 89° 54' 36" West, a distance of 121.00 feet to a 5/8 inch iron rod capped with "KHA" set for corner;

South, 00° 05' 22" East, a distance of 15.00 feet to a 5/8 inch iron rod capped with "KHA" set for corner;

South, 89° 54' 36" West, a distance of 702.34 feet to a 5/8 inch iron rod capped with "KHA" set for corner;

North, 45° 07' 58" West, a distance of 21.24 feet to the POINT OF BEGINNING and CONTAINING 77.231 gross acres of land, save and except a 2.61 acre unincorporated tract of land, known as Baccus Cemetery, leaving 74.62 net acres of land, more or less.

6-18

DATE: November 8, 2005

TO: Honorable Mayor & City Council

FROM: Carolyn Kalchthaler, Chairman, Planning & Zoning Commission CKP

SUBJECT: Results of Planning & Zoning Commission Meeting of November 7, 2005

AGENDA ITEM NO. 9A - PUBLIC HEARING
ZONING CASE 2005-39
APPLICANT: DMC MAZAL, LTD.

DESCRIPTION:

A request to rezone 4.2± acres located at the southeast corner of Legacy Drive and Preston Meadow Drive **from** Single-Family Residence-7 **to** Neighborhood Office.

APPROVED: 7-0 **DENIED:** _____ **TABLED:** _____

LETTERS RECEIVED WITHIN 200 FOOT NOTICE AREA: **SUPPORT:** 3 **OPPOSE:** 0

LETTERS RECEIVED OUTSIDE 200 FOOT NOTICE AREA: **SUPPORT:** 0 **OPPOSE:** 0

PETITION(s) RECEIVED: N/A **# OF SIGNATURES:** N/A

STIPULATIONS:

Recommended for approval as submitted.

FOR CITY COUNCIL MEETING OF: November 28, 2005 (To view the agenda for this meeting, see www.planotx.org)

PUBLIC HEARING - ORDINANCE

BT/slc

xc: Janet Barber, Legacy Drive Baptist Church
David Helmberger, Helmberger Associates
Lynn Woodall, Administrative Support Supervisor

CITY OF PLANO

PLANNING & ZONING COMMISSION

November 7, 2005

Agenda Item No. 9A

Public Hearing: Zoning Case 2005-39

Applicant: DMC Mazal, Ltd.

DESCRIPTION:

A request to rezone 4.2± acres located at the southeast corner of Legacy Drive and Preston Meadow Drive **from** Single-Family Residence-7 **to** Neighborhood Office.

HISTORY:

This property was purchased by the Plano Independent School District (PISD) when they bought land for Gulledge Elementary School and Jasper High School. PISD later sold the property to Christ Episcopal Church and Legacy Drive Baptist Church. Christ Episcopal Church built a parking lot on their portion of the property. Legacy Drive Baptist Church had intended to develop this property for overflow parking; however, the additional parking was not needed. DMC Mazal, Ltd. is now seeking a zoning change for the Legacy Drive Baptist Church section of the property.

REMARKS:

The applicant is proposing Neighborhood Office (O-1) to develop the 4.2± acre property for general and medical office use. A preliminary site plan has been submitted in conjunction with this request as Agenda Item No. 9B.

The current zoning is Single-Family Residence-7 (SF-7). The SF-7 district is intended to provide for areas of urban single-family development on moderate-size lots. The requested zoning is O-1. The O-1 is intended to provide for low-rise, garden-type office development providing professional, medical and other office services to residents in adjacent neighborhoods.

Surrounding Land Use and Zoning

The area of the request is undeveloped. The site has gentle terrain sloping generally to the west. There is a drainage channel along the southern border of the property. The site has little native vegetation except along the drainage channel.

The northern boundary of the property is Legacy Drive, a six-lane divided thoroughfare. North of Legacy Drive, the property is zoned Planned Development-281-Single-Family-Residence-7/9 with Specific Use Permit #337 for Day Care Center. This property has been developed as single-family residences, a church, and day care center. The eastern boundary of the property is Preston Meadow Drive, a four-lane divided thoroughfare. Across Preston Meadow Drive, the property is zoned O-1 with SUP #135 for Day Care Center and SF-7. The property has been developed as a day care center and single-family residences. To the south, across the drainage channel, the property is zoned SF-7 and has been developed as a public primary school and a public secondary school. To the west, the property is zoned SF-7 and is developed as a parking lot for a church.

Conformance to the Comprehensive Plan

Future Land Use Plan and Housing Element - The Future Land Use Plan designates this property as Major Public and Semi-Public. Major Public and Semi-Public land use designation includes a wide range of public and private uses such as colleges and universities, public and private schools, golf courses, country clubs, and large private open spaces. Neither this request nor the current SF-7 zoning is in conformance with the Comprehensive Plan.

The applicant is requesting to rezone the property from a residential classification to a nonresidential classification. The objectives within the City of Organized Development theme of the Land Use Element of the Comprehensive Plan provides guidance for reviewing rezoning requests. Objective B.3 calls for a balanced and efficient arrangement of Plano's land resources that accommodate residency, employment, shopping, entertainment, and recreation. Objective B.4 calls for land use compatibility by grouping complimentary land use activities and minimizing the impact of potentially incompatible activities. The proposed O-1 zoning will provide services that compliment the area's residential uses and is compatible with the church, day care center, and parking lot uses in close proximity to the site.

Adequacy of Public Facilities - Water and sanitary sewer services are available.

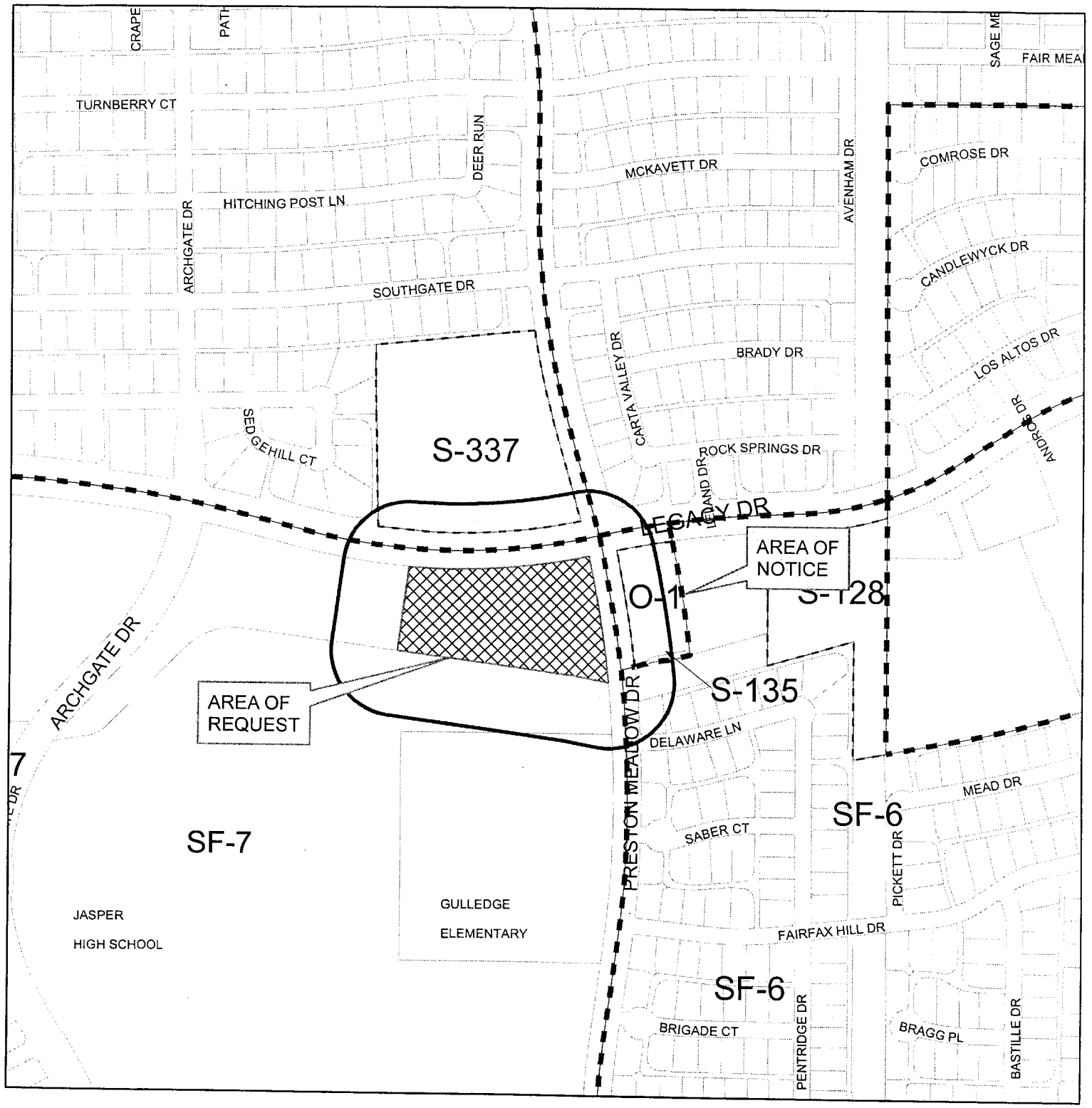
Traffic Impact Analysis (TIA) - A TIA is not required for this zoning request since the amount/intensity of the proposed office development would not exceed the 5,000 trips per day threshold.

SUMMARY:

Neither the requested zoning nor the existing zoning is in conformance to the Comprehensive Plan. The physical characteristics of the property are suitable for office development. The proposed O-1 zoning will provide services that compliment the surrounding residential uses.

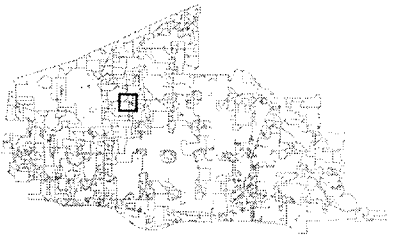
RECOMMENDATION:

Recommended for approval as submitted.



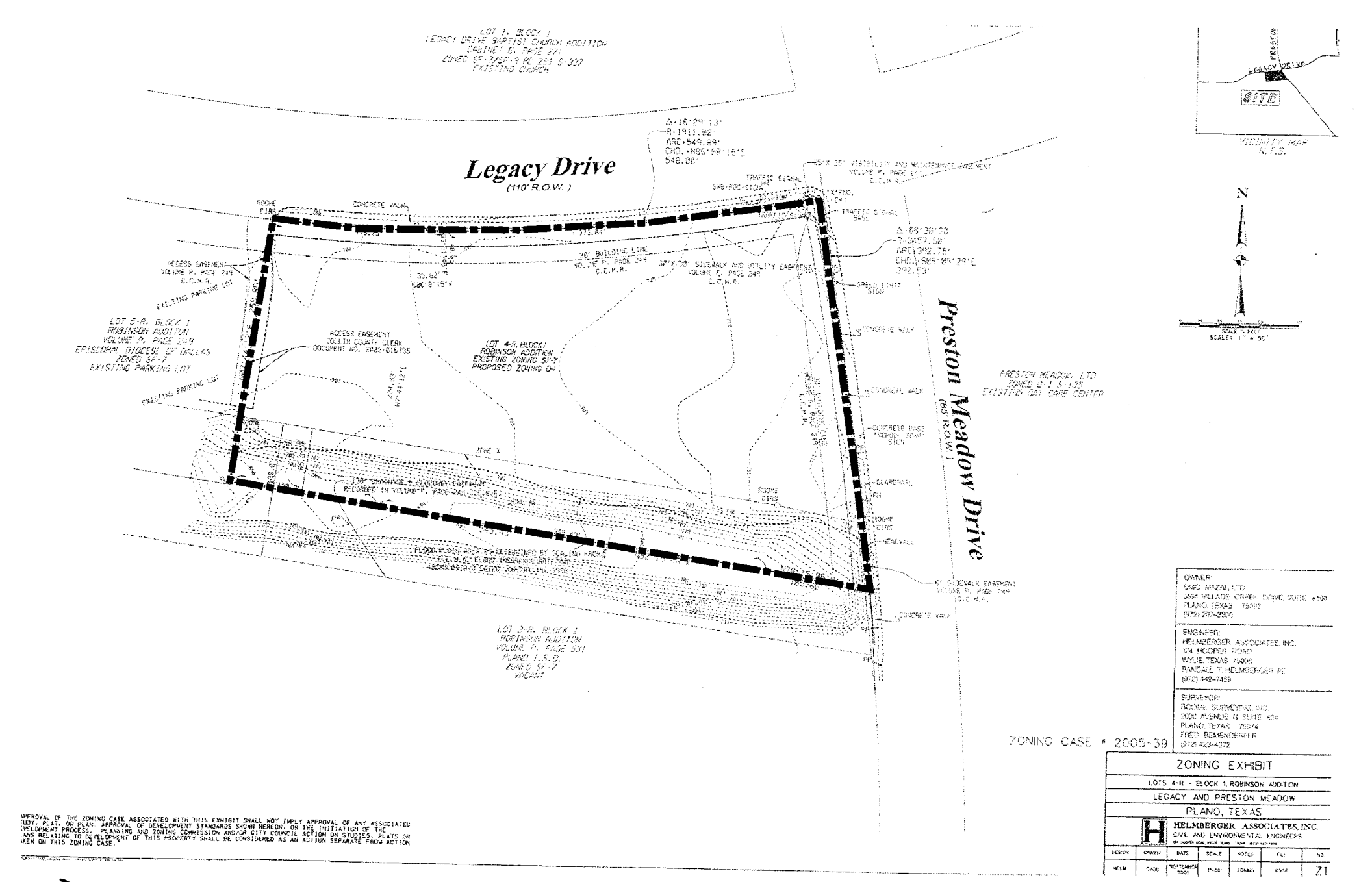
Zoning Case #: 2005-39

Existing Zoning: SINGLE-FAMILY RESIDENCE-7



7-4

○ 200' Notification Buffer



OWNER:
SMG MAZAL LTD
6564 VILLAGE CREEK DRIVE, SUITE #150
PLANO, TEXAS 75093
(972) 267-2300

ENGINEER:
HELMBERGER ASSOCIATES, INC.
924 HOOPER ROAD
WYLIE, TEXAS 75098
RANDALL T. HELMBERGER, P.E.
(972) 442-7469

SURVEYOR:
ROOME SURVEYING, INC.
2000 AVENUE G, SUITE 804
PLANO, TEXAS 75074
FRED BEMENDERFER
(972) 423-4772

ZONING CASE # 2005-39

ZONING EXHIBIT

LOTS 4-R - BLOCK 1, ROBINSON ADDITION

LEGACY AND PRESTON MEADOW

PLANO, TEXAS

HELMBERGER ASSOCIATES, INC.
CIVIL AND ENVIRONMENTAL ENGINEERS

DESIGN	DRAWN	DATE	SCALE	NOTES	FILE	NO
HELM	DADE	SEPTEMBER 2005	1"=50'	ZONING	0506	Z1

APPROVAL OF THE ZONING CASE ASSOCIATED WITH THIS EXHIBIT SHALL NOT IMPLY APPROVAL OF ANY ASSOCIATED PLAT, PLAT, OR PLAN. APPROVAL OF DEVELOPMENT STANDARDS SHOWN HEREON, OR THE INITIATION OF THE DEVELOPMENT PROCESS, PLANNING AND ZONING COMMISSION AND/OR CITY COUNCIL ACTION ON STUDIES, PLATS OR PLANS RELATING TO DEVELOPMENT OF THIS PROPERTY SHALL BE CONSIDERED AS AN ACTION SEPARATE FROM ACTION TAKEN ON THIS ZONING CASE."

Z-5

ORDINANCE NO. _____
(Zoning Case 2005-39)

AN ORDINANCE OF THE CITY OF PLANO AMENDING THE COMPREHENSIVE ZONING ORDINANCE OF THE CITY, ORDINANCE NO. 2004-9-37, AS HERETOFORE AMENDED, SO AS TO REZONE 4.2± ACRES OUT OF THE MARY AND CATHERINE OWENS SURVEY, ABSTRACT NO. 672, LOCATED AT THE SOUTHEAST CORNER OF LEGACY DRIVE AND PRESTON MEADOW DRIVE IN THE CITY OF PLANO, COLLIN COUNTY, TEXAS, FROM SINGLE-FAMILY RESIDENCE-7 TO NEIGHBORHOOD OFFICE; DIRECTING A CHANGE ACCORDINGLY IN THE OFFICIAL ZONING MAP OF THE CITY; AND PROVIDING A PENALTY CLAUSE, A REPEALER CLAUSE, A SAVINGS CLAUSE, A SEVERABILITY CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS, the City Secretary of Plano, Texas, directed that notices of a hearing be issued, as required by the Zoning Ordinance of the City of Plano and laws of the State of Texas, at a meeting of the City Council, to be held on the 28th day of November, 2005, for the purpose of considering rezoning 4.2± acres out of the Mary and Catherine Owens Survey, Abstract No. 672, located at the southeast corner of Legacy Drive and Preston Meadow Drive in the City of Plano, Collin County, Texas, from Single-Family Residence-7 to Neighborhood Office; and

WHEREAS, the City Secretary of the said City accordingly caused to be issued and published the notices required by its Zoning Ordinance and laws of the State of Texas applicable thereto, the same having been published in a paper of general circulation in the City of Plano, Texas, at least fifteen (15) days prior to the time set for such hearing; and

WHEREAS, the City Council of said City, pursuant to such notice, held its public hearing and heard all persons wishing to be heard both for and against the aforesaid change in the Zoning Ordinance, on the 28th day of November, 2005; and

WHEREAS, the City Council is of the opinion and finds that such rezoning would not be detrimental to the public health, safety, or general welfare, and will promote the best and most orderly development of the properties affected thereby, and to be affected thereby, in the City of Plano, and as well, the owners and occupants thereof, and the City generally.

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

Section I. The Comprehensive Zoning Ordinance No. 2004-9-37, as the same has been heretofore amended, is hereby further amended so as to rezone 4.2± acres out of the Mary and Catherine Owens Survey, Abstract No. 672, located at the southeast corner of Legacy Drive and Preston Meadow Drive in the City of Plano, Collin County, Texas, from Single-Family Residence-7 to Neighborhood Office, said property being described in the legal description on Exhibit "A" attached hereto.

7-6

Section II. It is directed that the official zoning map of the City of Plano (which is retained in electronic record format) be changed to reflect the zoning classification established by this Ordinance.

Section III. All provisions of the ordinances of the City of Plano in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the Ordinances of the City of Plano not in conflict with the provisions of this Ordinance shall remain in full force and effect.

Section IV. The repeal of any ordinance or part of ordinances affectuated by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions of any ordinance at the time of passage of this Ordinance.

Section V. Any person, firm or corporation found to be violating any term or provision of this Ordinance, shall be subject to a fine in accordance with Section 1-4(a) of the City Code of Ordinances for each offense. Every day a violation continues shall constitute a separate offense.

Section VI. It is the intention of the City Council that this Ordinance, and every provision hereof, shall be considered severable, and the invalidity or partial invalidity of any section, clause or provision of this Ordinance shall not affect the validity of any other portion of this Ordinance.

Section VII. This Ordinance shall become effective immediately upon its passage and publication as required by law.

PASSED AND APPROVED THIS THE 28TH DAY OF NOVEMBER, 2005.

_____
Pat Evans, MAYOR

ATTEST:

_____
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

EXHIBIT "A"
LEGAL DESCRIPTION

SITUATED in the State of Texas, County of Collin and City of Plano, being part of the Mary and Catherine Owens Survey, Abstract No. 672, being all of Lot 4-R, Block 1, Robinson Addition, an addition to the City of Plano as recorded in Volume P, Page 249 of the Collin County map Records with said premises being more particularly described as follows:

BEGINNING at an "X" found marking the northeast corner of said Lot 4-R and the intersection of the curving south right-of-way line of Legacy Drive (110' right-of-way) with the curving west right-of-way line of Preston Meadow Drive (85' right-of-way);

THENCE southeasterly along the curving east line of Lot 4-R and the west right-of-way line of Preston Meadow Drive, a curve to the right having a central angle of 06° 30' 30" with a radius of 3,457.50 feet, for an arc distance of 392.75 (chord = South 09° 09' 29" East, 392.53 feet) to a point (in a drainage ditch) marking the southeast corner of Lot 4-R and the northeast corner of Lot 3-R, Block 1 of said Robinson Addition, from which a Roome capped 1/2 inch iron rod set for reference on a drainage and floodway easement line bears North 06° 28' 04" West, 68.05 feet;

THENCE with the approximate middle of said drainage ditch along the south line of Lot 4-R and the north line of said Lot 3-R as follows: North 79° 15' 05" West, 105.60 feet and North 82° 15' 48" West, 545.43 feet to a point (in a drainage ditch) marking the southwest corner of Lot 4-R and the southeast corner of Lot 5-R, Block 1 of said Robinson Addition, from which a Roome capped 1/2 inch iron rod set for reference on a drainage and floodway easement line bears North 07° 44' 12" East, 65.06 feet;

THENCE with the west line of Lot 4-R and the east line of Lot 5-R, North 07° 44' 12" East, 259.85 feet to a Roome capped 1/2 inch iron rod set in the curving south right-of-way line of the aforementioned Legacy Drive marking the northwest corner of Lot 4-R and the northeast corner of said Lot 5-R;

THENCE with the curving south right-of-way line of Legacy Drive and Lot 4-R, a curve to the left having a central angle of 16° 29' 13" with a radius of 1,911.02 feet, for an arc distance of 549.89 feet (chord = North 86° 08' 15" East, 548.00 feet) to the PLACE OF BEGINNING and CONTAINING 4.242 gross acres of land, of which 41,811 square feet is in a drainage and floodway easement leaving 3.282 net acres of land.

7-8

DATE: November 8, 2005

TO: Honorable Mayor & City Council

FROM: Carolyn Kalchthaler, Chairman, Planning & Zoning Commission

SUBJECT: Results of Planning & Zoning Commission Meeting of November 7, 2005

AGENDA ITEM NO. 10 - PUBLIC HEARING
ZONING CASE 2005-40
APPLICANT: BRIAN HAIGWOOD

DESCRIPTION:

A request for a Specific Use Permit for Automobile Leasing/Renting on 0.1± acre located within the Shops of Willow Bend mall, 547± feet east of Plano Parkway and 733± feet south of Chapel Hill Boulevard. Zoned Regional Commercial.

APPROVED: 7-0 **DENIED:** _____ **TABLED:** _____

LETTERS RECEIVED WITHIN 200 FOOT NOTICE AREA: **SUPPORT:** 1 **OPPOSE:** 0

LETTERS RECEIVED OUTSIDE 200 FOOT NOTICE AREA: **SUPPORT:** 2 **OPPOSE:** 0

PETITION(s) RECEIVED: N/A **# OF SIGNATURES:** N/A

STIPULATIONS:

Recommended for approval as submitted.

FOR CITY COUNCIL MEETING OF: November 28, 2005 (To view the agenda for this meeting, see www.planotx.org)

PUBLIC HEARING - ORDINANCE

CDD/slc

xc: Shops of Willow Bend
Brian Haigwood, Superior One Transportation
Lynn Woodall, Administrative Support Supervisor

CITY OF PLANO

PLANNING & ZONING COMMISSION

November 7, 2005

Agenda Item No. 10

Public Hearing: Zoning Case 2005-40

Applicant: Brian Haigwood

DESCRIPTION:

A request for a Specific Use Permit for Automobile Leasing on 0.1± acre located within the Shops of Willow Bend mall, 547± feet east of Plano Parkway and 733± feet south of Chapel Hill Boulevard. Zoned Regional Commercial.

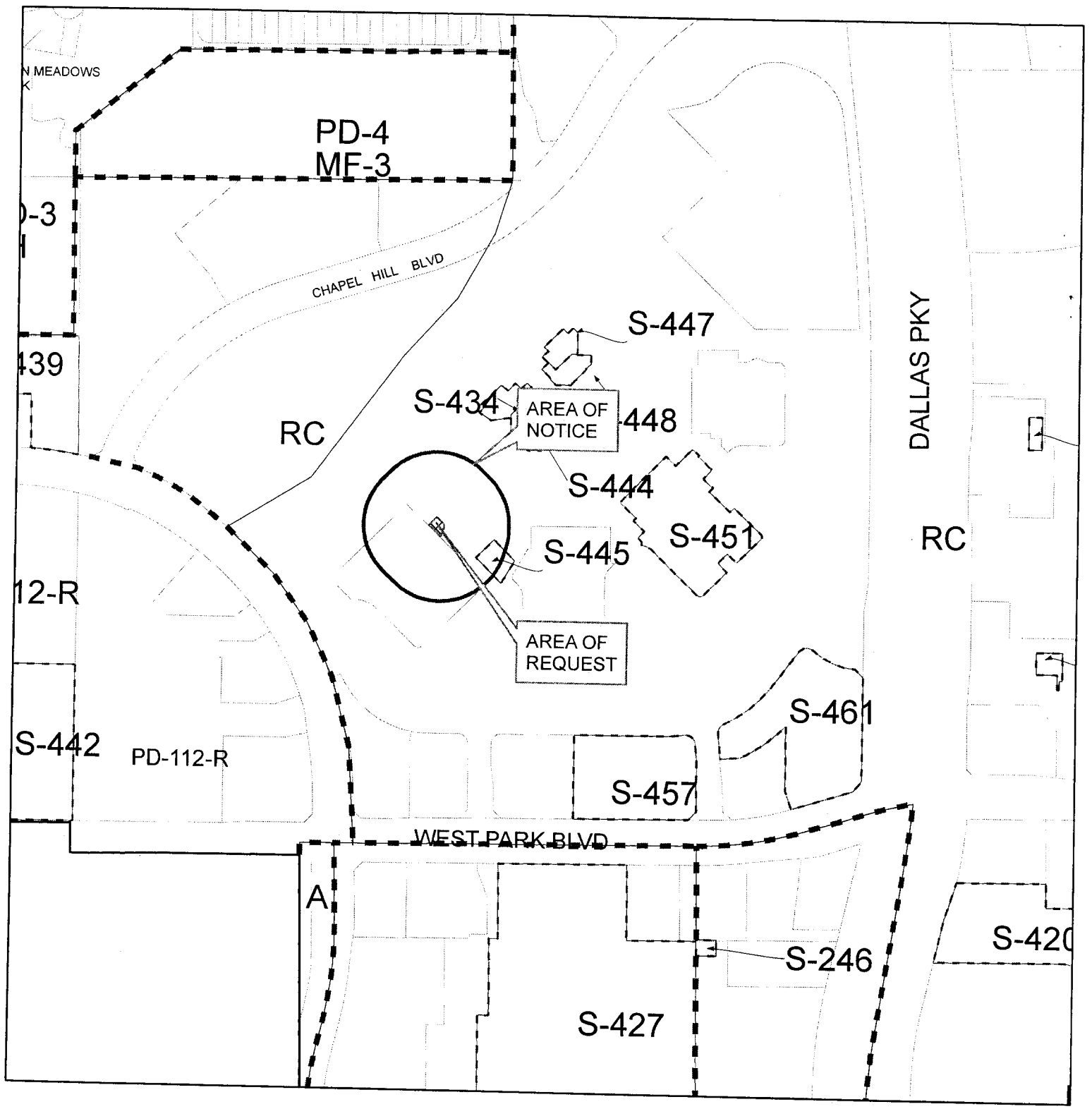
REMARKS:

The requested zoning is for a Specific Use Permit (SUP) to allow the additional use of auto leasing for a business located within the Shops of Willow Bend mall. The property in question is currently zoned for Regional Commercial which requires an SUP for automobile leasing. Automobile leasing is defined by the Zoning Ordinance as storage, leasing, or renting of automobiles, motorcycles, and light load vehicles.

The applicant operates a car and limousine chauffeur service. The business is currently leasing office space within the Shops of Willow Bend mall. The owner would like to store the cars and limousines on-site, specifically on the second floor of the mall parking garage, and is, therefore, requesting the SUP for Automobile Leasing/Renting. The mall has 337 parking spaces above the minimum requirement. The proposed SUP would be assigned specifically to the office space leased within the mall rather than the entire mall property.

RECOMMENDATION:

Recommended for approval as submitted.



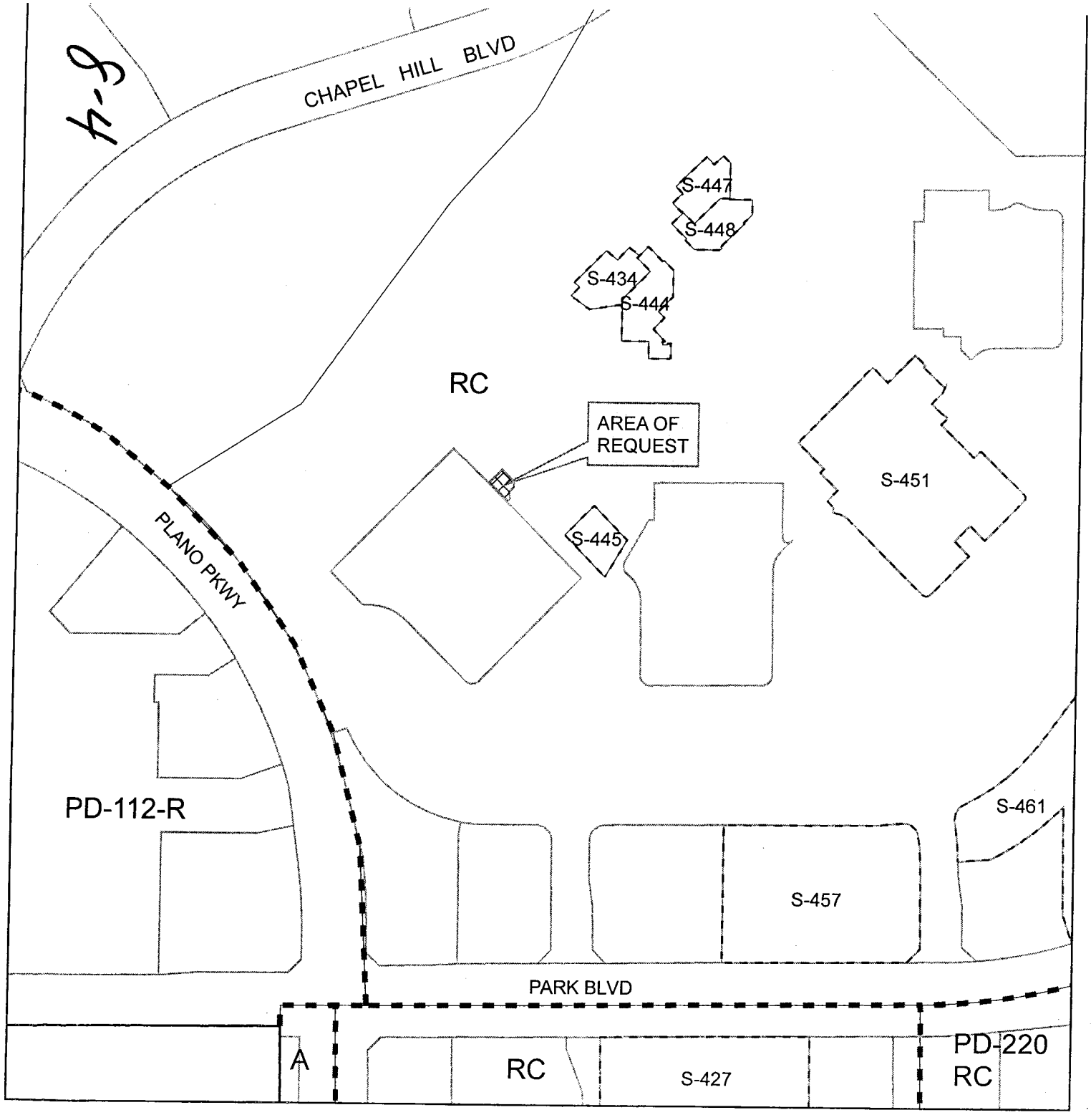
Zoning Case #: 2005-40

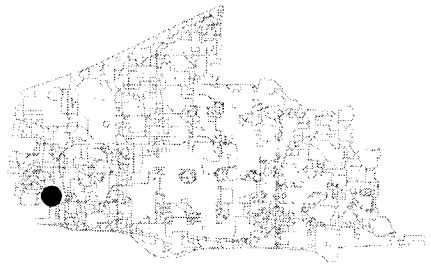
Existing Zoning: REGIONAL COMMERCIAL

8-3

○ 200' Notification Buffer

h-9





Approval of the zoning case associated with this exhibit shall not imply approval of any associated study, plat or plan, approval of development standards shown hereon, or the initiation of the development process. Planning & Zonng Commission and/or City Council action on studies, plats or plans relating to development of this property shall be considered as an action seperate from action taken on this zoning case.

ZONING EXHIBIT

ZONING CASE # 2005-40

Owner:
Shops at Willow Bend
6121 W. Park Blvd.
Plano, TX 75093

Applicant:
Brian Haigwood
Superior One Transport
4230 LBJ Freeway
Dallas, TX 75244

ORDINANCE NO. _____
(Zoning Case 2005-40)

AN ORDINANCE OF THE CITY OF PLANO, TEXAS, AMENDING THE COMPREHENSIVE ZONING ORDINANCE OF THE CITY, ORDINANCE NO. 2004-9-37, AS HERETOFORE AMENDED, GRANTING SPECIFIC USE PERMIT NO. 570 SO AS TO ALLOW THE ADDITIONAL USE OF AUTOMOBILE LEASING/RENTING ON 0.1± ACRE OF LAND OUT OF THE ROBERT LUDDINGTON SURVEY, ABSTRACT NO. 548, LOCATED WITHIN THE SHOPS OF WILLOW BEND MALL, 547± FEET EAST OF PLANO PARKWAY AND 733± FEET SOUTH OF CHAPEL HILL BOULEVARD IN THE CITY OF PLANO, COLLIN COUNTY, TEXAS, PRESENTLY ZONED REGIONAL COMMERCIAL; DIRECTING A CHANGE ACCORDINGLY IN THE OFFICIAL ZONING MAP OF THE CITY; AND PROVIDING A PENALTY CLAUSE, A REPEALER CLAUSE, A SAVINGS CLAUSE, A SEVERABILITY CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS, the City Secretary of Plano, Texas, directed that notices of a hearing be issued, as required by the Zoning Ordinance of the City of Plano and laws of the State of Texas, at a meeting of the City Council, to be held on the 28th day of November, 2005, for the purpose of considering granting Specific Use Permit No. 570 for Automobile Leasing/Renting on 0.1± acre of land out of the Robert Luddington Survey, Abstract No. 548, located within the Shops of Willow Bend Mall, 547± feet east of Plano Parkway and 733± feet south of Chapel Hill Boulevard in the City of Plano, Collin County, Texas, presently zoned Regional Commercial; and

WHEREAS, the City Secretary of the said City accordingly caused to be issued and published the notices required by its Zoning Ordinance and laws of the State of Texas applicable thereto, the same having been published in a paper of general circulation in the City of Plano, Texas, at least fifteen (15) days prior to the time set for such hearing; and

WHEREAS, the City Council of said City, pursuant to such notice, held its public hearing and heard all persons wishing to be heard both for and against the aforesaid change in the Zoning Ordinance, on the 28th day of November, 2005; and

WHEREAS, the City Council is of the opinion and finds that the granting of Specific Use Permit No. 570 for Automobile Leasing/Renting on 0.1± acre of land out of the Robert Luddington Survey, Abstract No. 548, located within the Shops of Willow Bend Mall, 547± feet east of Plano Parkway and 733± feet south of Chapel Hill Boulevard in the City of Plano, Collin County, Texas, would not be detrimental or injurious to the public health, safety and general welfare, or otherwise offensive to the neighborhood; and

WHEREAS, the City Council is of the opinion and finds that such change will promote the best and most orderly development of the properties affected thereby, and to be affected thereby, in the City of Plano, and as well, the owners and occupants thereof, and the City generally.

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

Section I. The Comprehensive Zoning Ordinance No. 2004-9-37, as the same has been heretofore amended, is hereby further amended so as to grant Specific Use Permit No. 570, allowing the additional use of Automobile Leasing/Renting on 0.1± acre of land out of the Robert Luddington Survey, Abstract No. 548, located within the Shops of Willow Bend mall, 547± feet east of Plano Parkway and 733± feet south of Chapel Hill Boulevard in the City of Plano, Collin County, Texas, presently zoned Regional Commercial, said property being more fully described on the legal description in Exhibit "A" attached hereto.

Section II. It is directed that the official zoning map of the City of Plano (which is retained in electronic record format) be changed to reflect the zoning classification established by this Ordinance.

Section III. All provisions of the ordinances of the City of Plano in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the Ordinances of the City of Plano not in conflict with the provisions of this Ordinance shall remain in full force and effect.

Section IV. The repeal of any ordinance or part of ordinances affectuated by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions of any ordinance at the time of passage of this Ordinance.

Section V. Any person, firm or corporation found to be violating any term or provision of this Ordinance, shall be subject to a fine in accordance with Section 1-4(a) of the City Code of Ordinances for each offense. Every day a violation continues shall constitute a separate offense.

Section VI. It is the intention of the City Council that this Ordinance, and every provision hereof, shall be considered severable, and the invalidity or partial invalidity of any section, clause or provision of this Ordinance shall not affect the validity of any other portion of this Ordinance.

8-6

Section VII. This Ordinance shall become effective immediately upon its passage and publication as required by law.

PASSED AND APPROVED THIS THE 28TH DAY OF NOVEMBER, 2005.

_____
Pat Evans, MAYOR

ATTEST:

_____
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

EXHIBIT "A"
LEGAL DESCRIPTION

SITUATED in the State of Texas, County of Collin and City of Plano, out of the Robert Luddington Survey, Abstract No. 548, and being part of Lot 6, Block 1, of the Shops of Willow Bend, an addition to the City of Plano, Collin County, Texas, according to the plat thereof recorded in Volume N, Page 44, of the Map Records of Collin County, Texas, and being more particularly described by metes and bounds as follows:

COMMENCING at a 5/8" iron rod found for corner at the most northern corner of a right-of-way clip at the intersection of the northeast right-of-way line of Plano Parkway with the southeast right-of-way line of Chapel Hill Boulevard at the most western corner of said Lot 6, said point being in a curve to the right having a radius of 795.00 feet, a central angle of 50° 28' 16", and a chord which bears north 47° 29' 52" East, a distance of 677.88 feet;

THENCE in a northeasterly direction along the southeast right-of-way line of said Chapel Hill Boulevard and with the said curve to the right, an arc distance of 700.31 feet to a brass cap found in concrete for corner;

THENCE South 34° 16' 19" East, a distance of 764.86 feet to a point for corner at the intersection of the outside face of a northeast wall with the inside face of the northwest wall of suite A 201 on level two of the existing building located on said Lot 6, said point being the PLACE OF BEGINNING of the herein described tract;

THENCE in a southerly direction along the outside face of wall of said Suite A 201, the following courses and distances:

South 44° 59' 19" East, a distance of 31.00 feet to a point for corner;

South 00° 00' 41" West, a distance of 12.37 feet to a point for corner;

South 45° 00' 41" West, a distance of 10.20 feet to a point for corner;

South 00° 00' 41" West, a distance of 14.99 feet to a point for corner;

South 45° 00' 41" West, a distance of 5.10 feet t a point for corner at the intersection of the inside face of the southwest wall of said Suite A 201;

THENCE North 44° 59' 19" West along the inside face of said southwest wall of said Suite A 201, a distance of 50.35 feet to a point for corner at its intersection with the inside face of the northwest wall of said Suite A 201;

THENCE North 45° 00' 41" East along the inside face of the northwest wall of said Suite A 201, a distance of 34.65 feet to the PLACE OF BEGINNING and CONTAINING 1,449 square feet of land.

8-8

DATE: November 8, 2005

TO: Honorable Mayor & City Council

FROM: Carolyn Kalchthaler, Chairman, Planning & Zoning Commission

SUBJECT: Results of Planning & Zoning Commission Meeting of November 7, 2005

AGENDA ITEM NO. 11 - PUBLIC HEARING
ZONING CASE 2005-41
APPLICANT: MONTESSORI NEW BEGINNINGS ACADEMY

DESCRIPTION:

A request for a Specific Use Permit for Day Care Center on 35.0± acres located at the northeast corner of Plano Parkway and Coit Road. Zoned Planned Development-128-Light Industrial-1.

APPROVED: 7-0 **DENIED:** _____ **TABLED:** _____

LETTERS RECEIVED WITHIN 200 FOOT NOTICE AREA: **SUPPORT:** 0 **OPPOSE:** 0

LETTERS RECEIVED OUTSIDE 200 FOOT NOTICE AREA: **SUPPORT:** 0 **OPPOSE:** 0

PETITION(s) RECEIVED: N/A **# OF SIGNATURES:** N/A

STIPULATIONS:

Recommended for approval subject to the day care center being limited to the classroom space and outdoor play space as shown on the zoning exhibit.

The Planning & Zoning Commission waived the play space area requirements for children receiving less than four hours of day care per day.

FOR CITY COUNCIL MEETING OF: November 28, 2005 (To view the agenda for this meeting, see www.planotx.org)

PUBLIC HEARING - ORDINANCE

TE/slc

xc: Jim Austin, John Paul II High School
Pat Hodge, Montessori NBA
Lynn Woodall, Administrative Support Supervisor

CITY OF PLANO

PLANNING & ZONING COMMISSION

November 7, 2005

Agenda Item No. 11

Public Hearing: Zoning Case 2005-41

Applicant: Montessori New Beginnings Academy

DESCRIPTION:

A request for a Specific Use Permit for Day Care Center on 35.0± acres located at the northeast corner of Plano Parkway and Coit Road. Zoned Planned Development-128-Light Industrial-1.

REMARKS:

The applicant is requesting a Specific Use Permit (SUP) for Day Care Center. An SUP authorizes and regulates a use not normally permitted in a district, which could benefit in a particular case the general welfare, provided that adequate development standards and safeguards are established. The proposed day care center would occupy approximately 22,500 square feet of classroom space and 8,500 square feet of outdoor play space for a maximum of 130 students at the existing John Paul II High School.

The current zoning is Planned Development-128-Light Industrial-1 (PD-128-LI-1). The LI-1 district is intended to provide areas for light manufacturing firms engaged in processing, assembling, warehousing, research and development, and incidental services that are developed in accordance with the same performance standards applicable to all other zoning districts. A planned development district provides the ability to amend use, height, setback and other requirements at the time of zoning to promote innovative site design and better development controls appropriate to both offsite and onsite conditions. PD-128-LI-1 contains stipulations for building height and setback, landscaping, loading dock screening requirements, and other development standards.

Subsection 3.102 of the Zoning Ordinance establishes supplementary regulations for day care centers. A day care center, as part of a multi-occupant building in a nonresidential district, must provide direct access to the exterior of the building and outdoor play space, and the play space must be immediately adjacent to the building. The proposed day care center complies with these requirements.

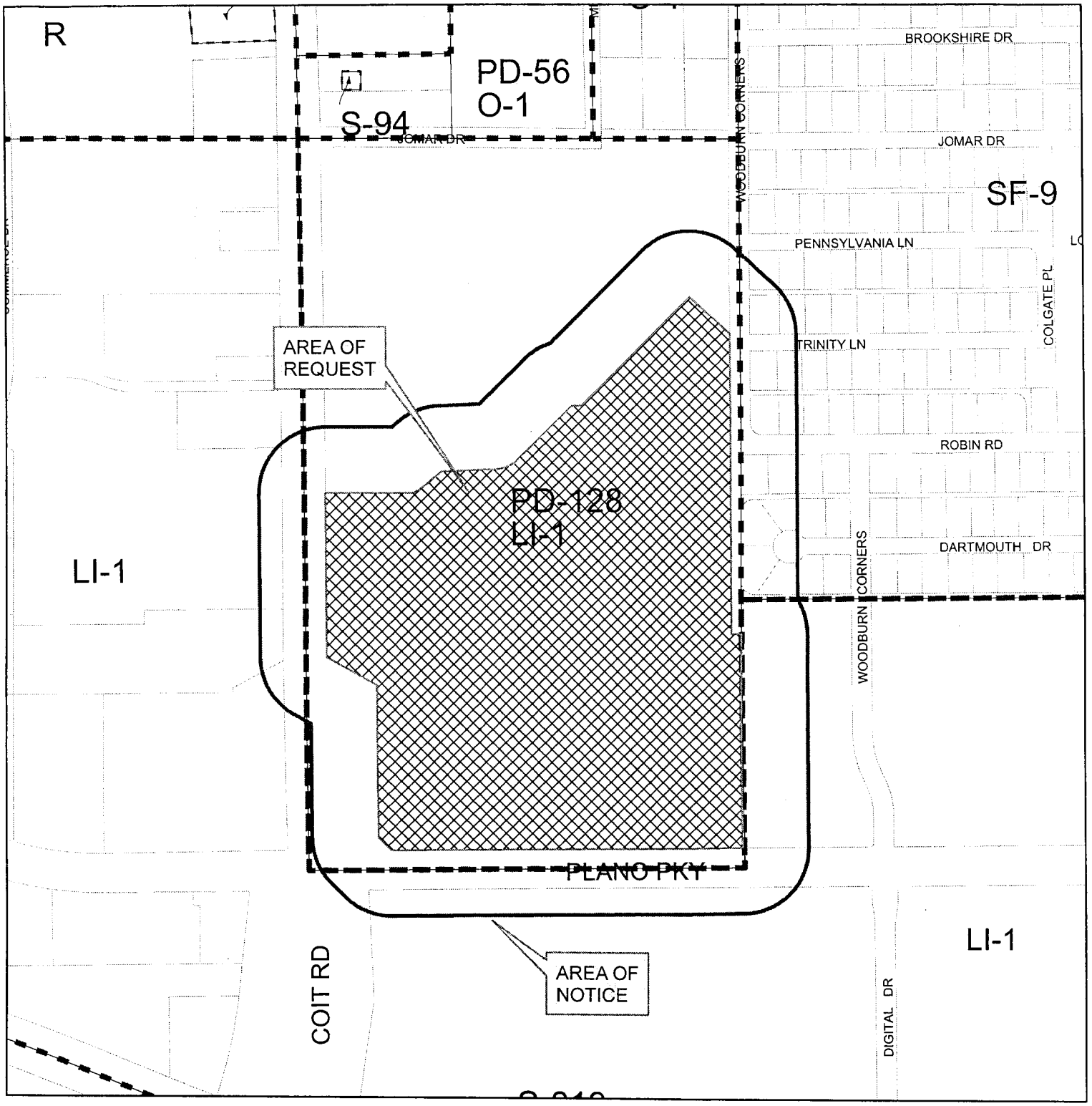
Subsection 3.102 establishes standards for passenger loading and unloading, outdoor play space, access, and 300-foot separation distance from gasoline pumps and storage tanks. The request complies with the access, loading and unloading, and separation distance standards. The request proposes two open space areas, one for toddlers aged two to three and one for children aged four through six. Adequate open space (65 square feet per student) is provided for the maximum student population; however, the play space area for the toddlers is less than the 30 foot width as required by the supplementary regulations. The width of the proposed toddler play space is 24 feet. The Zoning Ordinance allows the Planning & Zoning Commission to waive play space area requirements if day care is provided for less than four hours per day. The applicant has stated that care for toddlers will be less than four hours per day and is requesting a waiver of the play space area requirement for the toddlers.

RECOMMENDATION:

Recommended for approval subject to:

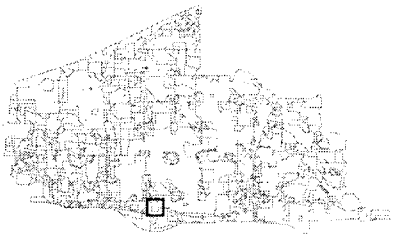
1. The day care center is limited to the classroom space and outdoor play space as shown on the zoning exhibit.

2. Planning & Zoning Commission waiving the play space area requirements for children receiving less than four hours of day care per day.



Zoning Case #: 2005-41

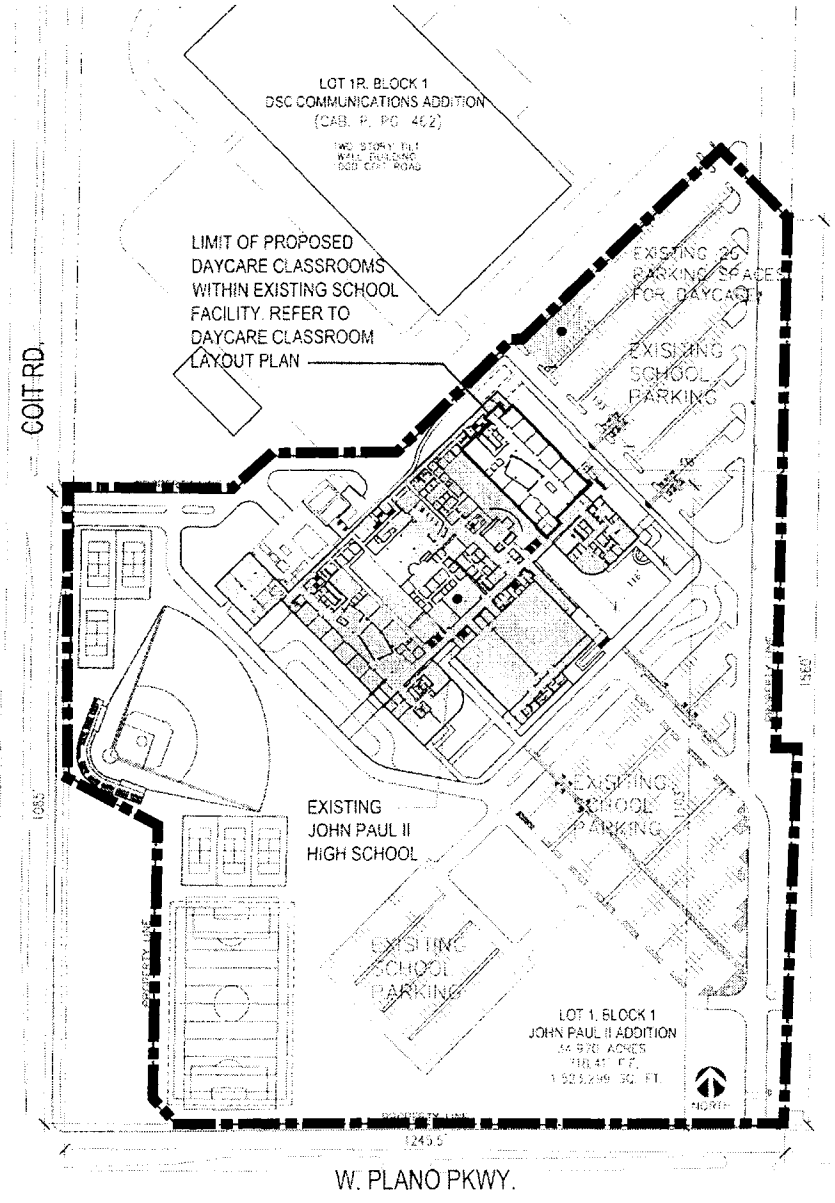
Existing Zoning: PLANNED DEVELOPMENT-128
LIGHT INDUSTRIAL-1



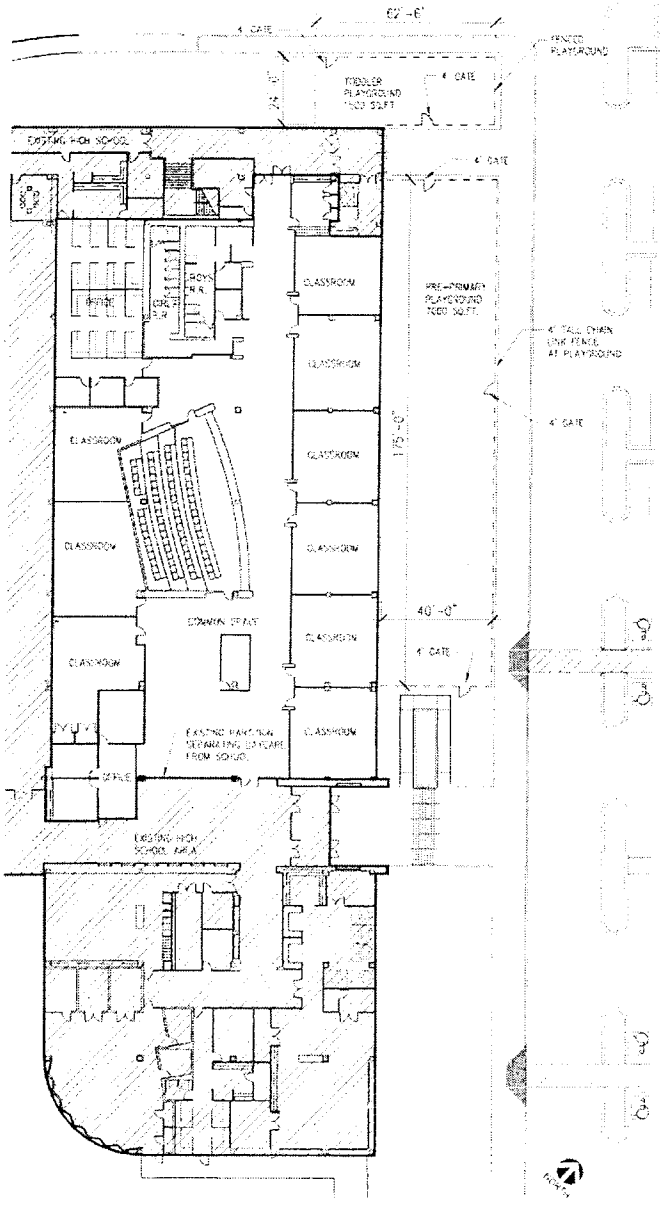
9-4

○ 200' Notification Buffer

9-5



02 OVERALL SITE PLAN



6 DAYCARE CLASSROOM LAYOUT

SITE TABULATION

ADDRESS	3800 COIT ROAD PLANO, TEXAS 75075
ZONING	LI-1, PD-125
EXISTING FACILITY	JOHN PAUL II HIGH SCHOOL
PROPOSED USE	DAYCARE CENTER
DESCRIPTION	22,500 SQ.FT. OF EXISTING CLASSROOMS AND ANCILLARY SPACES WILL BE USED AS A MONTESSORI SCHOOL FOR CHILDREN AGES 1 THROUGH 6. THE DAYCARE SPACE WILL BE SEPARATED FROM THE SCHOOL BY EXISTING PARTITIONS. EXISTING EXITS WILL BE MAINTAINED
DAYCARE AREA	APPROX. 22,500 SQ. FT.
NUMBER OF STUDENTS	150
PLAY SPACE REQ'D.	150 STUDENTS X 100 SF/STUDENT = 15,000 SQ. FT.
PLAYGROUND PROVIDED	TWO SEPARATE PLAYGROUNDS WILL BE PROVIDED: ONE 7,000 SQ.FT. PLAYGROUND FOR CHILDREN AGED 3 YEARS & ANY ONE 1500 SQ.FT. PLAYGROUND FOR CHILDREN AGED 2 OR 3
PARKING REQUIRED	26 SPACES

GENERAL NOTES

1. THE EXISTING SCHOOL HAS JUST COMPLETED RENOVATION AND EXPANSION AT THIS FACILITY.
2. THE FIRST FLOOR SPACE DEDICATED FOR DAYCARE USE WILL BE USED AS IS. THERE ARE NO INTERIOR MODIFICATIONS REQUIRED FOR THE PROPER OPERATION OF THE DAYCARE.
3. 4' TALL CHAIN LINK FENCES WILL BE ADDED TO THE EXISTING YARD AREAS TO DEFINE SECURE PLAY AREAS FOR THE DAYCARE CHILDREN.
4. THERE WILL BE NO INCREASE IN THE OCCUPANT LOAD OF THE EXISTING FACILITY.
5. EXISTING PARKING WILL ACCOMMODATE THE 26 PARKING SPACES REQUIRED FOR THE DAYCARE.

LIMIT OF SUP

THE SUP WILL BE LIMITED TO APPROXIMATELY 22,500 SQUARE FEET ON THE NORTHEAST SIDE OF THE FIRST FLOOR OF THE EXISTING JOHN PAUL II HIGH SCHOOL FACILITY. A TOTAL OF NINE CLASSROOMS AND ANCILLARY SPACES WILL BE USED TO PROVIDE DAYCARE SERVICES TO 150 CHILDREN AGED TWO TO SIX.

CITY OF PLANO NOTE

APPROVAL OF THE ZONING CASE ASSOCIATED WITH THE EXHIBIT SHALL NOT IMPLY APPROVAL OF ANY ASSOCIATED STUDY, YEAR OF PLAN, APPROVAL OF DEVELOPMENT STANDARDS SHOWN HEREON, OR THE INITIATION OF THE DEVELOPMENT PROCESS. EXAMINING A ZONING COMMISSION AND/OR CITY COUNCIL ACTION OR STUDENT PLANS RELATING TO DEVELOPMENT OF THIS PROPERTY SHALL BE CONSIDERED AS AN ACTION SEPARATE FROM ACTION TAKEN ON THIS ZONING CASE.

ZONING EXHIBIT

ZONING CASE 2805-14

LOT 1, BLOCK 1
JOHN PAUL II ADDITION
14.970 ACRES
(TBA AT P)
1,023,249 SQ. FT.

OWNER
JOHN PAUL II HIGH SCHOOL
3800 COIT RD
PLANO, TX 75075
972-867-2400 (P)
972-867-2445 (F)

DESIGN
MONTESSORI NEW BEGINNINGS ACADEMY
1201 CUSTER RD., STE. 203
PLANO, TX 75075
972-[illegible]
972-578-[illegible]

SCALE: 1" = 40'-0"

GHLA
GARLAN HEYCKENDORF LANDIS ARCHITECTS, INC.
ARCHITECTURE
INTERIOR DESIGN
PLANNING
120 SOUTH CENTRAL EXPY, SUITE 1100 RICHARDSON, TEXAS 75080 P 972.234.1200 F 972.234.1201

MONTESSORI
NEW BEGINNINGS ACADEMY
PLANO, TEXAS

DATE
SCALE
DRAWN BY
CHECKED BY

SHEET TITLE
ZONING EXHIBIT

SHEET NO.
1 of 1

ORDINANCE NO. _____
(Zoning Case 2005-41)

AN ORDINANCE OF THE CITY OF PLANO, TEXAS, AMENDING THE COMPREHENSIVE ZONING ORDINANCE OF THE CITY, ORDINANCE NO. 2004-9-37, AS HERETOFORE AMENDED, GRANTING SPECIFIC USE PERMIT NO. 514 SO AS TO ALLOW THE ADDITIONAL USE OF DAY CARE ON 35.0± ACRES OF LAND OUT OF THE MARTHA MCBRIDE SURVEY, ABSTRACT NO. 553, LOCATED AT THE NORTHEAST CORNER OF PLANO PARKWAY AND COIT ROAD IN THE CITY OF PLANO, COLLIN COUNTY, TEXAS, PRESENTLY ZONED PLANNED DEVELOPMENT-128-LIGHT INDUSTRIAL-1; DIRECTING A CHANGE ACCORDINGLY IN THE OFFICIAL ZONING MAP OF THE CITY; AND PROVIDING A PENALTY CLAUSE, A REPEALER CLAUSE, A SAVINGS CLAUSE, A SEVERABILITY CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS, the City Secretary of Plano, Texas, directed that notices of a hearing be issued, as required by the Zoning Ordinance of the City of Plano and laws of the State of Texas, at a meeting of the City Council, to be held on the 28th day of November, 2005, for the purpose of considering granting Specific Use Permit No. 514 for Day Care on 35.0± acres of land out of the Martha McBride Survey, Abstract No. 553, located at the northeast corner of Plano Parkway and Coit Road in the City of Plano, County, Texas, presently zoned Planned Development-128-Light Industrial-1; and

WHEREAS, the City Secretary of the said City accordingly caused to be issued and published the notices required by its Zoning Ordinance and laws of the State of Texas applicable thereto, the same having been published in a paper of general circulation in the City of Plano, Texas, at least fifteen (15) days prior to the time set for such hearing; and

WHEREAS, the City Council of said City, pursuant to such notice, held its public hearing and heard all persons wishing to be heard both for and against the aforesaid change in the Zoning Ordinance, on the 28th day of November, 2005; and

WHEREAS, the City Council is of the opinion and finds that the granting of Specific Use Permit No. 514 for Day Care on 35.0± acres of land out of the Martha McBride Survey, Abstract No. 553, located at the northeast corner of Plano Parkway and Coit Road in the City of Plano, Collin County, Texas, would not be detrimental or injurious to the public health, safety and general welfare, or otherwise offensive to the neighborhood; and

9-6

WHEREAS, the City Council is of the opinion and finds that such change will promote the best and most orderly development of the properties affected thereby, and to be affected thereby, in the City of Plano, and as well, the owners and occupants thereof, and the City generally.

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

Section I. The Comprehensive Zoning Ordinance No. 2004-9-37, as the same has been heretofore amended, is hereby further amended so as to grant Specific Use Permit No. 514, allowing the additional use of Day Care on 35.0± acres of land out of the Martha McBride Survey, Abstract No. 553, located at the northeast corner of Plano Parkway and Coit Road in the City of Plano, Collin County, Texas, presently zoned Planned Development-128-Light Industrial-1, said property being more fully described on the legal description in Exhibit "A" attached hereto.

Section II. The change granted in Section I is granted subject to:

1. Day Care Center is limited to the classroom space and outdoor play space as shown in Exhibit "B" attached hereto.

2. Play space area requirements are waived for children receiving less than four hours of day care per day.

Section III. It is directed that the official zoning map of the City of Plano (which is retained in electronic record format) be changed to reflect the zoning classification established by this Ordinance.

Section IV. All provisions of the ordinances of the City of Plano in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the Ordinances of the City of Plano not in conflict with the provisions of this Ordinance shall remain in full force and effect.

Section V. The repeal of any ordinance or part of ordinances affectuated by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions of any ordinance at the time of passage of this Ordinance.

Section VI. Any person, firm or corporation found to be violating any term or provision of this Ordinance, shall be subject to a fine in accordance with Section 1-4(a) of the City Code of Ordinances for each offense. Every day a violation continues shall constitute a separate offense.

Section VII. It is the intention of the City Council that this Ordinance, and every provision hereof, shall be considered severable, and the invalidity or partial invalidity of any section, clause or provision of this Ordinance shall not affect the validity of any other portion of this Ordinance.

Section VIII. This Ordinance shall become effective immediately upon its passage and publication as required by law.

PASSED AND APPROVED THIS THE 28TH DAY OF NOVEMBER, 2005.

_____
Pat Evans, MAYOR

ATTEST:

_____
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

9-8

EXHIBIT "A"
LEGAL DESCRIPTION

Being a certain tract of land in the Martha McBride Survey, Abstract No. 553, and being all of Lot 2, Block 1, of the DSC Communications Addition, City of Plano, Collin County, Texas, as recorded in Cabinet P, Pages 462-3 of the Plat Records, of Collin County, Texas.

DATE: November 8, 2005

TO: Honorable Mayor & City Council

FROM: Carolyn Kalchthaler, Chairman, Planning & Zoning Commission CK

SUBJECT: Results of Planning & Zoning Commission Meeting of November 7, 2005

AGENDA ITEM NO. 12A - PUBLIC HEARING
ZONING CASE 2005-42
APPLICANT: EDS INFORMATION SERVICES, LLC.

DESCRIPTION:

A request to rezone 18.4± acres located at the northeast corner of Headquarters Drive and Dallas North Tollway **from** Central Business-1 **to** Planned Development-65-Central Business-1. Zoned Central Business-1.

APPROVED: 7-0 **DENIED:** _____ **TABLED:** _____

LETTERS RECEIVED WITHIN 200 FOOT NOTICE AREA: **SUPPORT:** 0 **OPPOSE:** 0

LETTERS RECEIVED OUTSIDE 200 FOOT NOTICE AREA: **SUPPORT:** 0 **OPPOSE:** 0

PETITION(s) RECEIVED: N/A **# OF SIGNATURES:** N/A

STIPULATIONS:

Recommended for approval as submitted.

FOR CITY COUNCIL MEETING OF: November 28, 2005 (To view the agenda for this meeting, see www.planotx.org)

PUBLIC HEARING - ORDINANCE

TE/slc

xc: Steve Scott, EDS Information Services, LLC
Lynn Woodall, Administrative Support Supervisor

CITY OF PLANO

PLANNING & ZONING COMMISSION

November 7, 2005

Agenda Item No. 12A

Public Hearing: Zoning Case 2005-42

Applicant: EDS Information Services, LLC.

DESCRIPTION:

A request to rezone 18.4± acres located at the northeast corner of Headquarters Drive and Dallas North Tollway **from** Central Business-1 **to** Planned Development-65-Central Business-1. Zoned Central Business-1.

REMARKS:

The current zoning on the property is Central Business-1 (CB-1). The CB-1 district is intended for use in conjunction with the CE district to permit a highly concentrated business center similar to traditional downtown areas of major cities.

The requested zoning is Planned Development-65-Central Business-1 (PD-65-CB-1). A planned development district provides the ability to amend use, height, setback, and other requirements at the time of zoning to promote innovative design and better development controls appropriate to both offsite and onsite conditions. PD-65-CB-1 established a mixed-use, pedestrian-oriented development with specific use, bulk, and aesthetic standards. A concept plan accompanies this request as Agenda Item 12B.

The request proposes to continue the mixed-use, pedestrian-oriented, urban-style development of Legacy Town Center to the north side of Headquarters Drive. The rezoning requested is consistent with the existing PD-65-CB-1 zoning to the south. It is compatible with the existing CB-1 zoning to the north and the CE zoning to the east and west.

Surrounding Land Use and Zoning

Property to the north of the request is zoned CB-1 and is partially developed with office, retail, restaurant, and parking garage uses. The properties to the east across Parkwood Boulevard, a six-lane divided thoroughfare, and the properties to the west across Dallas North Tollway, are zoned CE, and are partially developed as corporate campus office buildings. The property to the south across Headquarters Drive, a six-lane divided thoroughfare, is zoned PD-65-CB-1. The initial development of this PD-65-CB-1 property, currently under construction, includes retail, restaurant, townhouse, and open space uses.

Conformance to the Comprehensive Plan

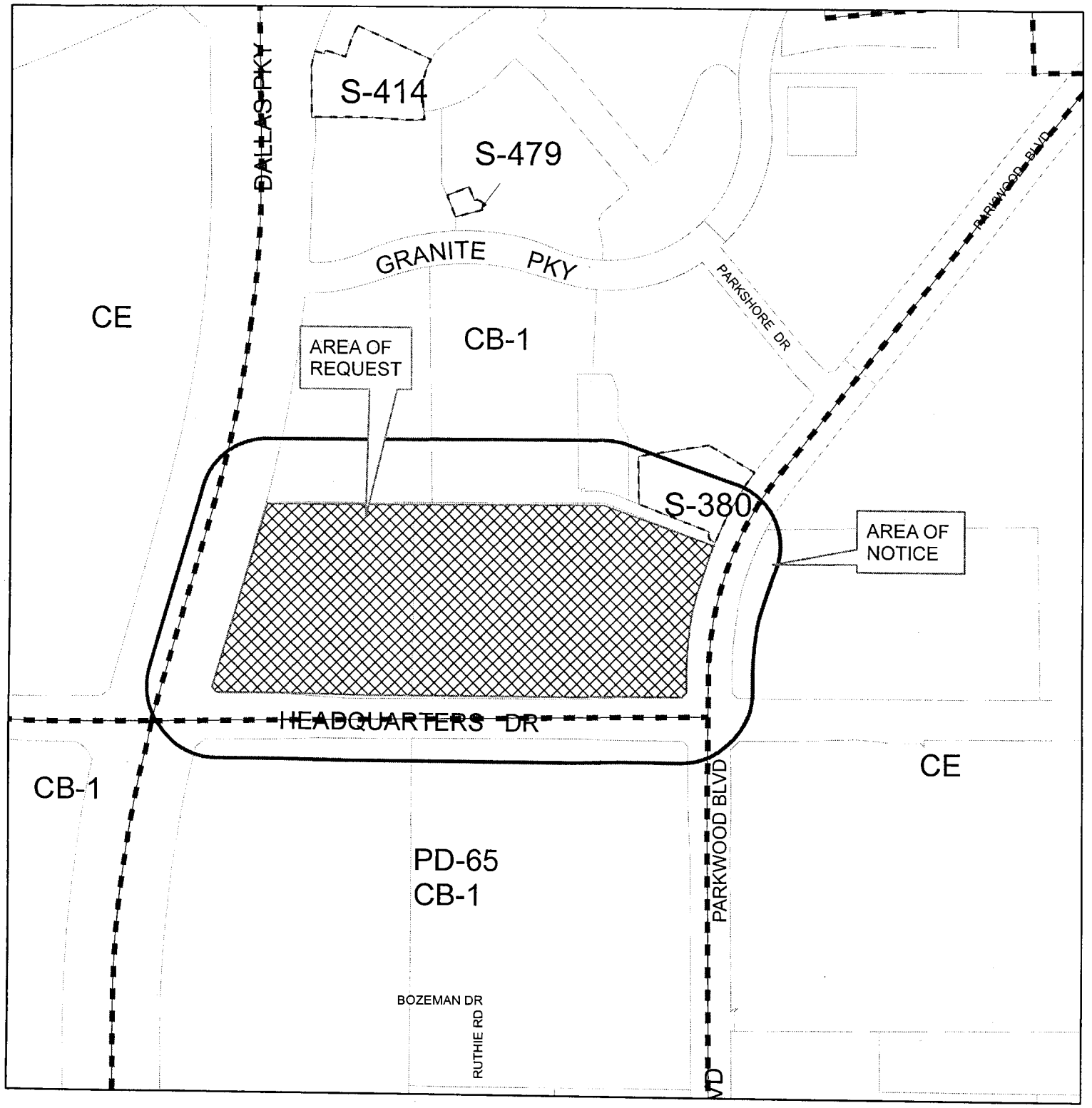
Future Land Use Plan - The Future Land Use Plan designates this property as Major Corridor Development. This request is in conformance with the Future Land Use Plan.

Adequacy of Public Facilities - Water and sanitary sewer services are available.

Traffic Impact Analysis (TIA) - A TIA is not required for this zoning request since the densities allowed by the proposed zoning request will be similar to those allowed by the existing zoning. A TIA will be required when a preliminary site plan is submitted for development that generates 5,000 or more trips per day.

RECOMMENDATION:

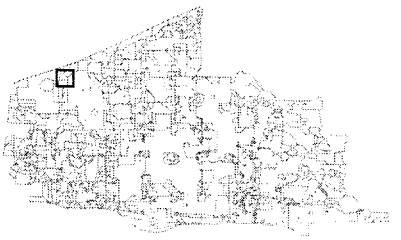
Recommended for approval as submitted.



plano gis

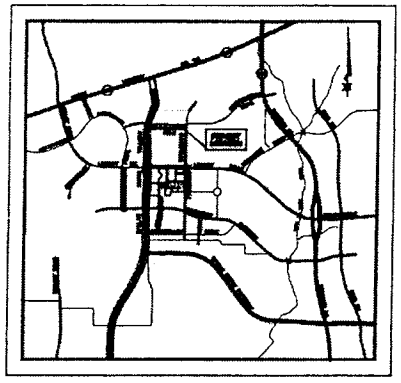
Zoning Case #: 2005-42

Existing Zoning: CENTRAL BUSINESS-1

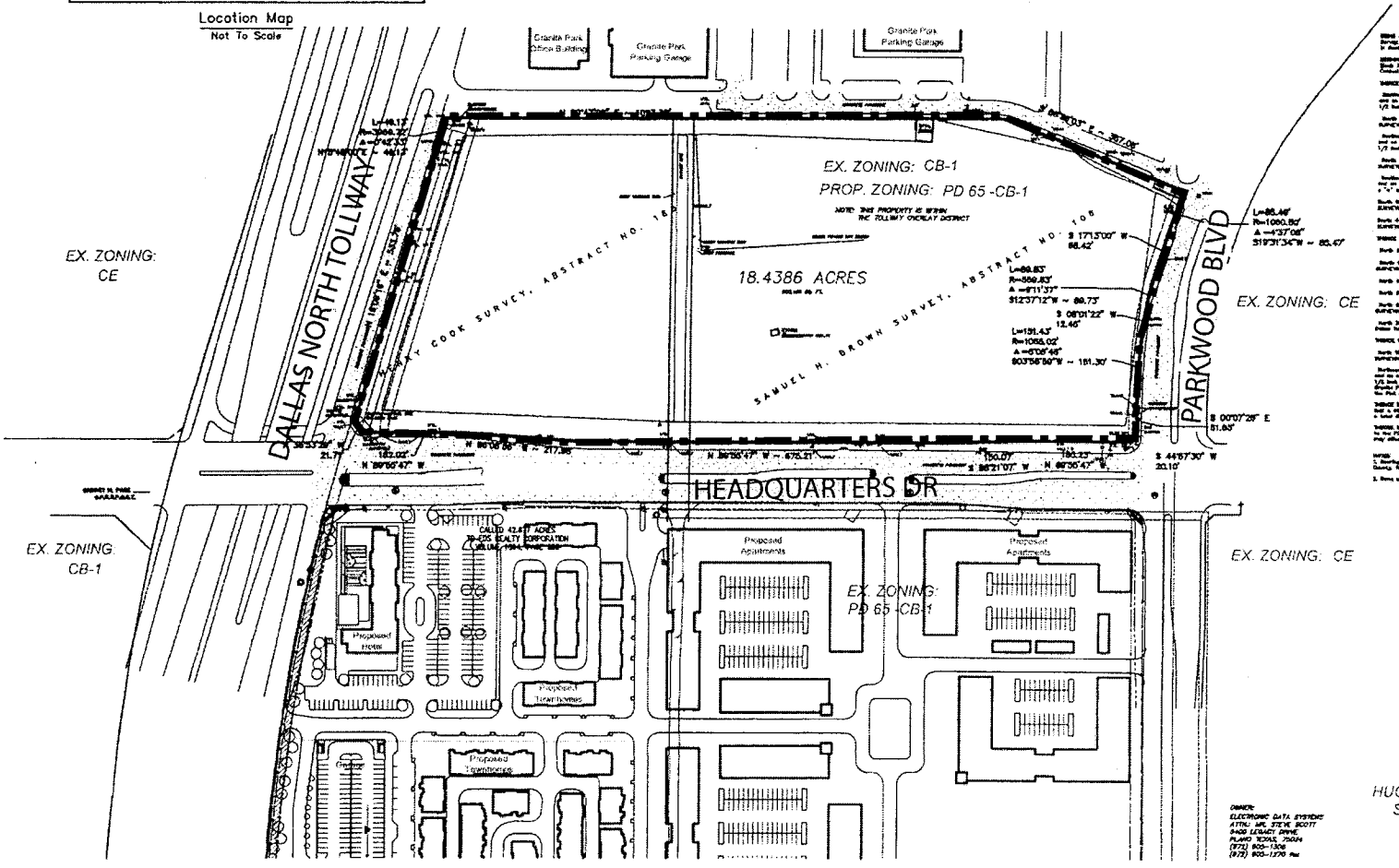


10-4

○ 200' Notification Buffer



Location Map
Not To Scale



10-5

100 0 100 200
1"=100'

NOTE: APPROVAL OF THE ZONING CASE ASSOCIATED WITH THIS EXHIBIT SHALL NOT IMPLY APPROVAL OF ANY ASSOCIATED STUDY, PLAT, OR PLAN, APPROVAL OF DEVELOPMENT STANDARDS SHOWN HEREON, OR THE INITIATION OF THE DEVELOPMENT PROCESS. PLANNING AND ZONING COMMISSION AND/OR CITY COUNCIL ACTION ON STUDIES, PLATS, OR PLANS RELATING TO DEVELOPMENT OF THIS PROPERTY SHALL BE CONSIDERED AS AN ACTION SEPARATE FROM ACTION TAKEN ON THIS ZONING CASE.

NOTE: ALL ELECTRICAL TRANSMISSION, DISTRIBUTION AND SERVICE LINES MUST BE UNDERGROUND.

ZONING CASE 2005-42
ZONING EXHIBIT
18.44 ACRES
IN THE
HUGH THOMPSON SURVEY, ABSTRACT NO. 896
SAM BROWN SURVEY, ABSTRACT NO. 108
CITY OF PLANO
COLLIN COUNTY, TEXAS

No.	Date	Revisions	App.

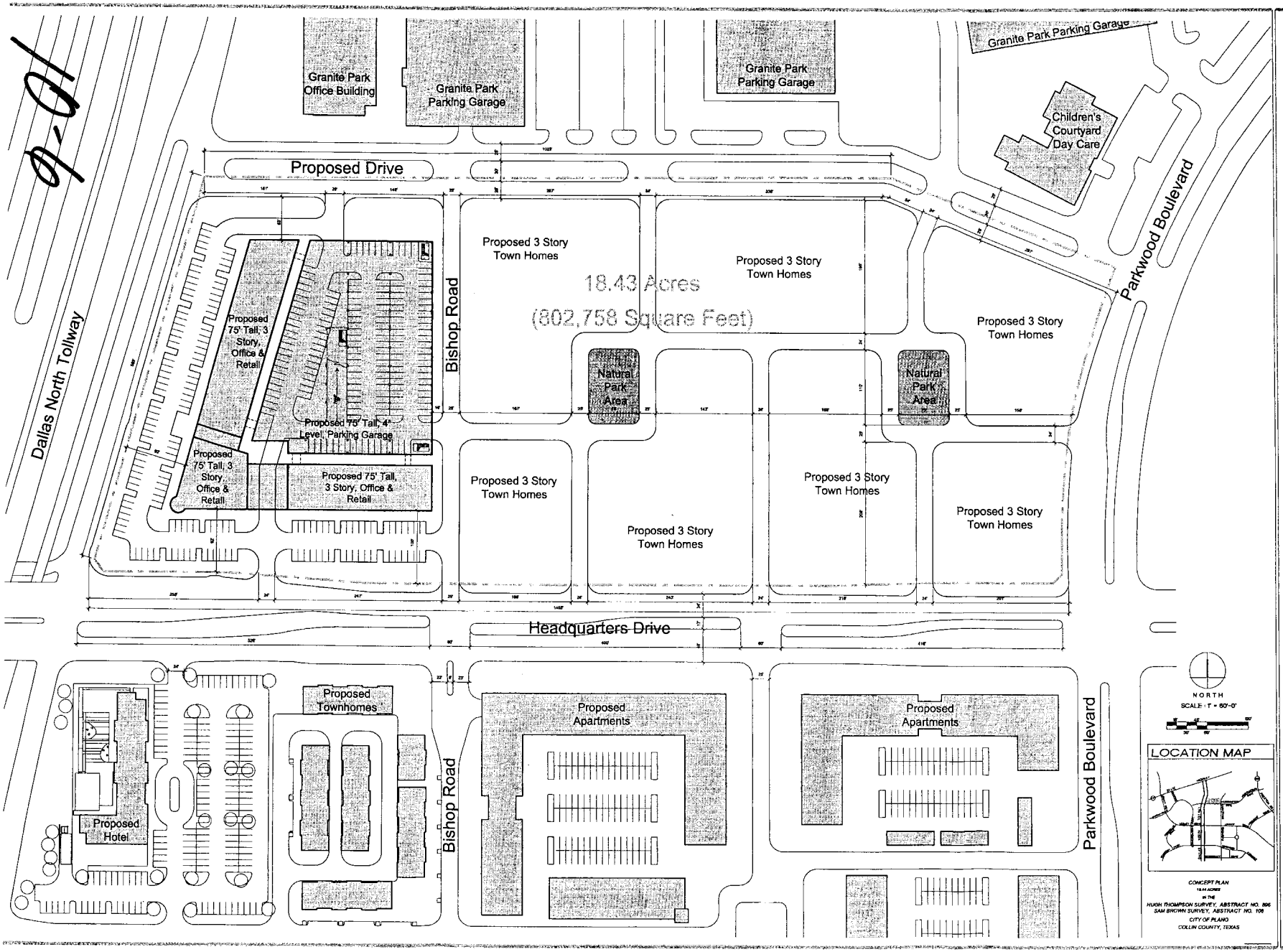
Allen & Ridinger Consulting, Inc.

NORTHEAST CORNER
DALLAS NORTH TOLLWAY
& HEADQUARTERS
PLANO, TEXAS

ZONING EXHIBIT

Scale: 1" = 100'
Designed by: MSA
Drawn by: LWR
Checked by: MSA
Date: OCTOBER 6, 2005
Project No. 004-001

SHEET 1 OF 1



TWICHELL

ARCHITECTURE
PLANNING
CONSTRUCTION
INTERIORS

MICHAEL F. TWICHELL, L.P.
3624 OAK LAWN AVE.
SUITE 320
DALLAS, TEXAS 75219
214 . 521 . 3066
FAX: 214 . 599 . 0563
EMAIL: MFT@TEXAS.NET

Owner: Electronic Data Systems
Attn: Mr. Steve Scott
3400 Legacy Drive
Plano Texas 75024
Ph. 972-605-1308
Ph. 972-605-1270

Legacy Town Center North - Phase Two
Headquarters Drive At Parkwood Blvd
Plano Texas

Master Plan

REV.	DATE	DESCRIPTION
	10.06.00	CONCEPT PLAN
	01.10.01	CONCEPT PLAN
	10.29.00	CONCEPT PLAN

DRAWN BY:
CHECKED BY:

PROJECT: 03200
SHEET

ORDINANCE NO. _____
(Zoning Case 2005-42)

AN ORDINANCE OF THE CITY OF PLANO AMENDING THE COMPREHENSIVE ZONING ORDINANCE OF THE CITY, ORDINANCE NO. 2004-9-37, AS HERETOFORE AMENDED, SO AS TO REZONE 18.4± ACRES OUT OF THE SAMUEL H. BROWN SURVEY, ABSTRACT NO. 108 AND THE HENRY COOK SURVEY, ABSTRACT NO. 183, LOCATED AT THE NORTHEAST CORNER OF HEADQUARTERS DRIVE AND DALLAS NORTH TOLLWAY IN THE CITY OF PLANO, COLLIN COUNTY, TEXAS, FROM CENTRAL BUSINESS-1 TO PLANNED DEVELOPMENT-65-CENTRAL BUSINESS-1; DIRECTING A CHANGE ACCORDINGLY IN THE OFFICIAL ZONING MAP OF THE CITY; AND PROVIDING A PENALTY CLAUSE, A REPEALER CLAUSE, A SAVINGS CLAUSE, A SEVERABILITY CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS, the City Secretary of Plano, Texas, directed that notices of a hearing be issued, as required by the Zoning Ordinance of the City of Plano and laws of the State of Texas, at a meeting of the City Council, to be held on the 28th day of November, 2005, for the purpose of considering rezoning 18.4± acres out of the Samuel H. Brown Survey, Abstract No. 108 and the Henry Cook Survey, Abstract No. 183, located at the northeast corner of Headquarters Drive and Dallas North Tollway in the City of Plano, Collin County, Texas, from Central Business-1 to Planned Development-65-Central Business-1; and

WHEREAS, the City Secretary of the said City accordingly caused to be issued and published the notices required by its Zoning Ordinance and laws of the State of Texas applicable thereto, the same having been published in a paper of general circulation in the City of Plano, Texas, at least fifteen (15) days prior to the time set for such hearing; and

WHEREAS, the City Council of said City, pursuant to such notice, held its public hearing and heard all persons wishing to be heard both for and against the aforesaid change in the Zoning Ordinance, on the 28th day of November, 2005; and

WHEREAS, the City Council is of the opinion and finds that such rezoning would not be detrimental to the public health, safety, or general welfare, and will promote the best and most orderly development of the properties affected thereby, and to be affected thereby, in the City of Plano, and as well, the owners and occupants thereof, and the City generally.

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

Section I. The Comprehensive Zoning Ordinance No. 2004-9-37, as the same has been heretofore amended, is hereby further amended so as to rezone 18.4± acres out of the Samuel H. Brown Survey, Abstract No. 108 and the Henry Cook Survey, Abstract No. 183, located at the northeast corner of Headquarters Drive and Dallas North Tollway in the City of Plano, Collin County, Texas, from Central Business-1 to Planned Development-65-Central Business-1, said property being described in the legal description on Exhibit "A" attached hereto.

Section II. The specific zoning and development requirements previously adopted for Planned Development-65-Central Business-1, and as amended by Zoning Case 2005-26, shall also apply to the property described on Exhibit "A" attached hereto.

Section III. It is directed that the official zoning map of the City of Plano (which is retained in electronic record format) be changed to reflect the zoning classification established by this Ordinance.

Section IV. All provisions of the ordinances of the City of Plano in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the Ordinances of the City of Plano not in conflict with the provisions of this Ordinance shall remain in full force and effect.

Section V. The repeal of any ordinance or part of ordinances affectuated by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions of any ordinance at the time of passage of this Ordinance.

Section VI. Any person, firm or corporation found to be violating any term or provision of this Ordinance, shall be subject to a fine in accordance with Section 1-4(a) of the City Code of Ordinances for each offense. Every day a violation continues shall constitute a separate offense.

Section VII. It is the intention of the City Council that this Ordinance, and every provision hereof, shall be considered severable, and the invalidity or partial invalidity of any section, clause or provision of this Ordinance shall not affect the validity of any other portion of this Ordinance.

Section VIII. This Ordinance shall become effective immediately upon its passage and publication as required by law.

PASSED AND APPROVED THIS THE 28TH DAY OF NOVEMBER, 2005.

_____

Pat Evans, MAYOR

ATTEST:

_____

Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

_____

Diane C. Wetherbee, CITY ATTORNEY

Z:ORD\ZC2005-42 (TE)

EXHIBIT "A"
LEGAL DESCRIPTION

BEING all that certain lot, tract or parcel of land situated in the Samuel H. Brown Survey, Abstract No. 108 and the Henry Cook Survey, Abstract No. 183, in the City of Plano, Collin County, Texas, and being that same called 18.47 acre tract of land described in deed to EDS Information Services, L.L.C., recorded in Volume 4853, Page 2203 of the Deed Records of Collin County, Texas;

BEGINNING at a "+" found in concrete at the northeast corner of said 18.47 acre tract, and being the southeast corner of Lot 1R, Block A of Granite Park, Phase I, an addition to the City of Plano, Collin County, Texas, according to the plat thereof recorded in Cabinet N, Page 362 of the Plat Records of Collin County, Texas, and being in the west line of Parkwood Boulevard;

THENCE the following seven (7) calls along the west line of said Parkwood Boulevard:

Southwesterly with a curve to the left having a radius of 1,060.50 feet, with a central angle of 04° 37' 08" and an arc length of 85.49 feet, whose chord bears South 19° 31' 34" West, a distance of 85.47 feet, to a 1/2 inch iron rod set with cap stamped "ARTHUR SURVEYING COMPANY";

South 17° 13' 00" West, a distance of 68.42 feet to a 1/2 inch iron rod set with cap stamped "ARTHUR SURVEYING COMPANY";

Southwesterly with a curve to the left having a radius of 559.83 feet, with a central angle of 09° 11' 37" and an arc length of 89.83 feet, whose chord bears South 12° 37' 12" West, a distance of 89.73 feet to a 1/2 inch iron rod set with cap stamped "ARTHUR SURVEYING COMPANY";

South 08° 01' 22" West, a distance of 12.45 feet to a 1/2 inch iron rod set with cap stamped "ARTHUR SURVEYING COMPANY";

Southwesterly with a curve to the left having a radius of 1,065.02 feet, with a central angle of 08° 08' 48" and an arc length of 151.43 feet, whose chord bears South 03° 56' 59" West, a distance of 151.30 feet to a "+" set on an electrical transformer;

South 00° 07' 26" East, a distance of 51.65 feet to a 1/2 inch iron rod set with cap stamped "ARTHUR SURVEYING COMPANY";

South 44° 57' 30" West, a distance of 20.10 feet to a 1/2 inch iron rod set with cap stamped "ARTHUR SURVEYING COMPANY"; said point being in the north line of Headquarters Drive;

THENCE the following six (6) calls along the north line of said Headquarters Drive:

North 89° 55' 47" West, a distance of 185.23 feet to a 5/8" iron rod found with cap stamped "KHA";

South 88° 21' 07" West, a distance of 150.07 feet to a 1/2 inch iron rod set with cap stamped "ARTHUR SURVEYING COMPANY";

North 89° 55' 47" West, a distance of 675.21 feet to a 5/8 inch iron rod found with cap stamped "KHA";

North 86° 06' 56" West, a distance of 217.98 feet to a 5/8 inch iron rod found with cap stamped "KHA";

North 89° 55' 47" West, a distance of 182.02 feet to a 1/2 inch iron rod set with cap stamped "ARTHUR SURVEYING COMPANY";

North 36° 53' 29" West, a distance of 21.71 feet to a "+" set on a utility vault in the east line of North Dallas Tollway;

THENCE the following two (2) calls along the east line of said North Dallas Tollway:

North 16° 09' 16" East, a distance of 533.78 feet to a 1/2 inch iron rod set with cap stamped "ARTHUR SURVEYING COMPANY";

Northeasterly with a curve to the left having a radius of 3,969.72 feet, with a central angle of 00° 42' 33" and an arc length of 49.13 feet, whose chord bears North 15° 48' 00" East, a distance of 49.13 feet to a 1/2 inch iron rod set with cap stamped "ARTHUR SURVEYING COMPANY", said point being the southwest corner of Lot 3, Block A of Granite Park, an addition to the City of Plano, Collin County, Texas, according to the plat thereof recorded in Cabinet M, page 88 of the Plat Records of Collin County, Texas;

THENCE North 89° 47' 08" East, along the south line of said Lot 3, and passing at a distance of 497.22 feet a 60D nail found at the southeast corner thereof, being the southwest corner of said Lot 1R, and continuing along said course, a total distance of 1,023.30 feet to a 1 inch iron rod found;

THENCE South 68° 36' 03" East, continuing along the south line of said Lot 1R, a distance of 357.08 feet to the POINT OF BEGINNING and CONTAINING 18.429 acres of land, more or less, and being subject to any and all easements that may affect.

NOTES: Bearings based on south line of Headquarters Drive as described in Volume 4853, Page 2203 of the Deed Records of Collin County, Texas.

10-10

DATE: November 22, 2005

TO: Honorable Mayor & City Council

FROM: Carolyn Kalchthaler, Chairman, Planning & Zoning Commission

SUBJECT: Results of Planning & Zoning Commission Meeting of November 21, 2005

AGENDA ITEM NO. 7 - PUBLIC HEARING
ZONING CASE 2005-44
APPLICANT: CITY OF PLANO

DESCRIPTION:

A request to amend Planned Development-20-Mixed Use to eliminate the phasing requirement in Sub-Area A and rezone 9.5± acres located on the east side of Preston Road, 490± feet south of McDermott Road **from** Planned Development-163-Mixed Use with Specific Use Permit #553 for Private Club **to** Planned Development-20-Mixed Use with Specific Use Permit #553 for Private Club.

APPROVED: 5-2 **DENIED:** _____ **TABLED:** _____

LETTERS RECEIVED WITHIN 200 FOOT NOTICE AREA: **FAVOR:** 2 **OPPOSE:** 1

LETTERS RECEIVED OUTSIDE 200 FOOT NOTICE AREA: **FAVOR:** 0 **OPPOSE:** 0

PETITION(s) RECEIVED: N/A **# OF SIGNATURES:** N/A

STIPULATIONS:

Recommended for approval as submitted.

The two commissioners voting in opposition to the request felt that it was inappropriate to remove the phasing requirement.

FOR CITY COUNCIL MEETING OF: November 28, 2005 (To view the agenda for this meeting, see www.planotx.org)

PUBLIC HEARING - ORDINANCE

CDD/pp

xc: Lynn Woodall, Administrative Support Supervisor

Z:PAC/11-28-CC

11-1

CITY OF PLANO

PLANNING & ZONING COMMISSION

November 21, 2005

Agenda Item No. 7

Public Hearing: Zoning Case 2005-44

Applicant: City of Plano

DESCRIPTION:

A request to amend Planned Development-20-Mixed Use to eliminate the phasing requirement in Sub-Area A and rezone 9.5± acres located on the east side of Preston Road, 490± feet south of McDermott Road **from** Planned Development-163-Mixed Use with Specific Use Permit #553 for Private Club **to** Planned Development-20-Mixed Use with Specific Use Permit #553 for Private Club.

HISTORY:

Zoning Case 97-01 - Established Planned Development-20-Mixed Use (PD-20-MU). MU zoning is intended to provide a variety of retail, office, and residential uses. The PD district contains building design, building arrangement, streetscape, open space, landscaping, parking, screening, and phasing stipulations to allow a pedestrian-oriented "new urbanism" development. Approved 08/11/97.

PD-20-MU was established as a "new urbanism" development. The stipulations of this "new urbanism" development are intended to blend work, housing, shopping, and service opportunities together by combining these uses, de-emphasizing the automobile, and encouraging social interaction and a special sense of place.

PD-20-MU is a 135.3± acre tract of land that is bounded by Preston Road, Rasor Boulevard, Ohio Drive, and McDermott Road. Please refer to attached Exhibit B showing the general layout of PD-20-MU. The western portion of the property is Sub-Area A and is intended to be primarily retail and office uses. A tributary of White Rock Creek traverses southeasterly across the property within Sub-Area A. The southern portion of this watercourse has been left in its natural state as open space. The northern portion has been dammed to create a pool of water for aesthetic and flood control purposes.

Sub-Area B is the area that is to be Town Center. It is centrally located within the development and will include retail, office, and residential uses around a village green. Town Center is intended to be the focal point of the entire development.

Sub-Area C is the majority of the eastern half of the property. It is predominately residential in use and will contain multifamily, townhouse, and other housing forms and types. The density of the housing is comparatively high to develop the urban concept and to avoid the appearance of a typical garden apartment development.

Sub-Area D is a small portion of the property located at the northwest corner of Ohio Drive and Rasor Boulevard with retail as the primary land use. This development will have storefronts on both sides facing the public streets and the residences in Sub-Area C and will be connected to the Town Center by open space.

Zoning Case 2000-02 - Amended development phasing and building design within Sub-Area A (Preston Road Mixed Use) and Sub-Area B (Town Center) of PD-20-MU. The original Exhibit B was replaced with Exhibit C. The phasing of the northern building fronting Town Square was extended from February 11, 1999, to March 20, 2002.

Zoning Case 2002-25 - Amended development phasing and building design within Sub-Area A (Preston Road Mixed Use) and Sub-Area B (Town Center) of PD-20-MU. The building design and facade requirements along the promenade were modified. The phasing of the northern building fronting Town Square was extended from March 20, 2002, to September 9, 2004.

Zoning Case 2002-62 - Amended the PD stipulations pertaining to nonresidential development within Sub-Area D. Allowed Sub-Area D to develop as entirely residential by removing the mandatory nonresidential component.

Zoning Case 2003-47 - Amended development phasing and circulation within Sub-Area A (Preston Road Mixed Use) and Sub-Area B (Town Center) of PD-20-MU. The design of the promenade connecting Preston Road and Town Square was modified, and Exhibit D replaced previous Exhibits B and C to reflect the changes. The phasing of the northern building fronting Town Square was limited to the property north of the promenade, exempting that area of Sub-Area A south of the promenade and reduced the number of square feet required to trigger the construction of the northern building fronting Town Square from 235,000 to 200,000.

Zoning Case 2005-35 - One property owner within Sub-Area A of PD-20-MU requested to rezone property from PD-20-MU and create a new PD. The new PD-163-MU separated these 9.5± acres of property from PD-20-MU in order to remove the phasing requirement linking the development of this property to the construction of the northern building fronting Town Square.

REMARKS:

There are two related components to this request. First, when considering Zoning Case 2005-35 in October, City Council called a public hearing with the intention of considering the phasing requirement within Sub-Area A of PD-20-MU. Second, if the phasing requirement is removed from PD-20-MU, PD-163-MU is no longer necessary, as the only difference between the stipulations of the two PD districts is the phasing requirement. Rejoining the two properties under one, cohesive zoning district would encourage a more consistent zoning application over time.

A PD district provides the ability to amend use, height, setback, and other development standards at the time of zoning to promote innovative design and better development controls appropriate to both off and onsite conditions. PD-20-MU was established as a "new urbanism" development. The stipulations of this "new urbanism" development are intended to blend work, housing, shopping, and service opportunities together by combining these uses, de-emphasizing the automobile, and encouraging social interaction and a special sense of place.

Phasing and Design

The original PD included a phasing requirement to ensure that the Town Square concept (Sub-Area B) was completed concurrent to the development of Sub-Area A. Town Square is centrally located within the development and currently includes office and residential uses around a village green. There are residential and office buildings on the south and east sides of Town Square. The west side of Town Square is bordered by the creek. Town Center is intended to be the focal point of the entire development.

When the PD was created in 1997, the phasing requirement originally had a deadline of February 11, 1999. Council has twice approved extensions to this timeframe, first to March 20, 2002, then to September 9, 2004. One lot within Sub-Area A, located at the southeast corner of McDermott Road and Preston Road, was approved prior to the September 9, 2005, deadline. All remaining property within Sub-Area A north of Towne Square Drive, approximately 31.4± acres, is tied to the phasing requirement; however, 9.5± acres were removed from the requirement as a part of Zoning Case 2005-35. Several other development projects within Sub-Area A are also being delayed until the phasing requirement has been met. Staff does not recognize a reasonable distinction in removing the phasing requirement from the 9.5± acres in Zoning Case 2005-35 while it remains on the adjoining 21.9± acres. Since Council found it appropriate to remove the phasing requirement from 9.5± acres within Sub-Area A in Zoning Case 2005-35, staff supports removal of the phasing requirement from the remaining 21.9± acres.

Reunification of PD-20-MU

Since its inception in 1997, PD-20-MU contained all the property bounded by Preston Road to the west, Rasor Boulevard to the south, Ohio Drive to the east, and McDermott Road to the north. If the phasing requirement is removed from the Sub-Area A, staff supports eliminating PD-163-MU and reincorporating the area back into PD-20-MU in order to maintain the geographic integrity of the district. Otherwise, the two PD districts could, over time, with additional amendments, lose continuity of design.

PD-20-MU is tied to a concept plan that includes the 9.5± acres now zoned PD-163-MU. The creation of PD-163-MU has removed the property from control of the concept plan for PD-20-MU, since that PD no longer controls development standards for those 9.5± acres. By rezoning PD-163-MU to PD-20-MU, the city can better ensure a more consistent and uniform design for the area.

11-4

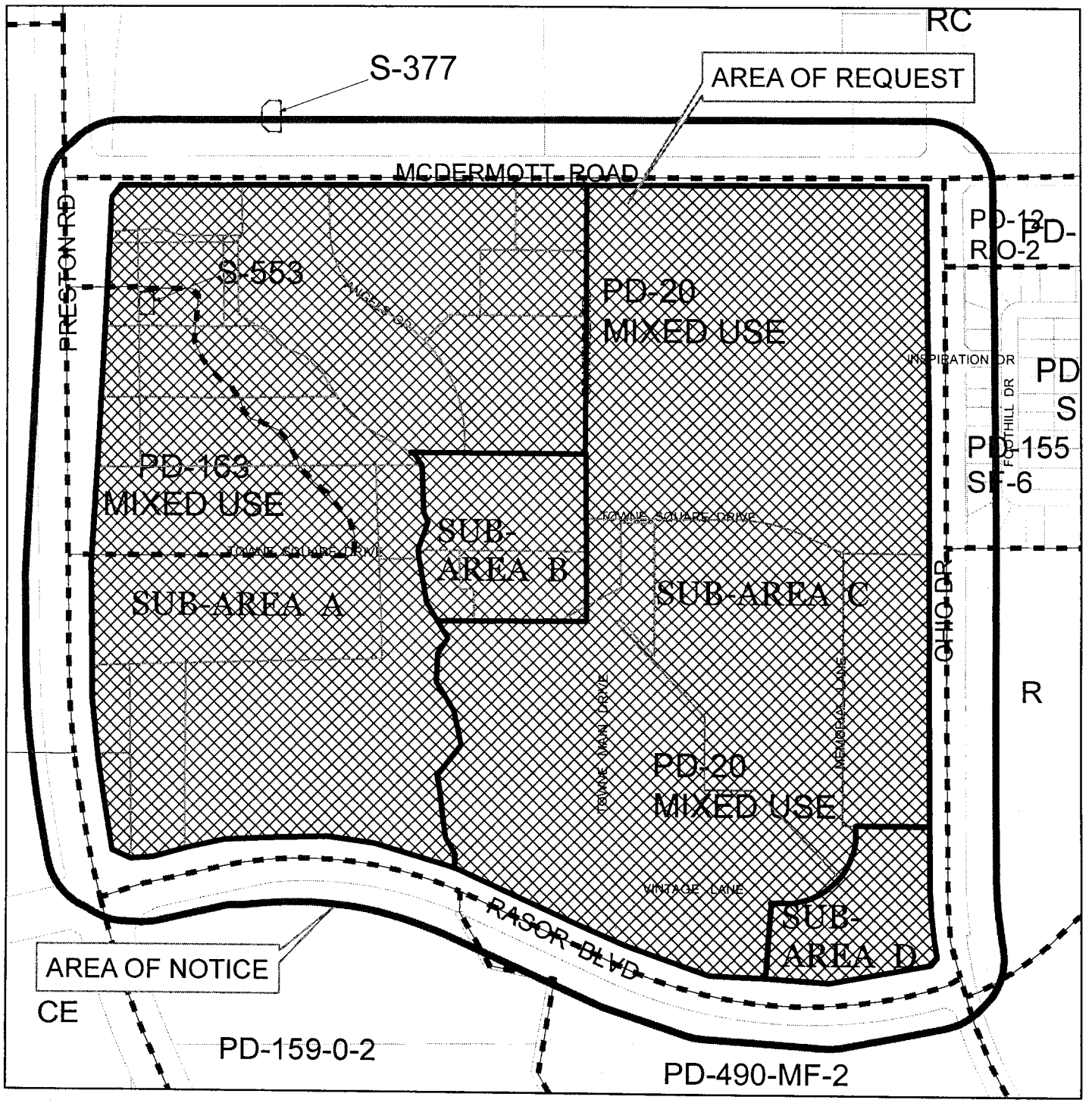
SUMMARY:

Since City Council removed the phasing requirement within Sub-Area A of PD-20-MU from 9.5± acres by creating PD-163-MU, staff supports a consistent action to remove the requirement from the remaining property within Sub-Area A of PD-20-MU. If the phasing requirement is removed, PD-163-MU is no longer necessary, so that property should be reincorporated into PD-20-MU.

RECOMMENDATION:

Recommended for approval as submitted.

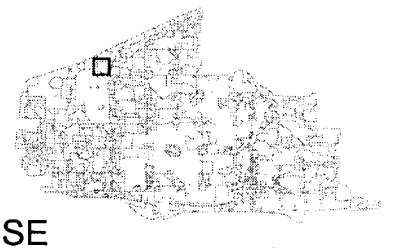
11-5



plano gis

Zoning Case #: 2005-44

Existing Zoning: PLANNED DEVELOPMENT-20-MIXED USE
& PLANNED DEVELOPMENT-163-MIXED USE
w/SPECIFIC USE PERMIT #553

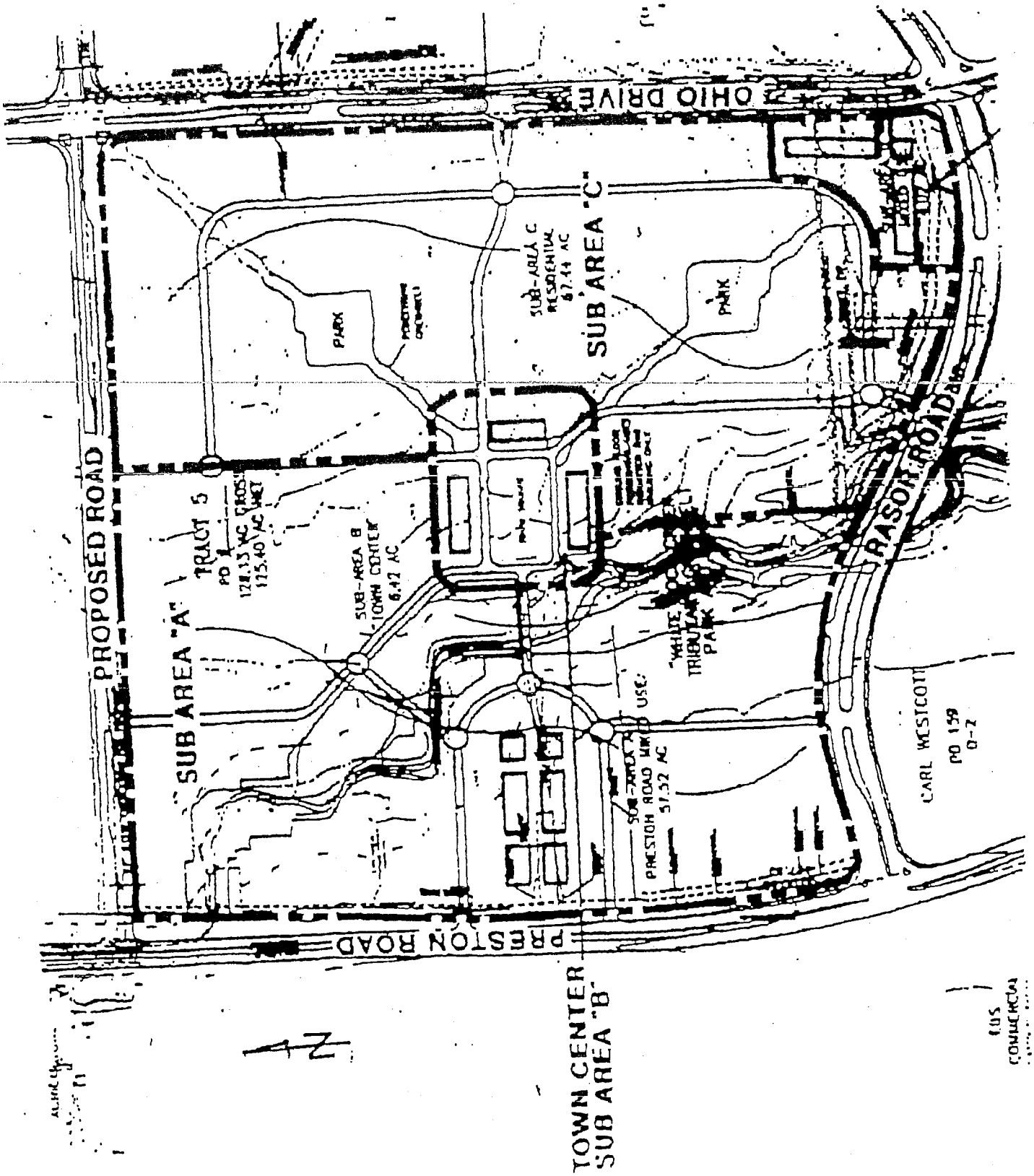


○ 200' Notification Buffer

11-6

ATTACHMENT TO ORDINANCE NO. 2000-5-55

EXHIBIT "B" ZC 97-01



42

11-7

ORDINANCE NO. _____
(Zoning Case 2005-44)

AN ORDINANCE OF THE CITY OF PLANO AMENDING THE COMPREHENSIVE ZONING ORDINANCE OF THE CITY, ORDINANCE NO. 2004-9-37, AS HERETOFORE AMENDED, SO AS TO ELIMINATE STIPULATION 2. SUB-AREA B (TOWN CENTER) M. PHASING OF PLANNED DEVELOPMENT-20-MIXED USE AND TO REZONE 9.5± ACRES OUT OF THE WILLIAM BROWN SURVEY, ABSTRACT NO. 66, LOCATED ON THE EAST SIDE OF PRESTON ROAD, 490± FEET SOUTH OF MCDERMOTT ROAD IN THE CITY OF PLANO, COLLIN COUNTY, TEXAS, FROM PLANNED DEVELOPMENT-163-MIXED USE WITH SPECIFIC USE PERMIT NO. 553 FOR PRIVATE CLUB TO PLANNED DEVELOPMENT-20-MIXED USE WITH SPECIFIC USE PERMIT NO. 553 FOR PRIVATE CLUB; DIRECTING A CHANGE ACCORDINGLY IN THE OFFICIAL ZONING MAP OF THE CITY; AND PROVIDING A PENALTY CLAUSE, A REPEALER CLAUSE, A SAVINGS CLAUSE, A SEVERABILITY CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS, the City Secretary of Plano, Texas, directed that notices of a hearing be issued, as required by the Zoning Ordinance of the City of Plano and laws of the State of Texas, at a meeting of the City Council, to be held on the 28th day of November, 2005, for the purpose of considering eliminating Stipulation 2. Sub-Area B (Town Center) m. Phasing of Planned Development-20-Mixed Use and rezoning 9.5± acres out of the William Brown Survey, Abstract No. 66, located on the east side of Preston Road, 490± feet south of McDermott Road in the City of Plano, Collin County, Texas, from Planned Development-163-Mixed Use with Specific Use Permit No. 553 for Private Club to Planned Development-20-Mixed Use with Specific Use Permit No. 553 for Private Club; and

WHEREAS, the City Secretary of the said City accordingly caused to be issued and published the notices required by its Zoning Ordinance and laws of the State of Texas applicable thereto, the same having been published in a paper of general circulation in the City of Plano, Texas, at least fifteen (15) days prior to the time set for such hearing; and

WHEREAS, the City Council of said City, pursuant to such notice, held its public hearing and heard all persons wishing to be heard both for and against the aforesaid change in the Zoning Ordinance, on the 28th day of November, 2005; and

WHEREAS, the City Council is of the opinion and finds that such amendment would not be detrimental to the public health, safety, or general welfare, and will promote the best and most orderly development of the properties affected thereby, and to be affected thereby, in the City of Plano, and as well, the owners and occupants thereof, and the City generally.

11-8

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

Section I. The Comprehensive Zoning Ordinance No. 2004-9-37, as the same has been heretofore amended, is hereby further amended so as to eliminate Stipulation 2. Sub-Area B (Town Center) m. Phasing of Planned Development-20-Mixed Use.

Section II. The Comprehensive Zoning Ordinance No. 2004-9-37, as the same has been heretofore amended, is hereby further amended so as to rezone 9.5± acres out of the William Brown Survey, Abstract No. 66, located on the east side of Preston Road, 490± feet south of McDermott Road in the City of Plano, Collin County, Texas, from Planned Development-163-Mixed Use with Specific Use Permit No. 553 for Private Club to Planned Development-20-Mixed Use with Specific Use Permit No. 553 for Private Club, said property being described in the legal description on Exhibit "A" attached hereto.

Section III. It is directed that the official zoning map of the City of Plano (which is retained in electronic record format) be changed to reflect the zoning classification established by this Ordinance.

Section IV. All provisions of the ordinances of the City of Plano in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the Ordinances of the City of Plano not in conflict with the provisions of this Ordinance shall remain in full force and effect.

Section V. The repeal of any ordinance or part of ordinances affectuated by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions of any ordinance at the time of passage of this Ordinance.

Section VI. Any person, firm or corporation found to be violating any term or provision of this Ordinance, shall be subject to a fine in accordance with Section 1-4(a) of the City Code of Ordinances for each offense. Every day a violation continues shall constitute a separate offense.

Section VII. It is the intention of the City Council that this Ordinance, and every provision hereof, shall be considered severable, and the invalidity or partial invalidity of any section, clause or provision of this Ordinance shall not affect the validity of any other portion of this Ordinance.

Section VIII. This Ordinance shall become effective immediately upon its passage and publication as required by law.

PASSED AND APPROVED THIS THE 28TH DAY OF NOVEMBER, 2005.

_____
Pat Evans, MAYOR

ATTEST:

_____
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

11-10

EXHIBIT "A"
LEGAL DESCRIPTION

BEING a tract of land, situated in the William Brown Survey, Abstract No. 66 in the City of Plano, Collin County, Texas, and being a portion of a called "Tract 3" as conveyed to Preston/121 Joint Venture and evidenced in a deed recorded in County Clerk's File No. 95-0039500, a portion of a tract of land as conveyed to Preston/121 Joint Venture and evidenced in a deed recorded in County Clerk's File No. 95-0039457, a portion of a tract of land as conveyed to Preston/121 Joint Venture and evidenced in a deed recorded in County Clerk's File No. 95-0039492, a portion of a tract of land as conveyed to Preston/121 Joint Venture and evidenced in a deed recorded in County Clerk's File No. 95-0039502 and a portion of a tract of land as conveyed to Preston/121 Joint Venture and evidenced in a deed recorded in County Clerk's File No. 95-003940 all of the Official Public Land Records of Collin County, Texas, and being more particularly described by metes and bounds as follows (bearings on the deed to the City of Plano as recorded in County Clerk's File No. 96-0108189 in the Official Public Land Records of Collin County, Texas):

BEGINNING at a 5/8-inch iron rod set for the Northeast corner of a tract of land as conveyed to the City of Plano and evidenced in a deed recorded in County Clerk's File No. 96-0072860 in the Official Public Land Records of Collin County, Texas, same being on the South line of a tract of land as conveyed to Mixon Enterprises and evidenced in a deed recorded in Volume 2160, Page 927 in the Official Public Land Records of Collin County, Texas;

Thence South, 89° 42' 31" East, along the South line of said Mixon Enterprises, a distance of 609.31 feet to a 5/8-inch iron rod found for an angle point;

Thence South, 89° 38' 49" East, continuing along said South line, a distance of 1,916.31 feet to the Northeast corner of said Tract 3;

Thence in a Southerly direction, along the East line of said Tract 3, the following:

South 00° 14' 32" West, a distance of 459.64 feet to a point for corner;

South 00° 37' 06" West, a distance of 78.53 feet to a point for corner;

South 00° 19' 13" West, a distance of 569.95 feet to a point for corner;

South 00° 15' 39" West, a distance of 45.57 feet to a point for corner;

South 00° 16' 44" East, a distance of 155.02 feet to a point for corner;

South 00° 26' 30" West, a distance of 817.97 feet to the beginning of a curve to the left;

Thence in a Southerly direction, along the arc of said curve to the left, having a central angle of 12° 42' 25" East, a radius of 1,400.00 feet and an arc length of 310.49 feet to the curving centerline of proposed Rasor Road, said curve being a non-tangent curve to the right;

Thence in a Westerly direction, along the centerline of said proposed Rasor Road the following:

Along the arc of said curve to the right, having a central angle of 03° 31' 44", a radius of 1,100.00 feet and an arc length at 67.75 feet to the end of said curve, same being the beginning of a curve to the right;

Along the arc of said curve to the right, having a central angle of 40° 35' 06", a radius of 1,400.00 feet and an arc length at 993.31 feet to the end of said curve;

North 65° 07' 47" West, a distance of 486.47 feet to a 1/2-inch iron rod found for the beginning of a curve to the left;

Along the arc of said curve to the left, having a central angle of 38° 56' 16", a radius of 1,200.00 feet and an arc length of 815.51 feet to a point for corner;

South 75° 55' 58" West, a distance of 264.05 feet to a point for corner on the East right-of-way line of State Highway 289;

Thence in a Northerly direction along the East right-of-way line of said State Highway 289, the following:

North 13° 31' 55" West, a distance of 215.85 feet to a 1/2-inch iron rod found for a corner;

North 08° 05' 04" West, a distance of 200.64 feet to a point for corner;

North 03° 34' 02" West, a distance of 292.54 feet to a point for corner;

North 88° 45' 09" East, a distance of 10.14 feet to a point for corner;

North 00° 33' 57" East, a distance of 247.62 feet to a point for corner;

North 00° 27' 45" West, a distance of 362.34 feet to a point for corner;

North 01° 31' 39" West, a distance of 197.16 feet to a point for corner;

North 00° 05' 49" West, a distance of 182.68 feet to a point for corner;

North 03° 09' 59" East, a distance of 16.90 feet to a point for the Southwest corner of the aforementioned City of Plano tract as recorded in County Clerk's File No. 96-0072861;

Thence North 89° 49' 53" East, along the South line of said City of Plano tract, a distance of 44.34 feet to a point for the Southeast corner of said City of Plano tract;

Thence North 03° 31' 48" East, along the East line of said City of Plano tract, a distance of 511.75 feet to the POINT OF BEGINNING and CONTAINING 135.3 acres of land, more or less.