PLANO CITY COUNCIL

WILL CONVENE INTO EXECUTIVE SESSION AT 5:00 P.M. ON DECEMBER 11, 2006, FOLLOWED BY PRELIMINARY OPEN MEETING IMMEDIATELY THEREAFTER, IN THE PLANO MUNICIPAL BUILDING, 1520 K AVENUE, IN COMPLIANCE WITH VERNON'S TEXAS CODES ANNOTATED, GOVERNMENT CODE CHAPTER 551 (OPEN MEETINGS ACT), AS FOLLOWS:

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

EXECUTIVE SESSION

I.	Legal Advice	Wetherbee	10 min.
	A. Respond to questions and receive legal advice on agenda items		
	B. Regarding annexation and extraterritorial jurisdiction issues for property located in the area west of Plano Parkway and south of Park Blvd.		
II.	Real Estate	Frank Turner	10 min.
	A. Offer to purchase city-owned property located at the NW corner of Park Blvd. and Avenue K		
III.	Personnel	Council	10 min.
	A. Evaluation of Council Appointees		

PRELIMINARY OPEN MEETING

I.	Consideration and action resulting from Executive Session discussion:	Council	5 min.
II.	Personnel Appointments	Council	5 min.
	A. Self Sufficiency Committee - Chair		
	B. TIF Reinvestment Zones No. 1 & 2 – Chairs		
	C. Community Relations Commission – Chair and Member		
III.	Council items for discussion/action on future agendas	Council	5 min.

IV.	Consent and Regular Agenda	Council	5 min.
V.	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.

C I T Y C O U N C I L

1520 AVENUE K

DATE: **December 11, 2006**

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

INVOCATION: **Pastor Dennis Tollison**
Grace Community Church

PLEDGE OF ALLEGIANCE: **Men of Note**

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** Presentation: 2007 Great American Cleanup T-Shirt Design Contest Winner **CERTIFICATE OF APPRECIATION** Community Relations Commission Carol Moss Planning and Zoning Commission Lisette Briley **THE CITY SECRETARY RECEIVES SPEAKER CARDS AT THE BEGINNING OF THE MEETING** **COMMENTS OF PUBLIC INTEREST** **This portion of the meeting is to allow up to five (5) minutes per speaker with thirty (30) total minutes on items of interest or concern and not on items that are on the current agenda. The Council may not discuss these items, but may respond with factual or policy information. The Council may choose to place the item on a future agenda.** **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. Citizens are limited to two (2) items and discussion time of three (3) minutes each.**	

ITEM NO.	EXPLANATION	ACTION TAKEN
(a)	**Approval of Minutes** November 27, 2006 **Approval of Expenditures** **Award/Rejection of Bid/Proposal: (Purchase of products/services through formal procurement process by this agency)**	
(b)	**Bid No. 2007-26-B** for 2006-07 Arterial Concrete Pavement Rehabilitation Project, Custer Road between Wilson Drive and Spring Creek Parkway to Hencie International, Inc. in the amount of $722,825.	
(c)	**RFP No. 2007-3-C** for an annual fixed price contract for Broker of Record and Supplemental Services to Arthur J. Gallagher Risk Management Services, Inc. in the estimated annual amount of $182,975 and approval of expenditure for City insurance premiums. This will establish an annual contract with four City optional one year renewals.	
(d)	**RFP No. 2007-4-C** for an annual fixed price contract for Risk Control Services to Arthur J. Gallagher Risk Management Services, Inc. in the estimated annual amount of $165,000. This will establish an annual contract with four City optional one year renewals.	
(e)	**Bid No. 2007-28-B** for Intersection Improvements 2004 to Jim Bowman Construction Co., L.P., in the amount of $312,390. This project includes improvements at the following three locations: Spring Creek Parkway/Lookout Trail, Commerce Drive/Plano Parkway, West Park Boulevard/Ohio Drive.	
(f)	**Bid No. 2006-237-B** for 15th Street Reconstruction (Avenue G to Avenue I) street project to JRJ Paving L.P. in the amount of $1,632,772 for the base bid. The project includes brick paved sidewalks, landscaping and irrigation. **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 approve the agreement with CaremarkPCS Health, L.P. for pharmacy benefit management services at the estimated cost of $2,500,000 annually for pharmacy claims, entered into through an existing agreement with PEBA (Public Employee Benefits Alliance), and authorizing the City Manager to execute all necessary documents.	
(h)	To approve the purchase and installation of infield conditioner in the amount of $47,300 from Masterturf Products through an existing contract/agreement with PISD, and authorizing the City Manager to execute all necessary documents. PISD Contract #3708/City of Plano Interlocal Contract #2007-43-1.	

ITEM NO.	EXPLANATION	ACTION TAKEN
	Approval of Contract: (Purchase of products/services exempt from State of Texas Competitive Bid Laws)	
(i)	To approve a contract by and between the City of Plano and JCW Electronics I Ltd., L.L.P. doing business as JCW Electronics Inc., for Jail Inmate Telephone System, and authorizing the City Manager to execute all necessary documents (RFO No. 2006-197-C). This will establish a three year contract with one City optional one year renewal.	
(j)	To approve the terms and conditions of an Engineering Services Agreement by and between the City of Plano and Alliance Geotechnical Group, Inc. in the amount of $26,894 for material testing on the Plano Parkway – Tollroad to Park Boulevard and West Plano Quiet Zone Improvements and authorizing the City Manager to execute all necessary documents.	
	Approval of Agreement	
(k)	To approve a Boundary Adjustment Agreement for Plano Parkway between the Town of Hebron and the City of Plano which would relocate the common boundary to the west side of Plano Parkway adjacent to Air Park.	
(l)	To approve a Boundary Adjustment Agreement for Parker Road and BNSF Railroad between the Town of Hebron and the City of Plano which would relocate the common boundary to the west side of the railroad so that the entire Parker Road crossing is within Plano jurisdiction.	
(m)	To approve the terms and conditions of an Interlocal Agreement by and between the City of Plano and the Town of Hebron, Texas concerning the improvements to Parker Road west of the BNSF Railroad.	
(n)	To approve a Geographic Information System (GIS) Annual Maintenance Agreement with Environmental Research Systems Institute (ESRI) in the amount of $57,115.	
	Adoption of Resolutions	
(o)	To authorize an expenditure of funds not to exceed $49,880 to Macaulay Controls Company, the exclusive representative in the State of Texas of Marsh McBirney, Flo-Tote 3 Electromagnet Open Channel Flow Meters, a sole manufactured product and system of Marsh McBirney Hach Corporation; authorizing the City Manager to take such action and execute such documents as necessary to effectuate this expenditure; and providing an effective date.	
(p)	To approve and authorize the refunds of property tax overpayments; and providing an effective date.	
(q)	To approve the terms and conditions of an Economic Development Program Agreement by and between the City of Plano, Texas and Insight Direct USA, Inc., an Illinois corporation, to promote state and local economic development and to stimulate business and commercial activity in the City and County; authorizing its execution by the City Manager; and providing an effective date.	

ITEM NO.	EXPLANATION	ACTION TAKEN
(r)	To approve a License Agreement by and between the City of Plano, Texas, and K & C Capital Partners, LTD., for use of an approximately nine by twenty foot portion of the public right-of-way for outdoor dining situated in front of the expanded space for Kelly's Eastside Restaurant located at 1424 Avenue K.	
(s)	To ratify and approve the expenditure of Community Services Funds in the amount of $508,010 for the various community services and approving the terms and conditions of agreements between the City of Plano and various community organizations; authorizing its execution by the City Manager; and providing an effective date.	
(t)	To approve the terms and conditions of a Real Estate Contract by and between the City of Plano, Texas, and Duyet H. and Hien Thi Nguyen for the purchase of 1,371.115 square feet of land for right of way for 15th Street and a temporary construction easement of 810 square feet, located at the southwest corner of K Avenue and Parker Road, in the George W. Barnett Survey, Abstract No. 45, being a part of Lot 1, Block A, of Glasgow Addition, an addition in the City of Plano, Collin County, Texas; authorizing its execution by the City Manager; and providing an effective date.	
(u)	To approve the receipt of funds in the amount of $62,773 from the Texas State Library and Archives Commission – Loan Star Libraries to fund the following for Plano Public Library System (PPLS): Rosetta Stone Database, OCLC World Language Sets, PPLS library cards, genealogy local history and Texana materials, large print materials, and English and Spanish computer class instructors; and authorizing the City Manager to execute all necessary documents for receipt of the funding.	
(v)	To authorize the City of Plano to participate in and receive funding through the Texas Highway Traffic Safety Program for a "Drink. Drive. Go to Jail" Project, Contract No. 587XXF6121 to be conducted during four holiday periods from December 13, 2006 through September 30, 2007; authorizing the City Manager to execute the Grant Agreement and any other documents necessary to effectuate the action taken; and providing an effective date.	
(w)	To approve the terms and conditions of a Local Transportation Project Advance Funding Agreement between the State of Texas and the City of Plano for bicycle route enhancements throughout the City of Plano; authorizing its execution by the City Manager; and providing an effective date.	
(x)	To authorize an expenditure of funds not to exceed $25,050.52 to the State of Texas – Texas Commission on Environmental Quality for the Fiscal Year 2007 Water System Fee; authorizing the City Manager to take such action and execute such documents as necessary to effectuate this expenditure; and providing an effective date.	
	Adoption of Ordinances	
(y)	To adopt and enact Supplement Number 76 to the Code of Ordinances for the City of Plano; providing for amendment to certain sections of the Code; and providing an effective date.	

ITEM NO.	EXPLANATION	ACTION TAKEN
	ITEMS FOR INDIVIDUAL CONSIDERATION:	
	Public Hearing Items: Applicants are limited to fifteen (15) minutes presentation time with a five (5) minute rebuttal, if needed. Remaining speakers are limited to thirty (30) total minutes of testimony time, with three (3) minutes assigned per speaker. The presiding officer may extend these times as deemed necessary.	
	Non-Public Hearing Items: The Presiding Officer may permit limited public comment for items on the agenda not posted for a Public Hearing. The Presiding Officer will establish time limits based upon the number of speaker requests, length of the agenda, and to ensure meeting efficiency, and may include a cumulative time limit. Speakers will be called in the order cards are received until the cumulative time is exhausted.	
(1)	**Public Hearing and an ordinance** to designate a certain area within the City of Plano as Reinvestment Zone No. 102 for a tax abatement consisting of a 6.2622 acre tract of land located approximately at the northeast corner of Summit Avenue and Klein Road, in the City of Plano, Texas establishing the boundaries of such zone; ordaining other matters relating thereto; and providing an effective date.	
(2)	**A resolution** to approve the terms and conditions of an agreement by and between the City of Plano, Texas, the County of Collin, Texas, the Collin County Community College District, RREEF America REIT II Portfolio, L.P., a Maryland limited partnership and Luminator Holding L.P., a Delaware limited partnership, and providing for a business personal property and real property tax abatement, and authorizing its execution by the City Manager; and providing an effective date.	
(3)	**Public Hearing and an ordinance as requested in Zoning Case 2006-29 –** To amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, so as to rezone 75.5± acres located at the northwest corner of Spring Creek Parkway and Tennyson Parkway in the City of Plano, Denton and Collin Counties, Texas, from Commercial Employment to Single-Family Residence Attached, Patio Home, and Single-Family Residence-9; 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: Welwood-Hawkins Homes	
(4)	**A resolution** to accept and approve the "Workforce Housing Study" as a guide for the creation of future programs related to workforce housing in the City of Plano, Texas; and providing an effective date.	
(5)	**A resolution** to approve the terms and conditions of a Grant and Maintenance Agreement for the construction and maintenance of a water fountain at Legacy Town Center by and between the Shops at Legacy (North), L.P. and the City of Plano; authorizing its execution by the City Manager; and providing an effective date.	
(6)	**An ordinance** to transfer the sum of $1,000,000 from the General Fund Unappropriated Fund Balance to the General Fund Operating Appropriation for Fiscal Year 2006-07 for the purpose of providing partial funding for the construction and maintenance of a water fountain within Legacy Town Center; amending the budget of the City and Ordinance 2006-9-9, as amended, to reflect the actions taken herein; declaring this action to be a case of public necessity; and providing an effective date.	

ITEM NO.	EXPLANATION	ACTION TAKEN
	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.	

city of plano

Pat Evans
Mayor

Scott Johnson
Mayor Pro Tem

Sally Magnuson
Deputy Mayor Pro Tem

Shep Stahel
Place 1

Loretta Ellerbe
Place 3

Harry LaRosiliere
Place 5

Jean Callison
Place 7

Lee Dunlap
Place 8

Thomas H. Muehlenbeck
City Manager

December 6, 2006

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

Honorable Mayor and City Council:

We will begin Monday evening in Executive Session where we will receive advice from the City Attorney along with a briefing regarding annexation and extraterritorial jurisdiction issues for property located in the area west of Plano Parkway and south of Park Boulevard. Frank Turner will advise us of an offer to purchase city-owned property located at the northwest corner of Park Boulevard and Avenue K. There is also an opportunity allotted to proceed with the evaluation of Council appointees.

The Preliminary Open Meeting agenda consists of five personnel appointments: the chair to the Self Sufficiency Committee, chairs to both TIF Reinvestment Zones No #1 and #2, and chair and member appointment to the Community Relations Commission.

I look forward to seeing you Monday.

Sincerely yours,

Thomas H Muehlenbeck

Thomas H. Muehlenbeck
City Manager

THM/cp

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

MEMO

DATE: December 5, 2006

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

FROM: Di Zucco, Assistant City Secretary

RE: Personnel Appointments/Reappointments
Executive and Worksession Meetings

The following personnel appointments/reappointments will be considered at the December 11, 2006 Council Meeting.

Executive Session	**Worksession Meeting**
No items to consider	Community Relations Commission Resignation of Carol Moss – Interim Term expires 10-07 and Chair Self Sufficiency Committee – Chair Tax Increment Financing Reinvestment Zones No. 1 and 2 Boards – Chairs

BRDSCOM/PERSMEMO

Discussion/Action Items for Future Council Agendas

December 11

December 14, City of Plano Employee Holiday Luncheon, Plano Centre, 11 am – 2 pm

December 19
Mobility Report
DART Report
Comprehensive Monthly Financial Report
City of Plano Employee Clinic
Youth Advisory Commission – Recognition for 1st Place Parade Float

December 22 & 25 - Christmas Holidays

2007

January 1 – New Year Holiday

January 8
Library Advisory Board
Electric Supply/Coal Generation Update

January 15 – MLK Holiday

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

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

February 12
Animal Shelter Advisory Committee

February 9 – 12, AMCC Conference, Austin

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

March 5 – 9, PISD Spring Break

March 10 – 14, NLC Congressional Cities

March 20
Transportation Advisory Committee

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

April 9
Public Arts Committee

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

May 14
Heritage Commission

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

May 28 – Memorial Day

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

June 11
Transition & Revitalization Commission

June 21 – 24, TCMA Conference, San Antonio

June 25
Board of Adjustment
Mobility Report
DART Report
Comprehensive Monthly Financial Report

July 4 – Independence Day

July 23
Building Standards Commission
Mobility Report
DART Report
Comprehensive Monthly Financial Report

July 25
(Budget Session)

August 13
Retirement Security Plan Committee

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

August 27
Parks and Recreation Planning Board
Mobility Report
DART Report
Comprehensive Monthly Financial Report

September 3 – Labor Day

September 10
Self Sufficiency Committee

September 24
Plano Housing Authority
Mobility Report
DART Report
Comprehensive Monthly Financial Report

October 7 – 10, ICMA Conference, Pittsburgh

October 8
TIF #1 & #2 Boards

October 18 – District 2 Neighborhood Roundtable, Sockwell Center, 7 p.m.

October 22
Youth Advisory Committee
Mobility Report
DART Report
Comprehensive Monthly Financial Report

November 7 – 9, TML Conference, Dallas

November 12
Technology Commission

November 13 – 17, NLC Conference, New Orleans

November 22 & 23 – Thanksgiving Holidays

November 27
Mobility Report
DART Report
Comprehensive Monthly Financial Report

December 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:	**12/11/06**	Reviewed by Legal	☐ Yes	☒ Not Applicable
Department:	City Manager's Office		Initials	Date
Department Head	Tom Muehlenbeck	Executive Director	RS	12-4-07
Dept Signature:		City Manager		
Agenda Coordinator (include phone #):	**Sharon Wright ext. 7107**			

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

CAPTION

Presentation: 2007 Great American Cleanup T-Shirt Design Contest Winner

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

PLANO CITY COUNCIL
PRELIMINARY OPEN MEETING
November 27, 2006

COUNCIL MEMBERS

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

STAFF

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

Mayor Evans called the meeting to order at 5:10 p.m., Monday, November 27, 2006, in Training Room A of the Municipal Center, 1520 K Avenue. All Council Members were present with the exception of Deputy Mayor Pro Tem Magnuson. Council Member Callison was present for the Executive Session but was not present for the Preliminary Open Meeting. 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 to discuss Litigation, Section 551.071, and 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 6:45 p.m. in the Council Chambers where the following matters were discussed:

Consideration and Action Resulting From Executive Session Discussion

No items were brought forward.

Personnel Appointments

Self Sufficiency Committee

Upon a motion made by Council Member Stahel and a second by Council Member Dunlap, the Council voted 6-0 to appoint Cathie Alexander. .

DART Report

No report was given.

Mobility Report

No report was given.

Comprehensive Monthly Financial Report

Director of Finance McGrane presented the Comprehensive Monthly Finance Report for the month of October and stated that General Fund Revenues are ahead slightly from last year. He spoke to an increase in sales tax revenues and property tax collections, and stated that water and sewer revenues are down partly to conservation efforts. Mr. McGrane stated that expenditures are ahead slightly, spoke to monitoring sales tax revenues, stated that unemployment rates are down, and spoke to sales tax revenue comparisons in other cities. He spoke to housing starts experiencing slight increases in addition to increases in commercial building permits, and further spoke to treasury pool equities and other investment pools.

Discussion and Direction Regarding Excess Tollroad Revenue Projects

City Engineer Upchurch spoke to policies to share excess tollroad revenues to be allocated to the counties and to a list of Collin County projects identified in the packet. He spoke to a potential receipt upfront of approximately $400 million from the SH 121 project for Collin County use. Mr. Upchurch requested that Council approve the list of eligible projects identified for funding to be used when the time comes. Mayor Pro Tem Johnson spoke to how projects might be prioritized to which Mr. Upchurch responded that the cities and County should meet and discuss the projects up for consideration. The Council concurred to begin with the list as identified.

Mayor Evans convened the Preliminary Meeting directly into the Regular Meeting at 7:00 p.m. where remaining items were discussed.

_____
Pat Evans, Mayor

ATTEST

_____
Elaine Bealke, City Secretary

PLANO CITY COUNCIL
November 27, 2006

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

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

Mayor Evans convened the Council into the Regular Session directly from the Preliminary Session on Monday, November 27, 2006, at 7:00 p.m. in the Council Chamber of the Plano Municipal Center, 1520 K Avenue. All Council members were present with the exception of Deputy Mayor Pro Tem Magnuson. Council Member Callison arrived at 8:00 p.m.

The invocation was led by Sr. Pastor Tom Mullenix of the Cross Bend Christian Church.

The Pledge of Allegiance was led by Senior Girl Scout Troop 2232.

Mayor Evans administered the oath of office to incoming Fire Chief Hugo Esparza.

Mayor Evans presented a certificate of appreciation to Brenda McDonald for her service on the Self Sufficiency Committee.

COMMENTS OF PUBLIC INTEREST

Sonja Hammar, citizen of the City, spoke regarding the drought conditions and inquired when the City would be entering the next stage of watering restrictions. City Manager Muehlenbeck advised consideration would be made following any decisions made by the North Texas Municipal Water District and spoke to the reduction in water use primarily as a result of cutbacks made by the City, school district and commercial customers.

Jack Lagos, citizen of the City, spoke regarding recent revisions to the drought ordinance, the amount of water that would be used by a fountain at the Shops at Legacy and referenced charter provisions in stating opposition to utilizing public funds for the construction of the fountain.

The Council resumed discussion of Preliminary Agenda Items.

Discussion and Direction Regarding the Format and Structure of the Four District Community Outreach Meetings

Mayor Evans requested input on any changes that might be made to the community outreach meetings. Council Member Stahel spoke to quarterly meetings being appropriate, possibly rotating the meeting days to which the Council concurred. He spoke to possibly utilizing focus groups and Council Member Dunlap spoke to having the public determine which topic they would select and to having questions raised in an open forum. Council Member LaRosiliere spoke to providing a dialogue with Council Members and Council Member Ellerbe spoke to compiling a selection so that the attendees may choose a topic. Mayor Pro Tem Johnson spoke to there being interest in asking general questions rather than narrowing the focus.

Mayor Evans spoke to ensuring there is sufficient Council present at the meetings. Council Member Ellerbe spoke to having at least four Council Members in attendance including those representing the district, Council Member Dunlap spoke to Council Members representing everyone in the City and Mayor Pro Tem Johnson stated that in most cases there have been five or six Council Members present. Mayor Evans spoke to continuing as is regarding Council presence.

Mayor Evans requested Staff bring back information regarding how focus groups might be implemented for the next meeting and City Manager Muehlenbeck advised that short presentations could be prepared for five or six topics to provide a starting point. Council Member Stahel spoke to trying the focus group approach rather than trying to incorporate it into the current format.

Council Items for Future Discussion/Action on Future Agendas

No items were brought forward.

Consent and Regular Agendas

Council Member Stahel requested that Consent Agenda Item “G,” to purchase switching equipment in the amount of $49,469 from Internetwork Experts through a Department of Information Resources (DIR) Contract be removed for individual consideration due to a possible conflict of interest.

Citizen Sonja Hammar requested that Consent Agenda Item “S,” a resolution to adopt a Chapter 380 Program for Economic Incentives be removed for individual consideration.

Citizen Sonja Hammar requested to speak on Regular Agenda Item "1," a resolution approve the terms and conditions of an agreement by and between RH 15th Condos One, Ltd. and the City of Plano. Ms. Hammar and citizen Richard Simmons requested to speak on Regular Agenda Item "13," discussion and direction regarding City of Plano participation in a public-private project for the construction of a fountain at the Shops at Legacy.

Council Member Dunlap advised that he would be stepping down on consideration of Regular Agenda Items "2," an ordinance to designate a certain area within the City of Plano as Reinvestment Zone No. 103 for a tax abatement consisting of a 2.8383 acre tract of land located approximately at the southwest intersection of Bishop Road and Infinity Avenue "3," a resolution to approve an agreement by and between the City of Plano, Texas, the County of Collin, Texas, the Collin County Community College District, Jackson Shaw/Legacy Hotel, LP, and "13,"discussion and direction regarding City of Plano participation in a public-private project for the construction of a fountain at the Shops at Legacy.

Council Reports

Mayor Pro Tem Johnson spoke to attendance at a holiday celebration for the Assistance League of Collin County during which the City was recognized for its contributions.

Council Member Ellerbe spoke to attendance at the National League of Cities Transportation Steering Committee and scheduling of an additional meeting to consider the large number of items.

CONSENT AGENDA

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

Approval of Minutes [Consent Agenda Item (A)]

November 9, 2006
November 13, 2006

Approval of Expenditures

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

RFP No. 2006-239-C to establish an annual contract for Oil and Lubrication Products (2) to Steagall Oil, Shelby Oil, and Buckley Oil in the estimated annual amount of $95,212. This will establish an annual contract with three renewals. [Consent Agenda Item (B)] (See Exhibit "A")

RFP No. 2006-215-C to establish an annual contract for Security Personnel Service for Municipal Courts to Ruiz Protective Service Inc. in the estimated annual amount of $58,964. This will establish an annual contract with three renewals. [Consent Agenda Item (C)] (See Exhibit "B")

Bid No. 2007-17-G for MSA OPTIMAIR 6A PAPRs (breathing apparatus) to Safety Supply Inc. in the amount of $26,159 (Homeland Security Grant for Police Department). [Consent Agenda Item (D)] (See Exhibit "C")

Bid No. 2007-21-C for an annual fixed price contract for Irrigation Repair Parts to Longhorn, Inc. in the estimated annual amount of $130,000 per year for two years with three City optional one-year renewals. [Consent Agenda Item (E)] (See Exhibit "D")

Bid No. 2007-16-C for the purchase of Library Periodicals and Related Subscription Services from EBSCO Information Services in the amount of $75,113. [Consent Agenda Item (F)] (See Exhibit "E")

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 approve the purchase and maintenance of TDS450 Digital System in the amount of $44,045 from Océ North America, Inc. through an existing contract/agreement with TXMAS and authorizing the City Manager to execute all necessary documents. (TXMAS-2-36010). [Consent Agenda Item (H)]

To approve the purchase of material testing services for the Alma Road Whitetopping Street Resurfacing project in the amount of $29,543 from GME Consulting Services, Inc. through an existing contract/agreement and authorizing the City Manager to execute all necessary documents. (Contract #2005-265-D) [Consent Agenda Item (I)]

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 and R-Delta Engineers, Inc. in the amount of $155,615 for design of Springbrook Drive – Janwood Drive to Quill Drive and authorizing the City Manager to execute all necessary documents. [Consent Agenda Item (J)]

To approve the purchase of street lights along McDermott Road from Custer Road to Coit Road from TXU Electric Delivery Company, the sole provider of such services/equipment and authorizing the City Manager to execute all necessary documents to effectuate the purchase in an amount not to exceed $26,331. [Consent Agenda Item (A)] [Consent Agenda Item (K)]

To enter into and execute a binding contract with the Texas Department of State Health Services for costs associated with purchase and shipping (not to exceed $70,000) of single doses of antiviral medication intended to reduce severity and intensity of symptoms for City employees and their immediate family members specific to a pandemic influenza event as declared by the City Health Authority. [Consent Agenda Item (L)]

Renewal of Contract

To approve renewal of Contract No. 2006-36-C for Tire Re-Capping Service with Southern Tire Mart in the estimated annual amount of $75,575. [Consent Agenda Item (M)]

Approval of Change Order:

To Duit Construction Co., Inc., increasing the contract by $68,010 for the Alma Road Whitetopping Street Resurfacing project, Change Order #2. (Original Bid #2006-112-B). [Consent Agenda Item (N)]

To Tiseo Paving Company, Inc., increasing the contract by $30,873 for the Ridgeview Drive Widening from Custer Road to Independence Parkway, Change Order #3. (Original Bid #B162-05) [Consent Agenda Item (O)]

Adoption of Resolutions

Resolution No. 2006-11-20(R): To approve the annual purchase of software and hardware maintenance for the Plano Public Library System for the Horizon System from SirsiDynix, a sole source supplier of said services, in an amount not to exceed $52,765; authorizing the City Manager to take such action and execute such documents as necessary to effectuate the annual purchase approved herein; and providing an effective date. [Consent Agenda Item (P)]

Resolution No. 2006-11-21(R): To approve the terms and conditions of an Interlocal Cooperation Agreement for Library Services by and between the City of Plano and Denton County, Texas providing the terms and conditions for receipt of funding in the amount of $11,289 from Denton County; authorizing the City Manager to take such action and execute such documents as necessary to effectuate the agreement herein; and providing an effective date. [Consent Agenda Item (Q)]

Resolution No. 2006-11-22(R): To approve the amended and restated Tax Abatement Agreement by and between the City of Plano, Texas, the County of Collin, Texas, the Collin County Community College District and Plano LH, LP, a Delaware Limited Partnership, and providing for a business personal property and real property tax abatement, and authorizing its execution by the City Manager; and providing an effective date. [Consent Agenda Item (R)]

Resolution No. 2006-11-23(R): To approve the terms and conditions of an Economic Development Program Agreement by and between the City of Plano, Texas and Capital One, National Association, along with Capital One Auto Finance, Inc., a Texas Corporation, to promote state and local economic development and to stimulate business and commercial activity in the City and county; authorizing its execution by the City Manager; and providing an effective date. [Consent Agenda Item (T)]

Adoption of Ordinances

Ordinance No. 2006-11-24: To abandon all right, title and interest of the City, in and to a portion of that certain variable width right-of-way called Coit Road, being situated in the Martha McBride Survey, Abstract Number 553, which is located within the City limits of Plano, Collin County, Texas; quitclaiming all right, title and interest of the City in such right-of-way to the abutting property owner, John Paul II High School Building and Endowment Fund, to the extent of its interest; authorizing the City Manager to execute any documents deemed necessary; and providing an effective date. [Consent Agenda Item (U)]

END OF CONSENT

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

Purchase from Existing Contract/Agreement: To authorize the purchase of switching equipment in the amount of $49,469 from Internetwork Experts through a Department of Information Resources (DIR) Contract, and authorizing the City Manager to execute all necessary documents. (DIR-SDD-239). [Consent Agenda Item (G)]

Upon a motion made by Council Member LaRosiliere and seconded by Mayor Pro Tem Johnson, the Council voted 5-0 to authorize the purchase of switching equipment in the amount of $49,469 from Internetwork Experts through a Department of Information Resources (DIR) Contract, and authorizing the City Manager to execute all necessary documents.

Council Member Stahel resumed his place at the bench.

Resolution No. 2006-11-25(R): To adopt a Chapter 380 Program for Economic Incentives; establishing procedures to administer the program and an application for applying for such incentive; and providing an effective date. [Consent Agenda Item (S)]

Sonja Hammar, citizen of the City, requested information regarding the incentives. City Manager Muehlenbeck advised that this item outlines the program and that recommendations will come from the economic development board. Ms. Hammar spoke to some Council Members being members of the board and Mr. Muehlenbeck spoke to the information that might be brought forward to the whole Council.

Resolution No. 2006-11-25(R) (cont'd)

City Attorney Wetherbee advised that this is not an entitlement and that the Council will make the determination regarding requests and that future agenda items will notify the public that funds are being used for economic development. Mr. Muehlenbeck advised that funding may come from a variety of sources and Ms. Hammar spoke to lack of specificity in the item.

Upon a motion made by Council Member Ellerbe and seconded by Mayor Pro Tem Johnson, the Council voted 6-0 to adopt a Chapter 380 Program for Economic Incentives; establishing procedures to administer the program and an application for applying for such incentive; and providing an effective date; and further to adopt Resolution No. 2006-11-25(R).

Resolution No. 2006-11-26(R): To approve the terms and conditions of an agreement by and between RH 15th Condos One, Ltd. and the City of Plano; authorizing its execution by the City Manager; and providing an effective date. [Regular Agenda Item (1)]

Executive Director Turner spoke to the request being a reassignment of the development agreement for 15th Street Village and stated that the terms and conditions are the same. He spoke to the number of town homes and condominiums currently constructed and the creation of RH 15th Condos One. Ltd. Mr. Turner spoke to an extension of an option for the purchase of City property dependant either on the construction of a pool/amenity center and plans for the construction of a second condominium building or the construction of six town homes on property they now control or future acquisitions that would be immediately adjacent to the property. He spoke to the agreement providing for a $100,000 infrastructure allowance and the City's cost participation in construction of parking spaces near the police and courts building.

Steve Merani, of RH 15th Condos One, Ltd. provided an update on the development, described the structure of the new organization and spoke to financing, project management and marketing.

Mr. Turner responded to citizen Sonja Hammar advising that the City has no ownership in properties controlled by the partnership and owns the property proposed to be optioned.

Upon a motion made by Council Member Stahel and seconded by Council Member Ellerbe, the Council voted 7-0 to approve the terms and conditions of an agreement by and between RH 15th Condos One, Ltd. and the City of Plano; authorizing its execution by the City Manager; and providing an effective date; and further to adopt Resolution No. 2006-11-26(R)

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

Public Hearing and adoption of Ordinance No. 2006-11-27 to establish and designate a certain area within the City of Plano as Reinvestment Zone No. 103 for a tax abatement consisting of a 2.8383 acre tract of land located approximately at the southwest intersection of Bishop Road and Infinity Avenue in the City of Plano; establishing the boundaries of such zone; ordaining other matters relating thereto; and providing an effective date. [Regular Agenda Item (2)]

Director of Finance McGrane advised that this request would establish a reinvestment zone with construction of a 400,000 square foot hotel and result in 150 full time jobs. He spoke to the abatement based on the an estimated amount of $12 million business personal property and $60 million real property and that it will be for ten years based on amounts equal to fifty percent of both real property and business personal property.

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

Upon a motion made by Council Member Ellerbe and seconded by Council Member LaRosiliere, the Council voted 6-0 to establish and designate a certain area within the City of Plano as Reinvestment Zone No. 103 for a tax abatement consisting of a 2.8383 acre tract of land located approximately at the southwest intersection of Bishop Road and Infinity Avenue in the City of Plano; establishing the boundaries of such zone; ordaining other matters relating thereto; and providing an effective date; and further to adopt Ordinance No. 2006-11-27.

Resolution No. 2006-11-28(R): To approve the terms and conditions of an agreement by and between the City of Plano, Texas, the County of Collin, Texas, the Collin County Community College District, Jackson Shaw/Legacy Hotel, LP, a Texas Limited Partnership and providing for a business personal property and real property tax abatement, and authorizing its execution by the City Manager; and providing an effective date. [Regular Agenda Item (3)]

Director of Finance McGrane advised that in the agreement the square footage of the building was revised to 400,000 square feet rather than 480,000 and that notification of the attorney for Jackson Shaw has been added along with other minor word changes.

Upon a motion made by Council Member LaRosiliere and seconded by Council Member Ellerbe, the Council voted 6-0 to approve the terms and conditions of an agreement by and between the City of Plano, Texas, the County of Collin, Texas, the Collin County Community College District, Jackson Shaw/Legacy Hotel, LP, a Texas Limited Partnership and providing for a business personal property and real property tax abatement, and authorizing its execution by the City Manager; and providing an effective date; Resolution No. 2006-11-28(R) as revised.

Council Member Dunlap resumed his place at the bench.

Public Hearing and adoption of Ordinance No. 2006-11-29 to establish and designate a certain area within the City of Plano as Reinvestment Zone No. 104 for a tax abatement consisting of a 25.000 acre tract of land located approximately at the northwest corner of Preston Road and Hedgcoxe Road, in the City of Plano, Texas, establishing the boundaries of such zone, ordaining other matters relating thereto and providing an effective date. [Regular Agenda Item (4)]

Director of Finance McGrane advised that this request would establish a reinvestment zone with construction of 300,000 square feet of space and will relocate 500 employees from another Plano location and create 500 new jobs. He spoke to the abatement based on an estimated $10 million in business personal property and $40 million in real property and stated that it will be for ten years based on amounts equal to seventy-five percent of real property and business personal property.

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

Upon a motion made by Council Member LaRosiliere and seconded by Mayor Pro Tem Johnson the Council voted 7-0 to establish and designate a certain area within the City of Plano as Reinvestment Zone No. 104 for a tax abatement consisting of a 25.000 acre tract of land located approximately at the northwest corner of Preston Road and Hedgcoxe Road, in the City of Plano, Texas, establishing the boundaries of such zone, ordaining other matters relating thereto and providing an effective date; and further to adopt Ordinance No. 2006-11-29.

Resolution No. 2006-11-30(R): To approve the terms and conditions of an agreement by and between the City of Plano, Texas, the County of Collin, Texas, the Collin County Community College District, and Capital One National Association, a national banking association along with Capital One Auto Finance, Inc, a Texas Corporation and providing for a business personal property and real property tax abatement, and authorizing its execution by the City Manager; and providing an effective date. [Regular Agenda Item (5)]

Upon a motion made by Council Member Ellerbe and seconded by Mayor Pro Tem Johnson, the Council voted 7-0 to approve the terms and conditions of an agreement by and between the City of Plano, Texas, the County of Collin, Texas, the Collin County Community College District, and Capital One National Association, a national banking association along with Capital One Auto Finance, Inc, a Texas Corporation and providing for a business personal property and real property tax abatement, and authorizing its execution by the City Manager; and providing an effective date; and further to adopt Resolution No. 2006-11-30(R).

Public Hearing and adoption of Ordinance No. 2006-11-31 as requested in Zoning Case 2006-21 – To amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, so as to amend Planned Development-65-Central Business-1 by adding a general condition of the Planned Development District regarding lot frontage on 168.1± acres located north and south of Legacy Drive between the Dallas North Tollway and Parkwood Boulevard in the City of Plano, Collin County, Texas, currently zoned 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: City of Plano [Regular Agenda Item (6)]

Director of Planning Jarrell spoke to amending lot frontage requirements to accommodate urban style development in Legacy Town Center. She advised that the planned development district does not have a specified minimum lot requirement, includes design requirements that would assist in governing the amount of frontage and has been recommended for approval by the Planning and Zoning Commission as follows:

General Conditions of the Planned Development District:

5. Lots must have frontage on a street. There is no required frontage distance for a lot although each lot must meet the design standards of the district.

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

Upon a motion made by Council Member LaRosiliere and seconded by Mayor Pro Tem Johnson, the Council voted 7-0 to amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, so as to amend Planned Development-65-Central Business-1 by adding a general condition of the Planned Development District regarding lot frontage on 168.1± acres located north and south of Legacy Drive between the Dallas North Tollway and Parkwood Boulevard in the City of Plano, Collin County, Texas, currently zoned Planned Development-65-Central Business-1; directing a change accordingly in the official zoning map of the City as requested in Zoning Case 2006-21 and as recommended by the Planning and Zoning Commission; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date; and further to adopt Ordinance No. 2006-11-31.

Public Hearing and adoption of Ordinance No. 2006-11-32 as requested in Zoning Case 2006-23 – To amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, so as to rezone 17.6± acres located on the west side of Des Moines Drive, 1,590± feet north of Spring Creek Parkway in the City of Plano, Collin County, Texas, from Light Commercial to Patio Home; 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: FTL Associates, Ltd. [Regular Agenda Item (7)]

Ordinance No. 2006-11-32 (cont'd)

Director of Planning Jarrell presented Regular Agenda Items "7," "8" and "9" concurrently. She spoke to the zoning case that would rezone 17.6 acres from Light Commercial to Patio Home and advised that while the use is not in conformance with the Comprehensive Plan there are policies to consider rezoning from commercial to residential uses. Ms. Jarrell spoke to compatibility with other development in the area, advised that limited visibility and access of the property does not yield itself to retail/commercial development and that the Planning and Zoning Commission recommended approval of the request as submitted.

Ms. Jarrell advised regarding a review of the alignment of Des Moines Drive and a 2004 Thoroughfare Plan amendment to extend it from Spring Creek Parkway to K Avenue as a four-lane undivided roadway. She stated that Staff determined that an amendment to the Plan to remove a portion of Des Moines Drive would not be detrimental to circulation, stated that access to the commercial properties can be served by K Avenue and spoke to intersection improvements under construction at the Spring Creek Parkway/K Avenue intersection. Ms. Jarrell advised that the Planning and Zoning Commission recommended that the Transportation Element of the Comprehensive Plan be amended to remove the portion of Des Moines Drive north of Leatherwood Drive to K Avenue, and to decrease the capacity of the remaining portion of Des Moines Drive between Spring Creek Parkway and Leatherwood Drive from a Type E, four-lane secondary thoroughfare street to a Type F, two-lane collector street.

Ms. Jarrell spoke to the third item being an appeal of the Planning and Zoning Commission's action on a concept plan that accompanied Zoning Case 2006-23. She advised that Staff felt that while a direct connection to K Avenue at Des Moines might not be necessary, it was appropriate to stub out a street from the proposed development into the Pecan Lane area that could be extended if and when additional development or redevelopment occurs. Ms. Jarrell stated that the extension would provide two points of access and that the City's policies support the connection of residential subdivisions. She advised that the Planning and Zoning Commission approved the concept plan without the street extension.

Ms. Jarrell responded to the Council regarding prior consideration of the alignment of Des Moines Drive and stated that the street stub could be extended in the future to facilitate future development, but if property owners continue the current pattern, there would not be a need for the extension. She stated that this would be the last opportunity to have residential street connections and reviewed the layout of Des Moines Drive. Ms. Jarrell advised that as shown the street stub would split a neighborhood lot, but that it could be moved east or west to accommodate future development and stated that the Council would need to take separate action on each item.

Mayor Evans opened the Public Hearing. Chuck McKinney, representing the applicant, spoke to the project continuing the patio home development in the area, working with Staff to develop the concept plan and stated that he is neutral with regard to providing connectivity. Ms. Jarrell responded to Council Member Ellerbe that the next step in the process would be consideration of a preliminary site plan at which time street connection could be established.

Ordinance No. 2006-11-32 (cont'd)

Lynn Robertson, citizen of the City, spoke to the location of the street stub hindering sale of the property and stated her opposition. No one else spoke either for or against the request. The Public Hearing was closed.

Ms. Jarrell responded to Council Member LaRosiliere stating that splitting the lot probably would not be possible and have the lot depth required for SF-20 on either side, but that if it were moved to one side it might be accomplished. Council Member Ellerbe spoke to the opportunity to connect neighborhoods and provide two points of access.

Ms. Jarrell responded to Council Member Stahel that she has not seen current interest in addition to residential or redevelopment in the Pecan Lane area. Council Member Stahel spoke to following the recommendations of the homeowners who are in opposition to the street extension. He spoke to the extension possibly being a deterrent to a future buyer, leaving the lot as green space and perhaps moving the extension to the west to run along the property line. Ms. Jarrell responded to Council Member Dunlap stating that future development of the area as a patio home subdivision would pose access issues without the connection.

Upon a motion made by Council Member Stahel and seconded by Council Member LaRosiliere, the Council voted 7-0 to accept the rezoning as recommended by the Planning and Zoning Commission and to amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, so as to rezone 17.6± acres located on the west side of Des Moines Drive, 1,590± feet north of Spring Creek Parkway in the City of Plano, Collin County, Texas, from Light Commercial to Patio Home as requested in Zoning Case 2006-23; 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; adoption of Ordinance No. 2006-11-32.

Consideration of an appeal by the Director of Planning of the Planning & Zoning Commission's approval of a concept plan for Oak Point Estates West, a 76 lot patio home development on 17.6 acres located on the west side of Des Moines Drive, 1,590± feet north of Spring Creek Parkway. Applicant: FTL Associates., Ltd. [Regular Agenda Item (8)]

Director of Planning Jarrell responded to the Council that Staff will work with the property owner to determine the best location for the street extension if the appeal is approved and spoke to locations that would allow for future development of the property with the existing zoning. She responded to Council Member Stahel regarding placement on another lot which would allow a future street to run along the western property line of the subdivision. Ms. Jarrell advised that a vacant lot was chosen because it offers the least intrusion and that if a street were placed at the boundary of commercial/residential developments, homes may face the back of the commercial development. Mr. Stahel stated concern regarding locating the extension through the middle of a lot. Ms. Jarrell responded to the Council that the Planning and Zoning Commission would have consideration of the plan showing the location of the extension.

A motion was made by Council Member Ellerbe and seconded by Council Member LaRosiliere to approve an appeal by the Director of Planning of the Planning & Zoning Commission's approval of a concept plan for Oak Point Estates West, a 76 lot patio home development on 17.6 acres located on the west side of Des Moines Drive, 1,590± feet north of Spring Creek Parkway. The Council voted 6-1 with Council Member Stahel voting in opposition. The motion passed.

Public Hearing and adoption of Ordinance No. 2006-11-33 to amend the Transportation Element -of the Comprehensive Plan, as adopted by Ordinance No. 2004-8-19, to remove the portion of Des Moines Drive north of Leatherwood Drive to K Avenue, and to decrease the capacity of the remaining portion of Des Moines Drive between Spring Creek Parkway and Leatherwood Drive from a Type E, four-lane, secondary thoroughfare street to a Type F, two lane collector street; and providing a repealer clause, a severability clause, and an effective date. Applicant: City of Plano [Regular Agenda Item (9)]

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

Upon a motion made by Mayor Pro Tem Johnson and seconded by Council Member Stahel, the Council voted 7-0 to amend the Transportation Element -of the Comprehensive Plan, as adopted by Ordinance No. 2004-8-19, to remove the portion of Des Moines Drive north of Leatherwood Drive to K Avenue, and to decrease the capacity of the remaining portion of Des Moines Drive between Spring Creek Parkway and Leatherwood Drive from a Type E, four-lane, secondary thoroughfare street to a Type F, two lane collector street as recommended by the Planning and Zoning Commission; and providing a repealer clause, a severability clause, and an effective date; and further to adopt Ordinance No. 2006-11-33.

Public Hearing and adoption of Ordinance No. 2006-11-34 as requested in Zoning Case 2006-24 – To amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, granting Specific Use Permit No. 579 so as to allow the additional use of an 80-foot Antenna Support Structure on 2.2± acres of land out of the Oliver Loving Survey, Abstract No. 536, located on the east side of Jupiter Road, 245± feet south of Park Boulevard in the City of Plano, Collin County, Texas, presently zoned Retail; directing a change accordingly in the official zoning map of the City; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date. Applicant: P.I.S.D. [Regular Agenda Item (10)]

Director of Planning Jarrell advised the Council that the item requests an antenna support structure to be located on PISD property and is recommended for approval as submitted by the Planning and Zoning Commission.

Mayor Evans opened the Public Hearing. Dave Kirk, T-Mobile, spoke to work done with the school district on the proposal and responded to the Council that the structure is designed for multiple carriers. No one else spoke either for or against the request. The Public Hearing was closed.

Ordinance No. 2006-11-34 (cont'd)

Upon a motion made by Council Member Ellerbe and seconded by Council Member LaRosiliere, the Council voted 7-0 to amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, granting Specific Use Permit No. 579 so as to allow the additional use of an 80-foot Antenna Support Structure on 2.2± acres of land out of the Oliver Loving Survey, Abstract No. 536, located on the east side of Jupiter Road, 245± feet south of Park Boulevard in the City of Plano, Collin County, Texas, presently zoned Retail; directing a change accordingly in the official zoning map of the City as recommended by the Planning and Zoning Commission and as requested in Zoning Case 2006-24; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date; and further to adopt Ordinance No. 2006-11-34.

Public Hearing and adoption of Ordinance No. 2006-11-35 as requested in Zoning Case 2006-26 – To amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, granting Specific Use Permit No. 580 so as to allow the additional use of Day Care Center on 0.4± acre of land out of the Original Donation, Block 16, Lot 2A, located on the south side of 14th Street, 177± feet east of M Avenue in the City of Plano, Collin County, Texas, presently zoned Retail; directing a change accordingly in the official zoning map of the City; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date. Applicant: Maria Folmar [Regular Agenda Item (11)]

Director of Planning Jarrell advised the Council that the request is for a day care center located in a house that has been converted to commercial uses, spoke regarding the applicant's plans for outdoor play space and stated because there is limited parking the applicant has agreed to limit the number of students to 20. She stated that the Planning and Zoning Commission recommended approval of the request subject to a maximum of 20 students.

Ms. Jarrell spoke to the concerns of one of the commissioners regarding the proximity of the property to existing day care facilities and advised that there have been no problems at other centers with regard to traffic on 14th Street. Development Review Manager Elgin advised that the property owner provides their own trash disposal and that there are two parking spaces left for location of a dumpster if necessary.

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

Upon a motion made by Council Member Stahel and seconded by Council Member Ellerbe, the Council voted 7-0 to amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, granting Specific Use Permit No. 580 so as to allow the additional use of Day Care Center on 0.4± acre of land out of the Original Donation, Block 16, Lot 2A, located on the south side of 14th Street, 177± feet east of M Avenue in the City of Plano, Collin County, Texas, presently zoned Retail as recommended by the Planning and Zoning Commission and as requested in Zoning Case 2006-26; directing a change accordingly in the official zoning map of the City; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date; and further to adopt Ordinance No. 2006-11-35.

Public Hearing and adoption of Ordinance No. 2006-11-36 as requested in Zoning Case 2006-28 – To amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2004-9-37, as heretofore amended, amending Heritage Resource Designation No. 16 to a 2.8± acre property, situated in the City of Plano, Collin County, Texas, Block 1, Lots 2 and 2A in the Wells Addition, located on the southwest corner of Coit Road and Lorimar Drive, presently zoned Agricultural with Heritage Resource Designation No. 16, and retaining this zoning classification; directing a change accordingly in the official zoning map of the City; and providing a repealer clause, a savings clause, a penalty clause, a severability clause and an effective date. Applicant: Richard Wells [Regular Agenda Item (12)]

Heritage Resource Officer Watson spoke regarding the recommendations of the Heritage Commission and advised that the Planning and Zoning Commission reviewed the request and recommended approval subject to:

- Museum, periodic fund raising activities, related charitable and/or educational activities, office-professional/general administrative, bed-and-breakfast, and restaurant are additional allowed uses.

- Vehicle circulation and parking may be gravel construction.

Mayor Evans opened the Public Hearing. Applicant Richard Wells responded to the Council that the home was built in 1896. No one else spoke either for or against the request. The Public Hearing was closed.

Upon a motion made by Council Member Dunlap and seconded by Council Member Ellerbe, the Council voted 7-0 to amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2004-9-37, as heretofore amended, amending Heritage Resource Designation No. 16 to a 2.8± acre property, situated in the City of Plano, Collin County, Texas, Block 1, Lots 2 and 2A in the Wells Addition, located on the southwest corner of Coit Road and Lorimar Drive, presently zoned Agricultural with Heritage Resource Designation No. 16, and retaining this zoning classification as recommended by the Planning and Zoning Commission and as requested in Zoning Case 2006-28; directing a change accordingly in the official zoning map of the City; and providing a repealer clause, a savings clause, a penalty clause, a severability clause and an effective date; and further to adopt Ordinance No. 2006-11-36.

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

Discussion and direction regarding City of Plano participation in a public-private project for the construction of a fountain at the Shops at Legacy. [Regular Agenda Item (13)]

City Manager Muehlenbeck spoke to determining if funding could be made available for a public/private partnership project for construction of a fountain at the Shops at Legacy. He advised that $1 million is available from the unencumbered ending balance of the 2006 budget and stated that if Council approves participation, a 380 agreement would be brought back for consideration.

Council Member Stahel spoke to the increase in the tax rate for development of an economic development fund and Mr. Muehlenbeck spoke to these funds being a combination of Staff holding down expenses and an increase in sales tax revenues.

Fehmi Karahan of the Shops at Legacy responded to Council Member Stahel stating that anything above $1 million from the City would be funded collectively, but that if the City did not participate the fountain could not be built and that the option recommended is $3 million. He responded to Council Member Ellerbe that they will use a water source other than the City's and that the fountain would use 15,000-18,000 gallons. Mr. Karahan responded to Council Member Stahel with regard to the fountain as a gathering place advising that there is 15 feet of sidewalk area from the curb to the edge of the fountain, there will be no fence at the street and that there will be a raised edge on the fountain. He spoke to the benefits to the City in terms of tourism and taxes generated and Council Member Stahel spoke to the City not receiving a good return on this investment.

Council Member LaRosiliere spoke to the project's positive effect on the tax rolls, adding to a spectacular project and to the fountain as being one component of a 150-acre project that will ultimately be worth $1 billion. Council Member Stahel spoke to development of the area not being dependant on the fountain. City Manager Muehlenbeck responded to Mr. Stahel that the improvement would be on the tax rolls as long as it is on private property.

Council Member Ellerbe spoke to funds spent in the downtown area, the fountain being part of a larger project, hotel/motel and sales tax revenues and in support of the item. Council Member LaRosiliere spoke to rewarding businesses that create success. Council Member Stahel spoke to the City's prior contribution in the area and stated concern that the request is not good public policy. He spoke to consideration of 380 agreements as comprehensive packages in conjunction with tax abatements rather than stand-alone issues. Mr. Karahan spoke to the project as being part of the Legacy Town Center.

Dave Noble of Trammel Crow advised that there are not sufficient office funds for the project and spoke to their commitment to the project and the City. He spoke regarding "branding" Plano as something special and Mr. Stahel spoke to making a connection with the cattle drive which is already in place.

Denton Walker of Trammel Crow spoke to their commitment to the plan and to Plano. He responded to Council Member Stahel that the fountain is the best place to utilize City funds since it will make the project better than it is today and spoke to a commitment to the Legacy area including amenities that make it special. Mr. Karahan spoke to the area being an urban development including retail/office/hotel and residential uses, having special amenities to make it a better place, and being competitive.

Mayor Pro Tem Johnson spoke to the unique nature of Legacy Town Center, encouraging its success, retention of businesses, making wise decisions on investing funds and to the fountain as a unique feature. Council Member Callison spoke regarding the distinctive nature of the fountain and its appeal to a variety of people along with the cattle drive. Council Member LaRosiliere spoke to the cattle drive representing "old" Plano and the fountain being modern, the opportunity to provide something unique and the fountain serving as a drawing point for people. Mayor Evans spoke to positioning the City to participate in this type of project, expansion of the tax base, the increase in tourism and developing gathering places.

Richard Simmons, citizen of the City, requested the Council not proceed with this request, spoke to tax abatements in place and stated that there will not be any gain in return on this additional investment. He spoke to the need for better traffic enforcement, unscheduled maintenance for streets and traffic control devices. Sonja Hammar, citizen of the City, spoke to the request being in violation of the City charter as it spends public dollars on private property, the possibility that private streets could be closed, the narrowness of the streets, and the construction of parking garages in the area. She spoke to the drought concerns in the City and recommended that the developer contribute the fountain and land to the City. Chang Young Jang, citizen of the City, spoke to the importance of providing gathering places in the City. Alvie O'Neal, citizen of the City, spoke to the fountain bringing business to the City, citizens putting their trust in the decisions of the Council and past/present Councils and city managers doing an outstanding job in taking Plano into the future.

City Attorney Wetherbee spoke to the multitude of projects over the years that have involved public funds and private property to serve the public purpose of economic development. She spoke to the Council making a reasonable interpretation of the charter, to ensuring that the public has access to the fountain, and her thought that the verbiage "private subdivision" may have some special meaning rather than referring to all subdivisions.

Council Member Stahel spoke to putting the $1 million into the Economic Development Fund and reserving it for job retention/creation and to meeting this request from public arts funds. Mayor Evans spoke to the monies coming from the ending balance rather than a dedicated fund. Council Member Callison stated opposition to using public arts funds citing the work done by the Public Art Committee. Council Member LaRosiliere stated that he would not support the use of public art funds. Council Member Ellerbe spoke to Economic Development Funds enhancing the community and bringing in more people and sales tax. Mayor Evans stated that projects funded with public art monies belong to the City who is then responsible for maintenance and spoke to the projects planned at Oak Point Park.

By a show of hands, the Council concurred to direct the City Manager move ahead and work towards participation in a public-private project for the construction of a fountain at the Shops at Legacy.

There being no further discussion, Mayor Evans adjourned the meeting at 10:15 p.m.

Pat Evans, MAYOR

ATTEST:

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:	12/11/06	Reviewed by Legal	☐ Yes	☒ Not Applicable
Department:	Public Works Administration / Michael Rappleem MR		Initials	Date
Department Head	Jimmy Foster	Executive Director	PB	11-30-06
Dept Signature:	M Rappleem for	City Manager		11/30/06
Agenda Coordinator (include phone #):	Margie Stephens (X4104)			

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

CAPTION

Award, Rejection of Bids/Proposals, Bid No. 2007-26- B, 2006-07Arterial Concrete Pavement Rehabilitation Project, Custer Road between Wilson Drive and Spring Creek Parkway to Hencie International, Inc. in the amount of $722,825.00.

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☒ CIP

FISCAL YEAR: 2006-07	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	2,620,680	3,979,320	2,300,000	**8,900,000**
Encumbered/Expended Amount	-2,620,680	-1,229,746	0	**-3,850,426**
This Item	0	-722,825	0	**-722,825**
BALANCE	0	2,026,749	2,300,000	**4,326,749**

FUND(S): CAPITAL RESERVE

COMMENTS: Funds are included in the 2006-07 Capital Reserve Fund. This item, in the amount of $722,825, will leave a current year balance of $2,026,749, for the Arterial Concrete Repair project.

STRATEGIC PLAN GOAL: Arterial Concrete Repair relates to the City's Goal of Safe, Efficient Travel.

SUMMARY OF ITEM

Staff recommends the bid of Hencie International, Inc. in the amount of $722,825.00, be accepted as the lowest responsible bid for the project conditioned upon timely execution of all necessary documents.

This project involves the repair of arterial street paving, curb and gutter, sidewalk and barrier free ramp construction, on Custer Road between Wilson Drive and Spring Creek Parkway.

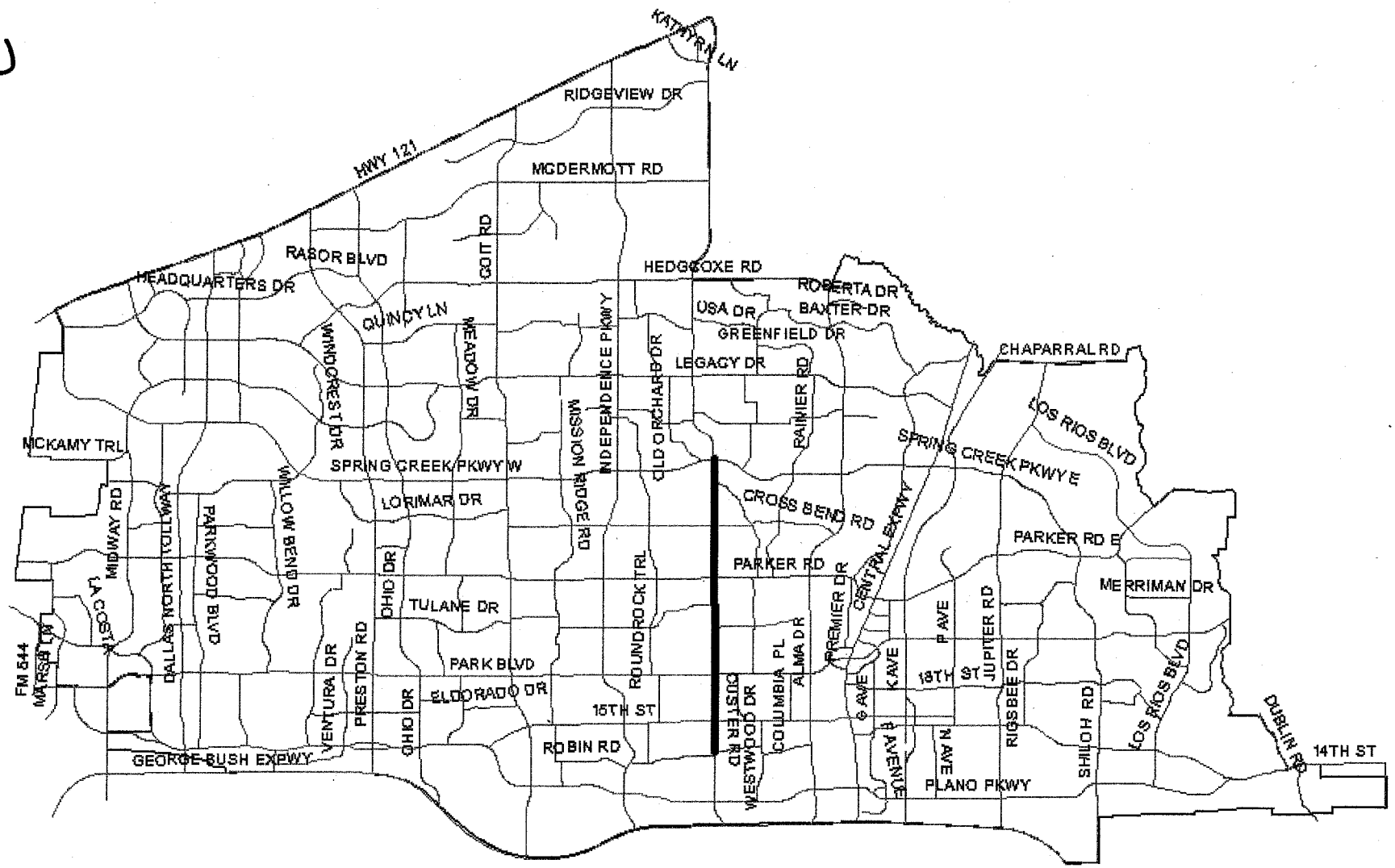
The secondary vendor being recommended is Jim Bowman Construction Company, L.P. in the amount of $758,650.00.

Engineer's estimate for this project is $750,000.00.

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
Bid Tabulation Location Map	

2006-2007 ARTERIAL CONCRETE PAVEMENT REHABILITATION PROJECT
CUSTER ROAD - WILSON DR. TO SPRING CREEK PARKWAY
LOCATION MAP

b-2



CITY OF PLANO
BID TABULATION

BID NO.: 2007-26-B

2006-2007 ARTERIAL CONCRETE PAVEMENT REHABILITATION PROJECT, CUSTER ROAD – WILSON DRIVE TO SPRING CREEK PARKWAY

PROJECT NO. 5765

FRIDAY, NOVEMBER 17, 2006 @ 3:00 PM

CONTRACTOR	BID BOND	TOTAL BID
Hencie International, Inc.	Yes	$722,825.00
Jim Bowman Construction Co., L.P.	Yes	$758,650.00
Advance Paving Co.	Yes	$776,695.00
Jerusalem Corp.	Yes	$828,875.00
Ken-Do Contracting, LP	Yes	$833,650.00
McMahon Contracting, L.P.	Yes	$870,700.00
Ed Bell Construction Company	Yes	$949,000.00

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

Sharron Mason — May 4, 2006

Sharron Mason, Buyer — Date

"BID TABULATION STATEMENT"

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

PURCHASING DIVISION
CITY OF PLANO TEXAS

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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:	12/11/06	Reviewed by Legal PM	☒ Yes	☐ Not Applicable
Department:	Purchasing		Initials	Date
Department Head	Mike Ryan	Executive Director		
Dept Signature:	Diane Palmer for	City Manager	MR	12/4/06
Agenda Coordinator (include phone #):	January M. Cook X7376			

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

CAPTION

Award/Rejection of Bid/Proposal for RFP No. 2007-3-C for an annual fixed price contract for Broker of Record and Supplemental Services to Arthur J. Gallagher Risk Management Services, Inc. in the estimated annual amount of $182,975 and approval of expenditure for City insurance premiums.

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☒ OPERATING EXPENSE ☐ REVENUE ☐ CIP

FISCAL YEAR: 06/07, 07/08, 08/09, 09/10, 10/11	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0

FUND(S): PROPERTY & LIABILITY LOSS

COMMENTS: This item approves price quotes for a one year contract with four optional renewals for Broker of Record and Supplemental Services in the annual amount of $125,000 for the first year, Certificate of Insurance Management Program in the estimated annual amount of $54,975 for the first year, and an estimated annual amount of $3,000 for travel related expenses, totaling $182,975. Also included is a request for approval for the Broker of Record to pay the annual insurance premiums on behalf of the City of Plano in the amount of $502,918, and not to exceed 15% for subsequent contract renewal periods. Funding is included in the 2006/07 budget.

STRATEGIC PLAN GOAL: Broker of Record and Supplemental Services and paying City insurance premiums relates to the City's goal of "Service Excellence".

SUMMARY OF ITEM

(ANNUAL CONTRACT WITH RENEWALS)

Staff recommends proposal of Arthur J. Gallagher Risk Management Services, Inc. in the estimated annual amount of $182,975 be accepted as the best proposal meeting specifications conditioned upon timely execution of any necessary contract documents. This will establish an annual contract with four City optional one year renewals for Broker or Record Services and Supplemental Services in the amount of $125,000 for the first year, and pricing in accordance with the fee schedule for each renewal period; Certificate of Insurance Management

CITY OF PLANO
COUNCIL AGENDA ITEM

Program in the estimated annual amount of $54,975 for the first year, and pricing in accordance with the fee schedule for each renewal period; and an estimated annual amount of $3,000 for travel related expenses while performing services under this contract.

The Broker of Record is responsible for paying annual insurance premiums on behalf of the City of Plano. The insurance premiums for the current year are $502,918. Requesting approval of expenditure in the annual amount of $502,918, not to exceed 15% for subsequent contract renewal periods.

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

C-2

INTEROFFICE MEMORANDUM

City of Plano

Date: 12/1/2006

To: Mike Ryan, Chief Purchasing Officer

From: Joey Page, Risk Manager

Subject: Recommendation of Award for RFP No. 2006-3-C Broker of Record and Supplemental Services

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Risk Management solicited a Request for Proposal (RFP) for Broker of Record and related supplemental services through the Purchasing Department as required by State of Texas. There were five proposals received and evaluated. A committee of City staff members reviewed each proposal utilizing the evaluation criteria set forth in the RFP.

After final review and evaluation of all proposals, the decision of the committee is to award the contract as follows:

Broker of Record

Risk Management recommends award of Broker of Record to Arthur J. Gallagher Risk Services (Gallagher). Gallagher's proposal best matched the expectations of services required for Broker services. They have a Public Entity Unit that specializes in Public Entity clients. They also offered the most comprehensive program for Enterprise Risk Management than any other vendor. Their submission was the most comprehensive in explaining the level of service they would provide the City.

Supplemental Services – Claims Auditing Services

Risk Management recommends award of Claims Auditing Services to Gallagher. Gallagher's proposal offered the best services for auditing claims handled by Risk Management. The person that will be conducting the audit had the most qualified experience to perform the audits.

Supplemental Services – Claims Actuarial Services

Risk Management recommends award of Claims Actuarial Services to Gallagher. Gallagher's proposal best matched the needs of the City for conducting the actuarial study. They are able to meet our expectation as listed in the RFP.

Supplemental Services – Certificate of Insurance Management

Risk Management recommends award of Certificate of Insurance Management Program to Gallagher. Gallagher proposed this optional program. Gallagher will be pro-active as a potential full service broker, to manage Certificates of Insurance for the City. Gallagher will also provide consulting services to review current insurance requirements and make recommendation for change.

C-3

Recommend award of all services listed above in accordance with the vendor's fee schedule as follows:

Broker of Record Services

Year 1	$ 85,000
Year 2	$ 89,250
Year 3	$ 93,712
Year 4	$ 98,398
Year 5	$103,318

Supplemental Services – Consulting Services

Year 1	$ 20,000
Year 2	$ 21,000
Year 3	$ 22,050
Year 4	$ 23,152
Year 5	$ 24,310

Supplemental Services – Claims Auditing Services

Year 1	$ 15,000
Year 2	$ 15,000
Year 3	$ 16,000
Year 4	$ 16,800
Year 5	$ 17,600

Supplemental Services – Claims Actuarial Services

Year 1 – Casualty/Property	$ 5,000
Year 2 – Worker's Com	$ 7,500
Year 3 – Casualty/Property	$ 5,250
Year 4 – Worker's Comp	$ 7,875
Year 5 – If needed	$ 5,500

Optional Service – Certificate of Insurance Management

Year 1 – Program Management	$ 12,500
Year 2 – Program Management	$ 10,000
Year 3 – Program Management	$ 10,000
Year 4 – Program Management	$ 10,000
Year 5 – Program Management	$ 10,000

Year 1 – System Implementation Costs (One Time Fee) $ 2,000

Year 1 – 5 Annual Certificate Transaction Maintenance $ 35,000 *

Fees will vary based on number of active annual transactions – annual fee shown based on estimated 2,500 insurance certificates per year X $14.00 each certificate

Year 1 – 5 Estimated Variable Expenses $ 5,475 *

Fees will vary based on actual usage of variables – annual fee shown is based on charges for faxing, emailing, and mailing correspondence to vendors, with an estimate of 3 letters per vendor.

Travel Related Expenses

Year 1 – 5 Annual Estimated Travel Expenses $3,000

The total estimated annual amount of award for year one is $182,975. Each subsequent renewal period will be in accordance with the fee schedule as listed above.

CITY OF PLANO

Request for Proposal No. 2007-3-C
RFP for Risk Control Services

RECAP

Opening Date/Time: October 19, 2006 @ 3:00pm

Number of Vendors Notified: 1,010

Vendors Submitting "No Response": None

Vendors Submitting Proposal	Final Combined Evaluation Score
Alamo Insurance Group	2.53
Arthur J. Gallagher Risk Management Services, Inc.	4.01
Hilb, Rogal & Hobbs of Houston, Inc.	2.97
Merit Insurance Services, Inc.	3.48
Wachovia Insurance Services, Inc.	3.50

Recommended Vendor

Arthur J. Gallagher Risk Management Services, Inc.	$182,975

January M. Cook

January M. Cook, CPPB
Senior Buyer
Purchasing Division

December 1, 2006
Date

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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:	12/11/06	Reviewed by Legal PM	☒ Yes	☐ Not Applicable
Department:	Purchasing		Initials	Date
Department Head	Mike Ryan	Executive Director		
Dept Signature:	Diane Palmer for	City Manager	JM	12/4/06
Agenda Coordinator (include phone #):	January M. Cook X7376			

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

CAPTION

Award/Rejection of Bid/Proposal for RFP No. 2007-4-C for an annual fixed price contract for Risk Control Services to Arthur J. Gallagher Risk Management Services, Inc. in the estimated annual amount of $165,000.

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☒ OPERATING EXPENSE ☐ REVENUE ☐ CIP

FISCAL YEAR: 06/07, 07/08, 08/09, 09/10, 10/11	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0

FUND(S): PROPERTY LIABILITY & LOSS

COMMENTS: This item approves price quotes for an annual contract with four City optional one year renewals for Risk Control Services. The estimated annual amount is $140,000 for the first year, with a price increase not to exceed 8% for each renewal period. Also included is $15,000 for optional Specialized Risk Services and an estimated annual amount of $10,000 for travel related expenses, totaling $165,000. Funding for this item is included in the 2006/07 budget.

STRATEGIC PLAN GOAL: Risk Control Services relates to the City's goal of "Service Excellence".

SUMMARY OF ITEM

(ANNUAL CONTRACT WITH RENEWALS)

Staff recommends proposal of Arthur J. Gallagher Risk Management Services, Inc. in the estimated annual amount of $165,000 be accepted as the best proposal meeting specifications conditioned upon timely execution of any necessary contract documents. This will establish an annual contract with four City optional one year renewals for Risk Control Services in the amount of $140,000 for the first year, with a price increase NTE 8% for each renewal period; optional Specialized Risk Services in the annual amount of $15,000; and an estimated annual amount of $10,000 for travel related expenses while performing services under this contract.

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

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REV 08/98

INTEROFFICE MEMORANDUM
City of Plano

Date: 12/1/2006

To: Mike Ryan, Chief Purchasing Officer

From: Joey Page, Risk Manager

Subject: Recommendation of Award for RFP No. 2007-4-C Risk Control Services

---

Risk Management solicited a Request for Proposal (RFP) for Risk Control Services through the Purchasing Department as required by State of Texas. There were four proposals received and evaluated. A committee of City staff members reviewed each proposal utilizing the evaluation criteria set forth in the RFP.

After final review and evaluation of all proposals, the decision of the committee to award the contract is as follows:

Risk Management recommends award of Risk Control Services to Arthur J. Gallagher Risk Services (Gallagher). Gallagher's proposal was the most comprehensive in meeting the expectations as listed in the specifications, and Gallagher offered the most cost effective package. Gallagher offered a full-time, on-site Risk Control Professional dedicated to the City of Plano. The resume for the Risk Control Professional exceeded expectations, and the individual is knowledgeable of the City of Plano's programs. Risk Management recommends award of contract to Gallagher in the annual amount of $140,000.

In addition to Risk Control Services, Gallagher submitted a proposal for Specialized Risk Services to include security consulting, premises assessments, and special events risk control services. Additionally, the following are included:

1. Serve as the security consultant and provide "on-call" assistance as requested.
2. Participate in follow-up activity on the recommendations even after the written report is completed and presented.
3. Assist the Grant Coordinator with identifying grand opportunities that will assist in executing on the recommendations presented.
4. Assist the various agencies Training Staff with identifying training opportunities that will further the skill sets of agency members.

Risk Management recommends award of Specialized Risk Services to Gallagher in the annual amount of $15,000.

The estimated travel expenses related to performing work under this contract is $10,000.

The total estimated annual amount of award is $165,000.

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CITY OF PLANO

Request for Proposal No. 2007-4-C
RFP for Broker of Record and Supplemental Services

RECAP

Opening Date/Time: October 23, 2006 @ 3:00pm

Number of Vendors Notified: 538

Vendors Submitting "No Response": None

Vendors Submitting Proposal	Final Combined Evaluation Score
Alternative Service Concepts, LLC	2.00
Arthur J. Gallagher Risk Management Services, Inc.	3.90
Bickmore Risk Services	0.86
Merit Insurance Services, Inc.	3.24
Safety, Environmental & Engineering Solutions	1.54

Recommended Vendor

Arthur J. Gallagher Risk Management Services, Inc.	$165,000

January M. Cook

January M. Cook, CPPB
Senior Buyer
Purchasing Division

December 1, 2006
Date

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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:	12/11/06	Reviewed by Legal	☐ Yes	☒ Not Applicable
Department:	Engineering		Initials	Date
Department Head	Upchurch	Executive Director		12/6/06
Dept Signature:		City Manager		12/7/06
Agenda Coordinator (include phone #):	Irene Peques (7198) Project No. 5385.1			

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

CAPTION

Award of Bid for Bid No 2007-28-B for Intersection Improvements 2004 to Jim Bowman Construction Co., L.P., in the amount of $312,389.65.

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☒ CIP

FISCAL YEAR: 2006-07	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	73,672	1,101,328	0	**1,175,000**
Encumbered/Expended Amount	-73,672	-45,439	0	**-119,111**
This Item	0	-312,390	0	**-312,390**
BALANCE	0	743,499	0	**743,499**

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

COMMENTS: Funds are included in the 2006-07 Street Improvements Community Investment Program. This item, in the amount of $312,390, will leave a current year balance of $743,499 for the Intersection Improvements 2004 project.

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

SUMMARY OF ITEM

Staff recommends bid of Jim Bowman Construction Co., L.P. in the amount of $312,389.65 be accepted as lowest responsible bid conditioned upon timely execution of any necessary contract documents.

The second vendor being recommended is Rebcon, Inc. in the amount of $388,770.00.

Engineer's estimate was $425,000.

This project for Intersection Improvements 2004 include intersection improvements at the following three (3) locations:

1. Spring Creek Parkway at Lookout Trail
2. Commerce Drive at Plano Parkway
3. West Park Boulevard at Ohio Drive

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

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BID SUMMARY

INTERSECTION IMPROVEMENTS 2004
1. SPRING CREEK PARKWAY AT LOOKOUT TRAIL
2. COMMERCE DRIVE AT PLANO PARKWAY
3. WEST PARK BOULEVARD AT OHIO DRIVE
PROJECT NO. 5385.1

BID RANK	BIDDER	TOTAL BID
1	Jim Bowman Const. Co., L.P.	$ 312,389.65
2	Rebcon, Inc.	388,770.00
3	Ken-Do Contracting, L.P.	399,204.25

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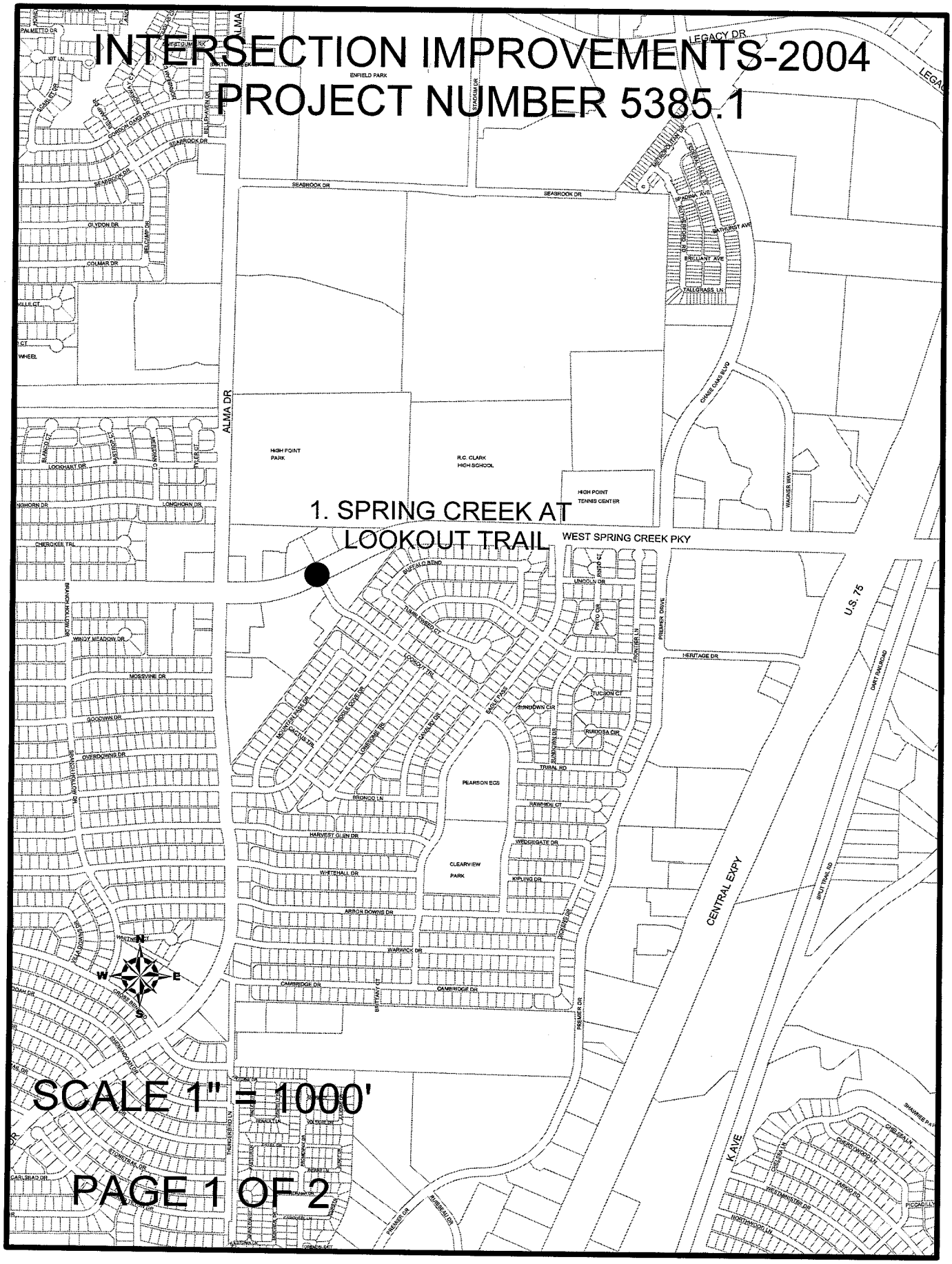
INTERSECTION IMPROVEMENTS-2004
PROJECT NUMBER 5385.1



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PAGE 1 OF 2

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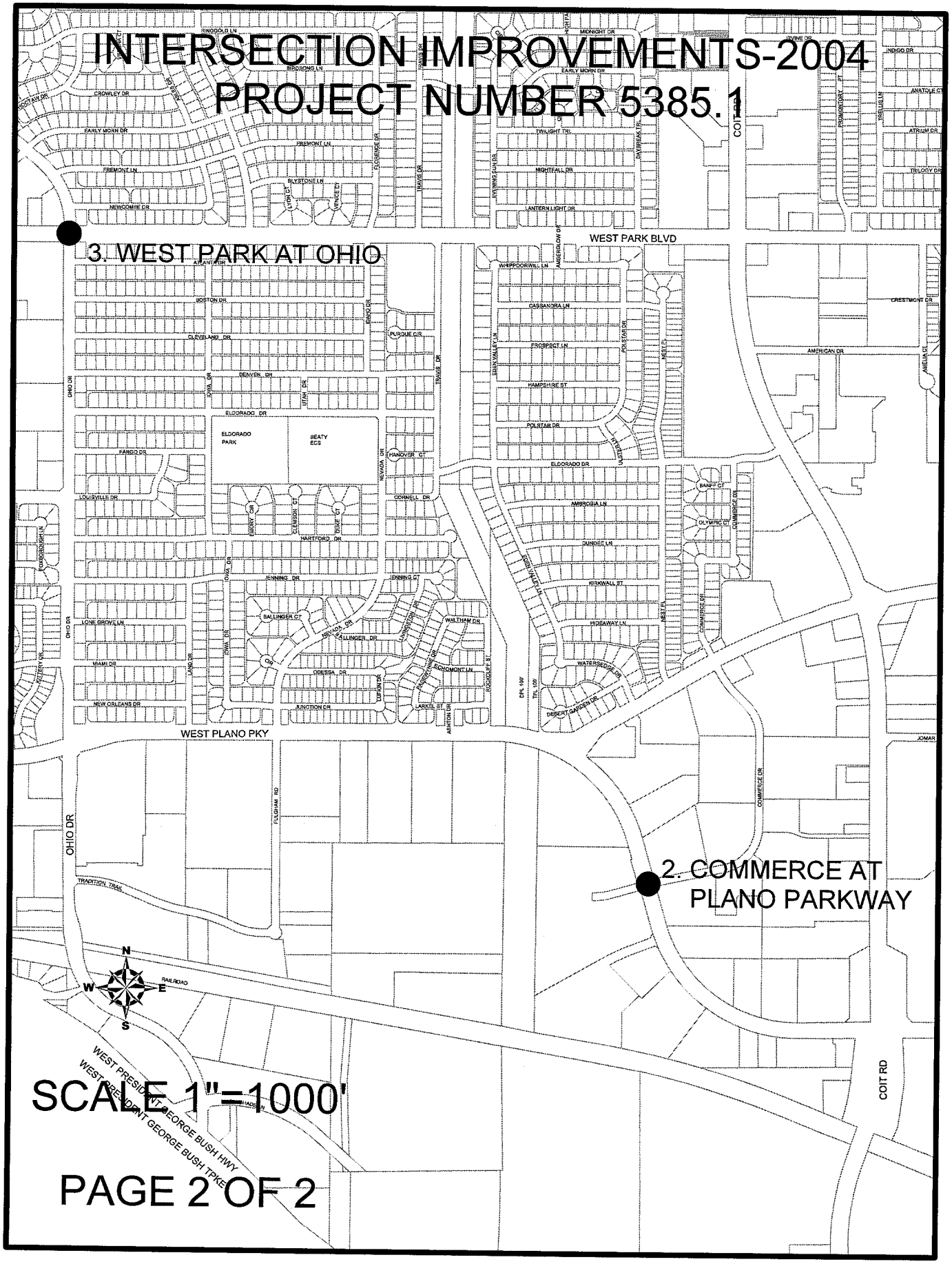
INTERSECTION IMPROVEMENTS-2004
PROJECT NUMBER 5385.1
3. WEST PARK AT OHIO
2. COMMERCE AT PLANO PARKWAY
WEST PARK BLVD
WEST PLANO PKY
OHIO DR
COIT RD
FULGHAM RD
TRADITION TRAIL
RAILROAD
WEST PRESIDENT GEORGE BUSH HWY
WEST PRESIDENT GEORGE BUSH TPKE
ELDORADO PARK
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CITY 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:	12/11/06	Reviewed by Legal	☐ Yes	☒ Not Applicable
Department:	Engineering		Initials	Date
Department Head	Upchurch	Executive Director		12/1/06
Dept Signature:	Alan L Upchurch	City Manager		12/1/06
Agenda Coordinator (include phone #):	Irene Pegues (7198)		Project No. 5274	

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

CAPTION

Award/Rejection of Bid for Bid No. 2006-237-B for 15th Street Reconstruction (Avenue G to Avenue I) street project to JRJ Paving L.P. in the amount of $1,632,772.36 for the Base Bid.

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☒ CIP

FISCAL YEAR: 2006-07	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	33,794	1,499,206	0	**1,533,000**
Encumbered/Expended Amount	-33,794	-8,131	0	**-41,925**
This Item	0	-1,632,772	0	**-1,632,772**
BALANCE	**0**	**-141,697**	**0**	**-141,697**

FUND(S): STREET IMPROVEMENT CIP AND WATER CIP

COMMENTS: Funds are included in the 2006-07 Street Improvements Community Investment Program and Water Community Investment Program. This item, in the amount of $1,632,772, will exceed the current year balance by $141,697. The overage will be covered through saving and reallocation from the Dallas North Tollway - Tennyson to Democracy project and a transfer from the DART program.

STRATEGIC PLAN GOAL: Street reconstruction and water relate to the City's Goal of Safe, Efficient Travel and a Livable and Sustainable Community.

SUMMARY OF ITEM

Staff recommends bid of JRJ Paving L.P., in the amount of $1,632,772.36 for the Base Bid, be accepted as lowest responsible bid conditioned upon timely execution of any necessary contract documents.

The second vendor being recommended is Jim Bowman Construction Company, L.P. in the amount of $1,657,540.78 for the Base Bid.

Engineers' estimate was $1,626,307.00

The project consists of the reconstruction of 15th Street from Avenue G to Avenue I and includes brick paved sidewalks, landscaping and irrigation. TxDOT is providing $783,000 in funding.

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

CITY OF PLANO
BID TABULATION
2006-237-B
15TH STREET RECONSTRUCTION (AVENUE G TO AVENUE I) – PROJECT NO. 5274
OCTOBER 18, 2006 @ 3:30 P.M.
BID TABULATION

BIDDER:	BID BOND	TOTAL PROJECT COST
JRJ PAVING LP	**YES**	**$1,632,772.36**
JIM BOWMAN CONSTRUCTION CO., L.P.	YES	$1,657,540.78
TISEO PAVING CO.	YES	$1,688,621.35
REBCON, INC.	YES	$1,828,708.06
P & E CONTRACTORS, INC.	YES	$1,884,315.00
BARSON UTILITIES, INC.	YES	$2,072,452.10

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

Dianna Wike October 18, 2006

Dianna Wike, Buyer Date

"BID TABULATION STATEMENT"

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

PURCHASING DIVISION
CITY OF PLANO TEXAS

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15TH STREET
AVE G TO AVE I

CITY OF PLANO

ENGINEERING DEPARTMENT

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0 495 990 1,980 2,970 3,960 Feet

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CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☒ Yes	☐ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget C.S.	☒ Yes	☐ Not Applicable
Council Meeting Date:	12/11/06	Reviewed by Legal	☐ Yes	☐ Not Applicable
Department:	Human Resources		Initials	Date
Department Head	LaShon Ross	Executive Director		12-1-06
Dept Signature:	LaShon Ross	City Manager		12/1/06
Agenda Coordinator (include phone #):	Christine Donald (X5155)			

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

CAPTION

Approval of the agreement with CaremarkPCS Health, L.P. for pharmacy benefit management services at the estimated cost of $2,500,000 annually for pharmacy claims, entered into through an existing agreement with PEBA (Public Employee Benefits Alliance), and authorizing the City Manager or his designee to execute all necessary documents.

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☒ OPERATING EXPENSE ☐ REVENUE ☐ CIP

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

FUND(S): **HEALTH CLAIMS FUND**

COMMENTS: This item approves the agreement with CaremarkPCS Health, L.P. Expenditures will be made in the Health Claims fund within approved budget appropriations. The estimated annual amount from actual pharmacy claims is $2,500,000.

STATEGIC PLAN GOAL: The pharmacy benefit management service of the employee health plan relates to the City's goal of Major Business Center.

SUMMARY OF ITEM

Staff recommends acceptance of the agreement with CaremarkPCS Health, L.P. for pharmacy benefit management services, conditioned upon timely execution of necessary contract documents. CaremarkPCS Health, L.P. will provide pharmacy and prescription benefit services for the self-funded plan for full-time City of Plano employees and qualified retirees. The cost for the pharmacy claims is estimated at $2,500,000 annually. This will be a three (3) year agreement commencing on January 1, 2007 with optional renewals.

In February the City entered into a purchasing alliance for employee benefits with the Public Employees Benefit Alliance (PEBA) in Texas. Through participation in this initiative, the City of Plano has an opportunity to join the contract for a pharmacy benefit manager service with Caremark. The Caremark agreement will be effective beginning plan year January 1, 2007.

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
Agreement with CaremarkPCS Health, L.P.	

Memorandum

To: Thomas H. Muehlenbeck, City Manager

From: LaShon Ross, Director Human Resources

Date: 11/30/2006

Re: Pharmacy Benefit Manager

In February the City entered into a purchasing alliance for employee benefits with the Public Employees Benefit Alliance (PEBA) in Texas. Through participation in this initiative, the City of Plano has an opportunity to join the contract for a pharmacy benefit manager service with Caremark. The Caremark agreement will be effective beginning plan year January 1, 2007.

The Benefits team has reviewed the Caremark agreement and recommends that the City of Plano enter into a contract with Caremark for Pharmacy Benefit Management services. In this environment of increasing medical costs, it is prudent to utilize opportunities to keep costs from increasing at double digit rates. This change will not decrease costs, but provides more favorable drug pricing which will help keep costs from growing as rapidly.

PEBA pricing options with Caremark include:

- National Network (over 61,000 pharmacies)
- Non Rebate sharing option with an increase in discounts and no administrative or dispensing fixed costs
- Three tiered copay guarantee similar to the one in place with our current provider
- Copays which are to be determined by City
- Over the Counter prescription options
- Specialty pharmacy
- Front-end deductible on any plan option
- Performance guarantees
- Customer Service accountability
- Customer service team dedicated to PEBA members

Caremark is the largest provider of PMB services. They have seven (7) mail order facilities nationwide. The mail order facility that will service our account is located in Fort Worth. The Specialty Pharmacy facility is located in Richardson. The account representatives to service our account are also located in the Metroplex.

Because the City of Plano will be a new member to Caremark, they are offering a one time New Member Implementation Credit of $3.00 per new member. That equates to over $11,000 to the City in the first year.

Please contact me should you have any further questions regarding this recommendation.

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CAREMARK
It all starts with care

PRESCRIPTION BENEFIT SERVICES
PARTICIPATING GROUP AGREEMENT FOR CITY OF PLANO

This Prescription Benefit Services Agreement (the "Agreement"), dated as of January 1, 2007 (the "Effective Date"), is between CaremarkPCS Health, L.P., a Delaware limited partnership, an indirect wholly-owned subsidiary of CaremarkPCS ("Caremark") and **City of Plano a Home Rule Municipal** corporation, located at **1520 Avenue K, Plano, Texas, 75074 ("City of Plano")**, on behalf of the health benefit plan(s) listed on Exhibit 6 (collectively, the "Client").

City of Plano has established a health benefit plan(s), as defined herein, for its Plan Participants and desires to retain Caremark to provide certain prescription benefit management, disease management and specialty pharmacy services with respect to Client's health benefit plan(s).

Client is a member of the Public Employee Benefits Alliance ("PEBA") and is eligible for Services to be provided by Caremark as stated herein provided that Client remains an active member of PEBA.

Caremark desires to provide such services pursuant to the terms and conditions of this Agreement.

Now, therefore, in consideration of the mutual promises set forth herein, the parties hereto agree as follows:

1. Definitions.

1.1. **"AWP"** means the "average wholesale price" for a standard package size of a prescription drug from the most current pricing information provided to Caremark by First DataBank®, Medi-Span Prescription Pricing Guide (with supplements), or any other nationally available reporting service of pharmaceutical prices as selected by Caremark. Caremark uses a single data reporting source for determining a Client's AWP pricing. The data reporting source used is dependent on the service platform utilized by Client. The standard package size applicable to a mail service pharmacy shall mean 100 units (i.e., pills, tablets, capsules, etc.), unless only a smaller package size is available from the manufacturer, or the actual package size dispensed for liquids and topical treatments. The standard package size applicable to a retail pharmacy shall be the actual package size dispensed as reported by the retail pharmacy to Caremark. If the reporting source used for determining Client's AWP should not continue to support AWP, the parties agree to modify the pricing hereunder to maintain the parties' respective economic position under this Agreement as of the Effective Date such that the net price of a product is the same as before such change occurred.

1.2. **"Change in Law"** means any (i) change in or adoption of any Law, (ii) change in the judicial or administrative interpretation of any Law, or (iii) change in the enforcement of any Law, in each case occurring after the date Caremark begins providing services or the Effective Date, whichever is earlier.

1.3. **"Claims"** means those prescription drug claims processed through Caremark's on-line claims adjudication system or otherwise transmitted or processed in accordance with the terms of this Agreement in connection with Client's Plan as defined herein.

1.4. **"Confidential Information"** means, any trade secrets or confidential or proprietary information relating to the business of the other party, including, but not limited to, information regarding contracts, audit results, SAS70 reports, pricing, finances, discounts or rebates; manuals; computer programs, systems and capabilities; databases, innovations and copyrighted materials; the value of which might be lost if the proprietary nature or confidentiality of such Confidential

Information is not maintained and specifically includes but is not limited to the terms and conditions of this Agreement including any and all of the contents of Exhibit 1. "Confidential Information" does not include Protected Health Information, the use and disclosure of which is governed by Section 12 of this Agreement.

1.5. **"Cost Share"** means the amount which a Plan Participant is required to pay for a prescription in accordance with the PDD, as defined herein, which may be a deductible, a percentage of the prescription price, a fixed amount and/or other charge or penalty.

1.6. **"HIPAA"** means the Health Insurance Portability and Accountability Act of 1996, as amended, and the regulations promulgated there under.

1.7. **"Law"** means any applicable federal, state, or local constitution, charter, act, statute, law, ordinance, code, rule, regulation, order, or other legislative or administrative action of the United States of America, or any State, or any agency, department, authority, political subdivision or other instrumentality thereof or a decree or judgment or order of a court.

1.8. **"Losses"** means claims, liabilities, demands, damages, losses, costs or expenses of any kind, including, without limitation, reasonable attorneys' fees and expenses.

1.9. **"Maximum Allowable Cost"** or **"MAC"** means the unit price that has been established by Caremark for a multi-source drug included on its MAC drug list developed for Caremark clients, which may be amended from time to time by Caremark, in its sole discretion. A copy of such MAC drug list shall be provided to Client following execution of this Agreement and thereafter upon Client's reasonable request.

1.10. **"Participating Pharmacy"** shall mean a retail pharmacy that participates in the Caremark network selected by Client pursuant to an agreement between the pharmacy and Caremark.

1.11. **"PDL"** means one or more list(s) of preferred pharmaceutical products, created and managed by Caremark, as amended from time to time, which: (a) has been approved by Caremark's Pharmacy and Therapeutics Committee, and (b) reflects Caremark's recommendations as to which pharmaceutical products should be given favorable consideration by plans and their participants.

1.12. **"Plan"** means the health benefit plan(s) sponsored by Client of which the prescription drug benefit is a part.

1.13. **"Plan Administrator"** means the Plan sponsor or committee designated by the Plan sponsor with respect to the Plan, as contemplated by section 3 (16)(A) of ERISA. The parties agree, however, that the Client and the Participating Groups are not subject to ERISA.

1.14. **"Plan Design Document"** or "PDD" means the document prepared by Caremark and approved in writing by Client that may be amended by Client, from time to time, in accordance with this Agreement, which documents the relevant parts of Client's Plan for prescription drug benefits and which is used by Caremark to process Claims under this Agreement.

1.15. **"Plan Participant"** means each individual who Client identifies in the eligibility file to be eligible for prescription drug benefits under its plan.

1.16. **"Prescriber"** means a health care practitioner licensed or authorized by Law to issue an order for a prescription drug.

1.17. **"Protected Health Information" or "PHI"** shall have the meaning given such term at 45 C.F.R. 160.103, but limited to that information created or received by Caremark in its capacity as a pharmacy benefit manager (and not as a mail service pharmacy or other health care provider) on behalf of the Plan.

1.18. **"Rebates"** means the rebates or discounts collected by Caremark in its capacity as a group purchasing organization for the Plan from various pharmaceutical manufacturers or distributors that are attributable to eligible Prescriptions dispensed to a Plan Participant, but specifically excluding any rebates or discounts paid with respect to utilization of Specialty Drugs.

1.19. **"Services"** means the prescription drugs, including biotech, biological and/or other specialty drugs, and all related products and services provided by Caremark under this Agreement.

1.20. **"Specialty Drugs"** means certain pharmaceuticals and/or biotech or biological drugs that are used in the management of specific chronic or genetic disease, including but not limited to, injectible,

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infused, or oral medications, or otherwise require special handling, including those listed in Attachment A of Exhibit 1 (which Caremark may amend from time to time).

1.21. **"Usual and Customary"** or "U&C" means a Participating Pharmacy's usual selling price for a prescription drug if the product were not eligible for coverage under the Plan.

2. **Caremark Services.** Caremark shall provide the Services hereunder in accordance with the PDD and the terms of this Agreement. Caremark may make non-material changes to the Services from time to time and may use Claims information to improve or recommend additional Services to Client provided such changes do not materially alter any of the provisions of this Agreement

2.1 Mail Service Pharmacy. Caremark shall be Client's exclusive mail service pharmacy, and shall provide the following products and services:

(a) Provide Client with a reasonable number of copies of Caremark's standard informational materials explaining the mail service pharmacy and the forms that must be used by Plan Participants to utilize mail service;

(b) Dispense through its mail service pharmacy new or refill Prescriptions upon receipt from a Plan Participant of (i) a Prescription and a completed order or refill order form and (ii) any applicable Cost Share;

(c) Fill Prescriptions subject to the professional judgment of the dispensing pharmacist, good pharmacy practices in accordance with local community standards, and product labeling and guidelines;

(d) Provide certain utilization management and clinical services as described in this Agreement; and

(e) Ship all drugs to Plan Participants via U.S. Postal Service or other appropriate carriers to the address provided by Client and/or the Plan Participant. Caremark shall not be liable to either Client or Plan Participant for any delay in delivery resulting from circumstances beyond Caremark's reasonable control as set forth in Section 13.3.

2.2 Retail Pharmacy Network. Caremark shall create and maintain a network of retail pharmacies to provide prescription drugs and related products and services with respect to the Plan. In so doing, Caremark shall:

(a) Require Participating Pharmacies to service Plan Participants during their normal business hours, in all applicable geographic areas;

(b) Provide information to Participating Pharmacies concerning drug interaction, safety edits, and information relating to generic substitution and therapeutic intervention programs selected by Client;

(c) Subject to Section 2.2(f) direct Participating Pharmacies to collect all applicable Cost Shares or the lesser of co-payment or U&C from Plan Participants;

(d) Provide and maintain toll free telephone access to Participating Pharmacies to address claim submission and clinical drug utilization review issues;

(e) Maintain a database of Participating Pharmacies so that Plan Participants and Client may locate a Participating Pharmacy using Caremark's website;

(f) Maintain a claims adjudication system to process payments of paper and electronic claims in accordance with the PDD; and

(g) Be solely responsible for payment to the Participating Pharmacies of the charge for Prescriptions dispensed (exclusive of Cost Shares), provided that the foregoing shall not release Client from any payment obligation to Caremark under this Agreement.

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2.3 Participating Pharmacy Audit.

(a) Periodic Audit. Caremark will conduct periodic on-site and off-site audits of Caremark selected Participating Pharmacies to verify the Participating Pharmacy's compliance with its retail pharmacy network agreement with Caremark ("Periodic Audits"). Caremark will have the sole right to audit Participating Pharmacies.

(b) Audit Discrepancies. To the extent Caremark determines, as the result of its Periodic Audits, that amounts have not been billed in accordance with Caremark's retail pharmacy network agreement ("Audit Discrepancies"), Caremark will make reasonable attempts to reconcile such Audit Discrepancies. In the event the Audit Discrepancy has a financial impact to Client, Caremark will reconcile Client's invoice based upon recovered Audit Discrepancies. Caremark will retain twenty percent (20%) of all recovered Audit Discrepancies to help cover its collection and audit costs. Caremark will notify Client of any Audit Discrepancy that has impacted Client's financial obligation to Caremark by greater than $1,000 that Caremark determines to be reasonably uncollectible by Caremark. Caremark will not be required to institute litigation to collect any Audit Discrepancies. Caremark's obligation to conduct Periodic Audits and to attempt collection and reconciliation, as described, will be Caremark's sole obligation with respect to remedying Audit Discrepancies.

2.4 Implementation.

(a) In consultation with Client, Caremark shall develop a mutually agreeable implementation project plan.

(b) Upon receipt of a refill file in a format acceptable to Caremark, Caremark shall begin filling Prescriptions through its mail service pharmacies as of the Effective Date.

(c) Caremark will provide Client with implementation kits for distribution to Plan Participants. The implementation kits will include the following materials: (a) introductory cover letter; (b) standard identification cards for use within the retail network which shall include Caremark's name and toll free number; (c) a standard client benefit brochure; (d) mail service order form; (e) paper claim reimbursement form, if applicable; and (f) PDL brochure, if applicable. If Client chooses to have Caremark prepare envelopes for mailing kits to Plan Participants, Client must provide at least one data tape containing Plan Participant address information in a mutually acceptable format. Individual Plan Participant mailings will be at Client's expense.

(d) Any customized material requested by Client shall be subject to an additional charge.

2.5 Eligibility. Subject to timely provision of complete and accurate eligibility data by Client to Caremark in a format acceptable to Caremark, Caremark shall maintain such eligibility data provided by Client.

2.6 PDL Management.

(a) Client hereby adopts as part of the Plan design, the PDL.

(b) Changes made to the PDL may be based upon, among other things, new products, customer safety, clinical appropriateness, efficacy, cost effectiveness, changes in availability of products, new clinical information and other considerations, changes in the pharmaceutical industry, new legislation and regulations, and/or new recommendations developed by Caremark based on its experience. Caremark shall make reasonable effort to provide Client with thirty (30) days notice prior to the addition or removal of a drug from the PDL. In the event safety concerns or regulatory action require Caremark to remove a drug sooner, Caremark shall notify Client of the removal of the drug from the PDL within five (5) business days.

(c) Caremark shall implement a therapeutic interchange program as approved by the Pharmacy and Therapeutics Committee under which Caremark's mail service pharmacy shall, upon

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receipt of a Prescription for a drug that is not on the PDL, contact Prescribers, as appropriate, to obtain approval for substitution of a clinically comparable drug on the PDL, if any. In accordance with its standard policies, Caremark shall credit Client for any Prescription returned to Caremark due to an error made by Caremark in effectuating the therapeutic interchange program described in this Section 2.6(c).

(d) Client acknowledges Prescriber shall have final authority over the drug prescribed to a Plan Participant, regardless of benefit coverage.

(e) Caremark may implement therapeutic intervention programs for Participating Pharmacies to promote the use of the PDL by encouraging Participating Pharmacies to ("PerformanceRx Program") (i) identify appropriate opportunities for converting a Prescription from a non-PDL drug to a drug on the PDL, and (ii) contact the Plan Participant and the Prescriber to request that the Prescription be changed to a PDL drug. If appropriate, Participating Pharmacies may be compensated by Caremark for the services they provide in connection with the PerformanceRx Program.

2.7 Generic Substitution Program.

(a) Generic substitution shall be conducted through Caremark's mail service pharmacies under a program which automatically substitutes brand name drugs with generic equivalents, where available, unless (i) the Prescriber issues the Prescription with a "dispense as written" notation, or (ii) the Plan Participant has notified Caremark to dispense the brand name drug only.

(b) Participating Pharmacies are contractually required to substitute brand name drugs with generic equivalents, where available and clinically appropriate, unless (i) the Prescriber issues the Prescription with a "dispense as written" notation, or (ii) where Plan Participant has notified the Participating Pharmacy to dispense the brand name drug only.

(c) Generic messaging intended to promote at the point-of –sale generic substitution of multi-source brand drugs. Client acknowledges that a pharmacist may override such messaging if the Prescriber or the Plan Participant has notified the Participating Pharmacy to dispense the brand name drug only.

2.8 Utilization Management/Clinical Programs.

(a) Concurrent Drug Utilization Review ("DUR") Services. Caremark will provide its automated concurrent DUR Services including but not limited to: (i) drug to drug interactions; (ii) therapeutic duplications; (iii) known drug sensitivity; (iv) over-utilization; (v) insufficient or excessive drug usage; and (vi) early or late refills. Pharmacists are directed to review the messages as they are received and to use their professional judgment as to whether action is required.

(b) DUR Limitations. The information generated in connection with DUR Services is intended as a supplement to, and not as a substitute for, the knowledge, expertise, skill, and judgment of Prescriber or pharmacists in providing patient care. Prescribers are individually responsible for acting or not acting upon information generated and transmitted through the DUR Services, and for performing services in each jurisdiction consistent with the scope of their licenses. In performing DUR Services, Caremark will not, and is not required by this Agreement, to deny Claims or require Prescriber, pharmacist, other health care provider, or Plan Participant compliance with any norm or suggested drug regimen, or in any way substitute Caremark's judgment for the professional judgment or responsibility of the Prescriber, pharmacist, or other health care provider.

The DUR Services are necessarily limited by the amount, type and accuracy of Plan Participant information made available to Caremark. Notwithstanding anything set forth in this Agreement, Caremark will have no obligation to acquire information concerning any Plan Participant

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beyond the information that is included in Caremark's eligibility file or the Claims submitted by Participating Pharmacies in connection with the Plan.

Caremark will update DUR databases on a reasonable basis to reflect changes in available standards for pharmaceutical prescribing; no database used by Caremark will contain all available information on accepted medical practices or prescribing practices. Caremark shall be entitled to rely upon nationally available reporting services such as First Data Bank or Medi-Span in connection with DUR Services provided to Client. The absence of a warning for a given drug or drug combination shall not be construed to indicate that the drug or drug combination is safe, appropriate or effective for any Plan Participant.

(c) Clinical Services Programs. Caremark shall provide clinical programs, as mutually agreed to by the parties, and described in Exhibit 5.

To the extent applicable for DUR services, Participating Group will be asked to sign a Prior Authorization Program Acknowledgment which describes the program parameters and indicates that it is administered by Caremark at the direction of the Participating Group.

(d) Additional Clinical Service Programs. In accordance with Law, including HIPAA, Client authorizes Caremark to perform the following service programs (collectively referred to herein as the "Additional Service Programs"): (i) local market clinical consulting; (ii) national clinical consulting; (iii) compliance and persistency; (iv) RxReview (participant program and prescriber program); and (v) RxViewpoints. Client and Caremark acknowledge and agree that: (i) although the Additional Service Programs may be of benefit to Client and its Plan Participants, Caremark will not charge Client for the performance of such Additional Service Programs; (ii) the performance of such Additional Service Programs may utilize PHI; (iii) the performance of such Additional Service Programs is at the discretion of Caremark and such performance is not an obligation of Caremark; and (iv) Caremark may contract with, and pursue and retain reimbursement from, pharmaceutical companies for the funding and provision of such Additional Service Programs.

2.9 Plan Participant Services. Caremark shall operate toll-free customer service lines twenty-four (24) hours a day, seven (7) days a week for the purpose of responding to inquiries from Plan Participants. Caremark shall also provide telephonic emergency pharmacist services twenty four (24) hours a day, seven (7) days a week.

2.10 Communication Materials. In addition to materials provided under Section 2.4(c), Caremark shall produce and provide the following communication materials:

(a) PDL Brochures. Caremark shall periodically distribute PDL brochures directly to Prescribers.
(b) Website. Caremark will provide an Internet website where Plan Participants can access information with respect to Plan specific drug information, the PDL, Cost Shares, Participating Pharmacy listings and Prescriptions.
(c) Drug Recalls. Caremark, in its discretion, may provide communications to Plan Participants and/or Client regarding drug recalls or withdrawals by a pharmaceutical manufacturer and/or the Federal Food and Drug Administration. Client acknowledges that pharmaceutical manufacturer or distributor shall be responsible for any refunds or reimbursements. Caremark shall not have any obligation or provide Client any refund or reimbursement for any drug recall. In the event Caremark receives any reimbursement from a pharmaceutical manufacturer due to a drug recall, Caremark will remit to Client a pro-rata share of such reimbursement as determined by Client's utilization of such drug compared to Caremark's entire book of business.

2.11 Reports and Claims Data. Caremark shall provide reports and detailed Claim data to Client as follows:

(a) Standard Reports. Caremark shall prepare and provide Client with its standard management and utilization reports.
(b) Non-Standard Reports. At Client's expense, Caremark may prepare and provide non-standard management and utilization reports, and ad hoc reports within an agreed-upon time and format, at Caremark's prevailing rate.
(c) Claims Tapes. With the issuance of each invoice, Caremark shall provide Client up to two (2) sets of complete Claims data in Caremark's standard format. At Client's expense, request and direction, Caremark may provide detailed electronic files or Claim detail reports to Client's designated third parties. Under no circumstances shall Client release or provide any Claims data including pricing and other Confidential Information, to a third party, without the third party signing a confidentiality agreement with Caremark. The confidentiality agreement will contain commercially reasonable terms.
(d) SAS 70. If requested, Caremark shall provide Client with a copy of its most recent Type II SAS 70 report in accordance with the terms and conditions of such report.

2.12 Plan Enhancements for Non-Covered Drugs Caremark may provide to Plan Participants filling Prescriptions at Participating Pharmacies discounts on Prescription drugs that are not covered under the Plan. Claims that process with such discounts are excluded from any and all commitments Caremark may have to Client under this Agreement, including those relating to pricing, rates, and/or Rebates. Client acknowledges that Caremark will retain rebates, if any, and charge Plan Participant fees that may be part of a Plan Participant's Prescription price for claims processed through this program to assist Caremark in funding this program. Client acknowledges that this program may be considered to be a prescription discount card program under some state laws and Client agrees to comply with all applicable Laws concerning programs involving discounts on Prescription.

2.13 Drug Classification. Caremark shall use either the Caremark shall use the indicators of Medi-Span Master Drug Database (Medi-Span), and their associated files, as updated regularly by Medi-Span, or another nationally available reporting service of pharmaceutical drug information in determining the classification of drugs (e.g. legend vs. over the counter, brand vs. generic, single-source vs. multi-source) for purposes of this Agreement.

2.14 Specialty Pharmacy. Notwithstanding specialty drugs that are paid through the Client's medical plan benefits, Caremark shall be the exclusive in-network provider of Specialty Drugs and shall provide the products and services, listed in Attachment A to Exhibit 1 (the "Specialty Drug Attachment"), as follows:

(a) Dispense new or refill Prescription orders for Specialty Drugs upon receipt from a Plan Participant of (i) a Prescription and a completed order or refill order form and (ii) the applicable Cost Share;
(b) Fill Prescriptions for Specialty Drugs subject to the professional judgment of the dispensing pharmacist, good pharmacy practices in accordance with local community standards, product labeling and guidelines;
(c) Provide certain utilization management and clinical services as described in this Agreement;
(d) Ship all Prescription orders to Plan Participants via U. S. Postal Service or other appropriate carriers to the address provided by Client and/or the Plan Participant. Caremark shall not be liable to either Client or Plan Participant for any delay in delivery resulting from circumstances beyond Caremark's control as set forth in Section 13.3.

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(e) Bill major medical benefits through the use of a CMS 1500 form when required;
(f) Provide routine supplies required for the administration of the Specialty Drug (such as needles, syringes, alcohol swabs) to the extent deemed appropriate by Caremark.

2.15 Government Agency Submitted Claims. Client acknowledges that government agencies may seek eligibility or similar data from Caremark regarding Plan Participants and may submit to Caremark Claims for, on behalf of and/or in the name of Plan Participants. Client authorizes Caremark to provide such data as requested by government agencies or their authorized agents and further authorizes Caremark to process such Claims in accordance with applicable laws and regulations. The fee for processing paper Claims submitted by government agencies will be invoiced at the paper claim rate already agreed to by the parties or as otherwise agreed by Caremark and Client. Client will pay Caremark for amounts paid by Caremark to government agencies in accordance with its payment obligations under this Agreement.

2.16 Performance Guarantees. Caremark agrees to perform in accordance with the performance standards described in Exhibit 8. Unless otherwise stated, all performance standards shall be measured across Caremark's book of business based on Caremark's standard calculation methodology and exclude Specialty Drugs and related services. Caremark will be deemed to have defaulted if performance penalties are imposed for three (3) consecutive quarters and total in excess of $40,000 and Client shall have the right to terminate immediately. In the event Caremark fails to meet the proposed standards, the penalties described herein and in Exhibit 8 shall be the sole and exclusive remedy available to the parties for such failure.

2.17 Appeals. If contracted to provide Appeals Services, Caremark shall conduct all appeals and grievances in accordance with the terms and conditions described in one of the attachments to Exhibit 7.

3. Maintenance of Records. Caremark shall maintain records with respect to the processing, payment, and denial of Claims by Caremark and shall retain such records for a period of seven (7) years after the transaction occurred or as otherwise required by applicable Law.

4. Use of Data. Subject to Exhibit 2, which governs the use and disclosure of PHI, Caremark may use, disclose, reproduce or adapt information obtained in connection with this Agreement, including Claims as well as eligibility information, in any matter it deems appropriate, except that Caremark shall maintain the confidentiality of this information to the extent required by applicable Law, and may not use the information in any way prohibited by applicable Law.

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5. Audit Rights.

5.1 Claims Audits.

(a) During the Term of this Agreement as defined as, upon not less than sixty (60) days prior written notice and subject to Section 5.2, Client, or a mutually acceptable independent third party retained by Client, may conduct an annual Claims audit of Caremark data that directly relates to Claims billings during the twelve (12) months prior to the date of the review. The scope of the Claims audit shall be in accordance with, and shall not exceed, the guidelines set forth in Exhibit 4. Client shall be responsible for all reasonable expenses of the Claims audit, including Caremark's costs related to the provision of records. Client acknowledges that it shall not be entitled to audit: (i) documents that Caremark is barred from disclosing by applicable Law or pursuant to an obligation of confidentiality to a third party; and (ii) agreements with vendors, pharmaceutical manufacturers, or distributors, Participating Pharmacies or other providers of products or services to Caremark.

(b) Any independent third party auditor engaged by Client shall execute a confidentiality agreement with Caremark in a form and substance reasonably acceptable to Caremark prior to conducting a Claims audit, ensuring that all information gathered during such audit and all details and terms of this Agreement, including pricing and rebate information, will be treated as confidential to Caremark and will not be revealed in any manner or form by or to any third party.

5.2 Upon reasonable notice, Caremark may inspect and audit, or cause to be inspected and audited, the books and records of Client directly relating to the existence and number of Plan Participants. For purposes of audit verification, Client shall maintain eligibility records for Plan Participants for a period of twelve (12) months from the date of the review.

5.3 Any adjustments, payments and/or reimbursements determined to be necessary as a result of any examination or audit shall be paid by the appropriate party within thirty (30) days of execution by the party receiving payment and/or reimbursement of an appropriate release document covering the audit period.

6. Obligations of Client.

6.1 Implementation.

(a) Prior to the Effective Date and in accordance with an agreed upon implementation project plan, Client, or Client's designee, must provide the initial eligibility test data and the initial full eligibility data to Caremark. Client acknowledges that if it fails to provide data within the agreed-upon time frames, Caremark may, at its option, postpone the initiation of Services by one day for each day that any such submission is late.

(b) Prior to the Effective Date and in accordance with an agreed-upon implementation project plan, Client, or Client's designee, must furnish the Plan documents, a refill file in a format acceptable to Caremark, summary plan descriptions or, if such are not available, a written description of the Plan design sufficient to enable Caremark to prepare the PDD.

(c) Client represents and warrants that it has obtained from Plan Participants all consents and/or authorizations required, if any, for Caremark to perform the Services and for the use and disclosure of information including PHI, as permitted under this Agreement.

(d) Client represents and warrants that the PDD will accurately reflect the terms of the Plan and agrees to approve, in writing, the PDD and any amendments to the PDD.

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(e) Client has and will disclose to Plan Participants any and all matters relating to the Plan and Services as required by Law to be disclosed.

6.2 Payment. Client shall pay Caremark for the Services hereunder in accordance with the terms set forth in Section 7 and Exhibit 1.

6.3 Control of Plan. Client, as Plan Administrator, retains the sole and absolute authority to design, amend, terminate or modify, in whole or in part, all or any portion of the Plan, including the sole authority to control and administer the Plan. Nothing in this Agreement shall be deemed to confer upon Caremark the status of plan administrator or fiduciary as defined in ERISA, or applicable state law, or any responsibility for the terms or validity of the Plan. Client represents and warrants that the Plan is in full compliance with all applicable Laws. Furthermore, because Caremark is not an insurer, plan sponsor, third party administrator or Plan Administrator, Caremark shall have no responsibility for (i) any funding of Plan benefits; (ii) any insurance coverage for, the Plan, Plan Administrators or the Plan Participants; or (iii) the nature or quality of professional health services rendered to Plan Participants (except in Caremark's capacity as a mail service or specialty pharmacy).

6.4 PDD Changes. Client shall provide Caremark with ninety (90) days prior written notice of any requested changes to the PDD, which changes shall be consistent with the scope and nature of the Services to be performed by Caremark under this Agreement. In addition, Client shall notify its Plan Participants of the change prior to its effective date at Client's expense. Caremark will not be responsible or liable to Client or Plan Participants for Losses resulting from failure to implement Plan design changes which are not communicated in writing to Caremark in accordance with the first sentence of this Section. Client also shall notify Caremark in writing at least thirty (30) days in advance of any change in its third party administrator or insurance carrier that results in a change in any of the Services provided by Caremark under the terms of this Agreement.

6.5 Pharmacy Network. Client hereby selects (i) Caremark's national network as the retail pharmacy network of Participating Pharmacies, (ii) Caremark as the exclusive mail service pharmacy to provide mail service prescription drugs to Plan Participants; and (iii) Caremark as the exclusive "in-network" specialty pharmacy to provide Specialty Drugs to Plan Participants. Client shall distribute the mail service information materials and forms to all Plan Participants.

6.6 Eligibility Data. Client, or Client's designee, at Client's sole expense, will provide Caremark all information concerning its Plan and Plan Participants needed to perform the Services, including any updates thereto ("Eligibility Information"). This Eligibility Information must be complete and accurate, provided timely, and in a format and media approved by Caremark. Caremark, Plan Participants' physicians and the Participating Pharmacies are entitled to rely on the accuracy and completeness of such information and updates thereto. Client bears the risk of fraudulent Claims submitted by Plan Participants or by unauthorized persons using a Plan Participant's identification card or number.

6.7 Exclusivity. Client shall make Caremark the exclusive provider of the Services described in this Agreement to the Plan and its Plan Participants. Notwithstanding the foregoing, this Section shall not be construed as to prohibit Client from offering Specialty Drug coverage as a medical benefit under a managed care, HMO, PPO or similar benefit plan.

6.8 Client's Obligation. Caremark shall not be held responsible to any performance standard or obligation if Client, or Client's designee, fails to provide Caremark with accurate, timely and complete information as needed to meet such performance standard or obligation.

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7. Invoicing and Payment.

7.1 Invoicing. Caremark shall invoice Client, which may be via facsimile or electronically, in Caremark's standard format, in accordance with the financial terms set forth in Exhibit 1 according to the following schedule:

(a) Claims. Caremark shall issue Client an invoice for prescription claims two (2) times monthly.
(b) Fees. Caremark shall issue Client an invoice for fees, if any, on a monthly basis.

7.2 Payment. Client shall pay Caremark all invoiced amounts for Claims and fees within two (2) days after Client receives an invoice from Caremark. Client shall have no right to offset disputed amounts or amounts due or allegedly due from Caremark to Client from such payment except as approved in writing by Caremark. Any sales, use or other tax or assessment, including any surcharge or similar fee imposed under any applicable Law on any health care provider, Plan Participant, service, supply or product provided under this Agreement, will be the sole responsibility of Client and shall be added to the invoice.

7.3 Late Payments. At the option of Caremark, payments not received in accordance with Section 7.2 shall bear a service fee of ten percent (10%) per annum (or, if less, the highest rate allowed by Law).

7.4 Financial Responsibility. If at any time during this Agreement Caremark reasonably determines, based on Claims volume, payment record or Client's latest financial information, that Client may have difficulty meeting its financial commitments under this Agreement, then Caremark may request information, reasonable assurances or both from Client as to its financial responsibility (including a deposit in an amount equal to the average billing amount based upon the average of the last three (3) months of billing history or, if the three (3) months billing history is not available, the most recent month of billing history will be the basis). If Caremark requires Client to provide a deposit, Client will provide such deposit within ten (10) days of Caremark's request. If Client gives Caremark a deposit, Caremark may apply the deposit to past due balances and shall return the remaining deposit, if any, after the termination of this Agreement and the payment of all amounts payable to Caremark hereunder. Any deposit provided by Client shall not be deemed a Plan asset. Additionally, Client will furnish audited financial statements to Caremark upon Caremark's request. Caremark will keep these audited financial statements confidential and will use them solely for internal review purposes to determine credit requirements.

7.5 Suspension of Performance. In the event Client: (i) is not current on its payment obligations under this Agreement or does not provide a deposit pursuant to Section 7.4; (ii) makes an assignment for the benefit of creditors; (iii) is the subject of a voluntary or involuntary petition for bankruptcy, or is adjudged insolvent or bankrupt; or, (iv) a receiver or trustee is appointed for any portion of its property, Caremark may immediately, and without penalty or any liability for any Losses, suspend performance of Services hereunder. Suspension of performance by Caremark shall not constitute termination of this Agreement.

8. Pharmaceutical Contracts and Rebates.

8.1 Client's Authorization. Client authorizes Caremark to contract as a group purchasing organization for the Plan with pharmaceutical manufacturers and distributors for Rebates. Client acknowledges that whether and to what extent pharmaceutical manufacturers and distributors are willing to provide Rebates to Client may depend upon a variety of factors, including the content of the PDL adopted by

Client, the Plan's design features and participating in Caremark's PDL management programs, as well as Caremark receiving sufficient information regarding each Claim that is submitted to pharmaceutical manufacturers for Rebates.

8.2 Rebate Limitations. Client waives, releases and forever discharges Caremark from any Losses arising from a pharmaceutical manufacturer's or distributor's (i) failure to pay any Rebate; (ii) breach of an agreement related to Rebates; or (iii) negligence or misconduct resulting from the drug manufacturer's failure to pay amounts due. Client acknowledges that Rebates will not be paid with respect to Claims reimbursed on a unit basis by Medicaid agencies or other federal or state healthcare programs.

8.3 Specialty Drug Rebates. Client acknowledges and agrees that Caremark negotiates rebates and discounts for Specialty Drugs on its own behalf as a purchaser of pharmaceutical products over its aggregate book of business and not on behalf of any client or plan. Caremark shall have the exclusive right to enter into contracts with any pharmaceutical manufacturer or distributor with respect to rebates or discounts for any and all Specialty Drugs provided under this Agreement. Neither Client nor Plan shall have any right to or interest in such rebates or discounts.

8.4 Disclosure of Manufacturer Fees. Caremark may receive fees or other compensation from pharmaceutical manufacturers and distributors for services rendered and property provided to pharmaceutical manufacturers or distributors, including, without limitation, administrative fees not exceeding three (3) percent of the AWP of the products dispensed across Caremark's book of business. In addition, Caremark may receive concurrent or retrospective rebates or discounts from pharmaceutical manufacturers and distributors which are attributable to product purchases for prescriptions dispensed by its mail or Specialty Pharmacies, service provision, market share or other factors. The term "Rebates" as used in this Agreement does not include the fees, compensation, and discounts described in this Section 8.5, which belong exclusively to Caremark.

8.5 Pharmaceutical Manufacturer and Distributor Agreements. Client agrees that during the Term of this Agreement, Client will not negotiate, contract, or agree with any pharmaceutical manufacturer or distributor for the purpose of obtaining rebates or other discounts related to the drug utilization, including the use of over the counter products, of Plan Participants. Client further agrees to cancel any existing agreements, arrangements and/or contracts with any pharmaceutical manufacturer or distributor related to such rebates or discounts as of the Effective Date. In the event of a breach of this Section 8.6 by Client, Caremark may terminate this Agreement or Client's participation in the Rebates and may retain 100% of any and all rebates that have not been remitted to Client as of the date of such termination. The pursuit or award of damages shall in no event preclude the right of Caremark to seek an injunction or other equitable relief to enforce this Section 8.6, or any remedy available at law. Caremark shall have the exclusive right to enter into contracts with any pharmaceutical manufacturer or distributor with respect to rebates or discounts for drug utilization, including the use of over the counter products, of Plan Participants.

9. Term and Termination.

9.1 Term. The term of this Agreement shall commence on the Effective Date and expire on December 31, 2009 ("Term") subject to earlier termination as hereinafter set forth. **THE TERM SHALL BE AUTOMATICALLY RENEWED FOR ADDITIONAL ONE (1) YEAR PERIODS UNLESS EITHER PARTY SENDS NOTICE OF NON-RENEWAL TO THE OTHER PARTY AT LEAST NINETY (90) DAYS PRIOR TO THE END OF THE ORIGINAL TERM OR ANY SUBSEQUENT ONE-YEAR TERM.**

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9.2 Termination for Cause.

(a) Either party may terminate this Agreement upon written notice to the other party in the event of a material breach of this Agreement by the other party which is not cured within sixty (60) days of notice thereof. The pursuit or award of damages shall not constitute a penalty or liquidated damages, and shall in no event preclude the right of Caremark to such an injunction or other equitable relief, or any remedy available at law or equity.
(b) Upon notice Caremark may terminate this Agreement upon Client's breach of Section 6.7.
(c) Client may terminate this Agreement upon a material breach by Caremark of Exhibit 2 (Business Associate Obligations) of this Agreement if Caremark does not cure the breach or if a cure is not possible, end the violation, within thirty (30) days of receipt of written notice by Caremark of such breach.
(d) Either party may terminate this Agreement if any court, governmental or regulatory agency issues to the other party an order to cease and desist doing business. The party receiving notice of an order or finding must provide the other party written notice within ten (10) business days of receipt.

9.3 Termination for Change in Law.

(a) Either party may terminate this Agreement upon written notice to the other party if, as a result of any Change in Law, the rights or obligations of the requesting party would be materially adversely affected. Any such termination shall be effective on the day immediately preceding the effective date of such Change in Law, subject to the provisions of Section 9.3(b) below.
(b) Notwithstanding Section 9.3(a), the parties agree to use prompt, good faith efforts to renegotiate the terms of this Agreement. If the parties successfully conclude such negotiations prior to the effective date of the Change in Law, this Agreement shall not terminate and shall be amended to reflect the negotiated terms. In the event the parties are unable to successfully conclude such negotiations, this Agreement shall terminate as provided above.

9.4 Obligations Upon Termination.

(a) Upon termination of this Agreement, Caremark will, at Client's request, provide mutually agreed upon post-termination services at Caremark's prevailing rate.
(b) Except as provided in Section 9.4(c) below, upon termination of this Agreement, for any reason, Caremark shall return or destroy all PHI created or received by Caremark as a business associate of Client in connection with this Agreement.
(c) In the event that Caremark determines that returning or destroying the PHI is not feasible, Caremark may retain PHI, provided that Caremark shall extend the protections contained in Exhibit 2 to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Caremark maintains such PHI.
(d) Upon termination of this Agreement, Caremark will not transition claims files and/or history that contains Client's cost and privacy information to Client's new pharmacy benefit manager.

10. Confidential and Proprietary Information.

10.1 Confidential Information.
(a) Neither Caremark, Client, nor any of Client's officers, employees, advisors, agents or representatives shall disclose or make use of any Confidential Information except as permitted under this Agreement without the prior written consent of the non-disclosing party, which consent may, inter alia be conditioned upon the execution of a confidentiality agreement prior to any disclosure to a third party. Each party will disclose Confidential Information of the other party only to its officers or

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employees who have a need to know the Confidential Information in order to accomplish the purpose of this Agreement and who (i) have been informed of the confidential and proprietary nature of the Confidential Information, and (ii) have agreed not to disclose it to others and to treat it in accordance with the requirements of this Section. Client shall advise its officers, employees, advisors, agents or representatives of the confidentiality provisions set forth in this Agreement and shall be liable for any breach of such confidentiality provisions by its officers, employees, advisors, agents or representatives.
(b) The foregoing shall not apply to such Confidential Information to the extent: (i) the information is or becomes generally available or known to the public through no fault of the receiving party; (ii) the information was already known by or available to the receiving party prior to the disclosure by the other party on a non-confidential basis; (iii) the information is subsequently disclosed to the receiving party by a third party who is not under any obligation of confidentiality to the party who disclosed the information; (iv) the information has already been or is hereafter independently acquired or developed by the receiving party without violating any confidentiality agreement or other similar obligation; or (v) the information is required to be disclosed pursuant to a non-appealable court order. If either party is required to disclose the Confidential Information of the other party as part of a judicial process, government investigation, legal proceeding, or other similar process, such party, if it is reasonably possible to do so, shall give such prior written notice to the other party to allow the other party to seek an appropriate protective order or modification of any disclosure.
(c) Any unauthorized disclosure or use of Confidential Information including but not limited to, the sharing of this Agreement any of the financial terms related to this Agreement, or claims tapes with any consulting agents, advisors, brokers, or any other third party, would cause Caremark or Client immediate and irreparable injury or loss that may not be adequately compensated with money damages. Accordingly, if either party fails to comply with this Section 10, the other party will be entitled to specific performance including immediate issuance of a temporary restraining order or preliminary injunction enforcing this Agreement, and to judgment for Losses caused by the breach, and to any other remedies provided by Law.

Notwithstanding the foregoing, Confidential Information may be disclosed by Client in response to a request made pursuant to an applicable state Public Records Law, insofar as disclosure is required by that Law. Client shall provide Caremark with (i) notice of its intent to disclose Confidential Information and (ii) an opportunity for Caremark to object to such disclosure in accordance with Law. Caremark acknowledges that PEBA and the Participating Groups are subject to the Texas Public Information Act, Chapter 522, Texas Government Code.

10.2 Proprietary Information to Caremark. Client acknowledges that the PDL is proprietary to Caremark. Further, all Caremark databases, as well as the software, hard coding, and logic used to generate the compilations of information contained in Caremark's claims adjudication system and in all other databases developed by Caremark or its designees in connection with performing Services, and the format of all reports, printouts, and copies, and any prior and future versions thereof by any name, are the property of Caremark and are protected by copyright which shall be owned by Caremark.

11. Indemnification.

11.1 To the extent permitted by law, Caremark shall defend, indemnify and hold harmless Client and each of its officers, directors, employees, subsidiaries and affiliates (the "Client Parties") from and against any and all Losses incurred by any Client Parties to the extent arising out of or relating to Caremark's negligence or breach of its obligations or warranties set forth in this Agreement, except to the extent such Losses are caused by the negligence or willful misconduct of any Client Party.

11.2 To the extent permitted by law without waiving any rights, defenses or immunities afforded by state and federal law, Client shall defend, indemnify and hold harmless Caremark and each of its

officers, directors, employees, subsidiaries and affiliates (the "Caremark Parties") from and against any and all Losses incurred by any Caremark Parties arising out of or relating to (i) Client's negligence or breach of its obligations or warranties set forth in this Agreement, except to the extent such Losses are caused by the negligence or willful misconduct of any Caremark Party, (ii) any legal defects in the design of the Plan, or (iii) any deficiencies in the PDD.

11.3The party seeking indemnification shall notify the other party in writing within thirty (30) days of the assertion of any claim or the commencement of any action or proceeding for which indemnity may be sought under this Agreement. Failure to notify the other party shall not result in the waiver of indemnity rights with respect to such claim, suit, action or proceeding unless such failure materially prejudices the ability of the indemnifying party to defend such claim, suit, action or proceeding. The parties shall cooperate with each other in the defense and settlement of any such claim, action or proceeding.

12. Business Associate Relationship. The parties acknowledge and agree that Caremark is a Business Associate, as defined under HIPAA, of the Plan in connection with the provision of certain Services, and is a health care provider and Covered Entity, and not a Business Associate of Client, under HIPAA in connection with its provision of certain other Services. To the extent Caremark acts as a Business Associate of the Plan, and in accordance with HIPAA, Caremark shall adhere to the applicable requirements established for Business Associates as set forth in Exhibit 2. Privacy officer to review

13. General Provisions.

13.1Assignment. Neither party may assign this Agreement without the prior written consent of the other party, provided such consent will not be unreasonably withheld. However, either party may assign this Agreement or delegate the duties to be performed under this Agreement without the consent of the other party to any of its subsidiaries or affiliates at any time, or as part of a sale of all, or substantially all, of the assets to which this Agreement pertains.

13.2 Compliance with Law.
(a) Each party shall comply with the provisions of all applicable Law relating to the performance of its obligations under this Agreement. Neither party has any responsibility to advise the other about such party's compliance with any Law. Client represents that its Plan complies with all applicable Laws. Caremark makes no representation that the Plan is in compliance with any applicable Law.
(b) To the extent applicable, each party certifies that it shall not violate the federal anti-kickback statute, set forth at 42 U.S.C§ 1320a-7b(b) ("Anti-Kickback Statute"), or the federal "Stark Law," set forth at 42 U.S.C. § 1395nn ("Stark Law"), with respect to the performance of its obligations under this Agreement. Further, Caremark shall ensure that individuals meeting the definition of "Covered Persons" (as such term is defined in the Corporate Integrity Agreement between the Office of Inspector General of the Department of Health and Human Services and AdvancePCS) shall comply with Caremark's Compliance Program, including training related to the Anti-Kickback Statute and the Stark Law. In addition, Caremark's Code of Conduct and policies and procedures on the Anti-Kickback Statute and Stark Law may be accessed at http://www.caremark.com/wps/portal/_s.155/3370?cms=CMS-2-007764.

13.3Force Majeure. Except for payment obligations, neither party shall be liable for failure or delay of performance arising from an act of God or other events beyond the reasonable control of such party, such as the acts of a regulatory agency, fires, floods, explosions, strikes, labor stoppages, and acts of terrorism, war or rebellion.

13.4 Limitation of Liability.

(a) Except as otherwise expressly set forth in this Agreement, Caremark makes no additional representations or warranties, including without limitation, warranties of merchantability or fitness for a particular purpose.

(b) In no event shall either party be liable to the other for any incidental, special or consequential damages as a result of the performance or any default in the performance of their respective obligations under this Agreement Caremark's liability to PEBA under this Agreement, if any, shall in no event exceed $250,000 under this Agreement for the twelve- month period preceding the event resulting in damage or loss.

(c) Caremark will not be liable for any claim which is asserted by Client more than twelve (12) months after Client is or reasonably should have been aware of such claim, and will in no event be liable for any claim which is asserted by Client more than thirty-six (36) months after the event resulting in damage or loss.

(d) Caremark does not direct or exercise any control over the professional judgment exercised by any pharmacist in dispensing prescriptions or otherwise providing pharmaceutical related services at a Participating Pharmacy. Participating Pharmacies are independent contractors, not subcontractors or agents of Caremark, and Caremark shall have no liability to Client for a claim arising out of any act or omission of any Participating Pharmacy or its agents or employees.

(e) Caremark shall be entitled to rely on First Data Bank, Medi-Span or any other nationally available reporting service of pharmaceutical prices selected by Caremark to determine AWP for purposes of establishing the pricing provided to Client under this Agreement. Client acknowledges that Caremark does not establish AWP, and Caremark shall have no liability to Client arising from the use of First DataBank, Medi-Span or any other nationally available reporting service. Client acknowledges that if the reporting source for determining Client's AWP should not continue to support AWP, Client shall cooperate with Caremark to negotiate the pricing hereunder to maintain the parties' respective economic position under this Agreement as of the Effective Date.

13.5General. Except as otherwise provided herein, this Agreement may not be modified except in a writing signed by both parties. If any provision of this Agreement is held to be invalid or unenforceable for any reason, such invalidity or unenforceability shall not affect the remainder of this Agreement, which shall remain in full force and effect and enforceable in accordance with its terms. This Agreement attached hereto supersedes all prior or contemporaneous understandings or contracts regarding the subject matter of this Agreement, including, but not limited to, Caremark's response to a request for proposal, a best and final offer document or final offer document or finalist presentation, and any memorandum of understanding, and constitute the entire agreement existing between the parties with respect thereto. No waiver or discharge of any breach of this Agreement shall be effective unless it is in writing and signed by the party granting such waiver or discharge. Any waiver of any breach of any provision of this Agreement shall not be a waiver of any subsequent breach of any provision of this Agreement. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties and shall not in any way affect the meaning or interpretation of this Agreement.

13.6 Governing Law/Venue. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Texas without regard to its conflict of laws rules). Any suit brought hereunder (including any action to compel arbitration or to enforce any award or judgment reentered thereby) shall be brought in the state or federal courts sitting in Collin County, Texas the parties hereby waiving any claim or defense that such forum is not convenient or proper. Each party

agrees that any such court shall have in persona jurisdiction over it and consents to service of process in any manner authorized by Texas Law.

13.7 Notices. Any notice given under this Agreement shall be given in writing, and sent by hand delivery, facsimile transmission (receipt confirmed), overnight courier that provides confirmation of delivery, or certified mail, return receipt requested, to the applicable party at its address set forth below:

If to Caremark:

2211 Sanders Road
Northbrook, Illinois 60062
Attn: Vice President, Legal
Services/Managing Counsel of
Client and Account Services
Fax No: (847) 559-4879

With a copy to:

211 Commerce Street, 8th Floor
Nashville, Tennessee 37201
Attn: General Counsel
Fax No: (615) 743-6611

If to Client:

City of Plano
1520 Avenue K
Plano, Texas, 75074
Attn:

or to such other address or to the attention of such other person as either party may designate in writing pursuant to this Section 13.7. Written notices shall be deemed received on the date actually delivered to the other party.

13.8 Commercially Unavailable Products. This Agreement does not require Caremark to dispense those products to which Caremark has no reasonable access.

13.9 Independent Contractors. Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating a relationship of employer and employee, principal and agent, or joint venture of the parties hereto; it being understood and agreed that no provision contained in this Agreement nor any acts of the parties hereto shall be deemed to place Caremark in any relationship with Client other than as an independent contractor.

13.10 Third Party Beneficiary. This Agreement has been entered into solely for the benefit of Client and Caremark and is not intended to create any legal, equitable, or beneficial interest in any third party or to vest in any third party any interest as to enforcement or performance, including but not limited to, Participating Pharmacies or Plan Participants.

13.11 Government Programs. To the extent required by applicable Law, Client agrees to properly disclose and report to Medicare, Medicaid or other government health care program any discount or

rebate received under this Agreement, whether reflected in the fees for the products and services or otherwise provided hereunder, under all applicable state or federal programs that provide cost or charged-based reimbursement to Client for products and services provided by Caremark.

13.12 Government Program Business. Client represents and warrants that:

(a) it is not a party to a risk contract under Sections 1876(g) or 1903(m) of the Social Security Act;
(b) it is not a Medicare Part C health plan that receives a capitated payment from Medicare and has its total Medicare beneficiary cost sharing approved by the Centers for Medicare and Medicaid Services under Section 1854 of the Social Security Act; or
(b) it does not provide or arrange for items and services for Medicaid enrollees in accordance with a risk-based contract with a state agency subject to the upper payment limits in 42 C.F.R § 447.361 or an equivalent payment cap approved by the U.S. Secretary of Health and Human Services.

13.13 Survival. Sections 4 (Use of Data), 6.2 (Payment), 6.3 (Control of Plan), 9.4 (Obligations Upon Termination), 10 (Confidential and Proprietary Information), 11 (Indemnification), 13.4 (Limitation of Liability) and 13.14 (Survival) shall survive the termination or expiration of this Agreement.

13.14 Use of Name. Each party shall use the other party's name, logo and trademark only in the manner specified by the other party in writing, or as expressly permitted by this Agreement. The terms of use of Caremark's name, logo and trademark are set forth in Exhibit 3.

13.15 Attorney Fees. If either party institutes an action or proceeding to enforce any rights arising under this Agreement, the party prevailing in such action or proceeding will be paid all reasonable attorneys' fees and costs to enforce such rights by the other party, such fees and costs to be set by the court, not by a jury, and to be included in the judgment entered in such proceeding.

13.16 Authority. Each party represents and warrants that it has the necessary power and authority to enter into this Agreement and to consummate the transactions contemplated by this Agreement.

13.17 Affidavit of No Prohibited Interest. Caremark will execute Affidavit of No Prohibited Interest, a copy of which is attached hereto as Exhibit 10.

13.18 Insurance. Caremark will execute insurance agreement attached hereto as Exhibit 11.

14. Exhibits. The following Exhibits are hereby incorporated into and made a part of this Agreement:

Exhibit	Description
1	Financial Terms
2	Business Associate Obligations
3	Terms of Use of Name
4	Audit Guidelines
5	Clinical Service Programs
6	List of Plans (Employer)
7	Appeals
8	Performance Guarantees
9	RxNavigator
10	Affidavit of No Prohibited Interest
11	Insurance Requirements

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The parties hereto have caused this Prescription Benefit Services Agreement to be executed by their duly authorized representatives.

CAREMARKPCS HEALTH, L.P.: By its general partner CaremarkPCS Health Systems, LLC:	CLIENT:
By:_____	By:_____
Its:_____	Its:_____
Date: _____	Date: _____

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Exhibit 1
Financial Terms

1. As modified below, Client shall utilize pricing terms identified on Exhibit A-3 to the master agreement entered into by and between Caremark and PEBA in effect as of October 1, 2006.

2. **Optional Services.** As consideration for the Services selected by Client in accordance with the Agreement, Client will pay to Caremark the fees set forth below:

Prior Authorization/Formulary Exception	$ 30.00 per authorization
Appeals	$100 per 1st level review and $500 per 2nd level appeal

3. **Clinical Programs.** As consideration for the clinical Services selected by Client in accordance with this Agreement, Client will pay to Caremark the fees set forth below:

3.1 Base Clinical Services (included in base administrative fee)

▪ Concurrent DUR	No Charge
▪ Physician Profiling	No Charge
▪ Formulary Management	No Charge
▪ Generic Substitution Programs	No Charge

3.2 Additional Clinical Programs:

	Fee	Guaranteed ROI
(b) CustomCare Retail*	$0.40 per retail Rx	200% ROI over 3 yrs
(f) PerformanceRx	waived	

*Any savings beyond the ROI guarantee will be shared between Caremark and Client at 50%/50%, respectively.

NOTE: For those programs that have a shared savings component over the targeted savings, Client will be billed for any excess savings, as applicable. Any overachievement of guaranteed savings related to any clinical program will be applied to any underachievement of guaranteed savings.

4. Special Fees.

4.1 Administrative charges relating to certain services may be charged to Client at Caremark's prevailing rate.

4.2 Miscellaneous Fees.

Paper Submitted Claim (per processed Claim)	$1.50/Claim
Manual Eligibility Submission	$1.00/Manual Entry
Client Specific Programming	$150.00/Hour

4.3 Charges or services not identified in this Exhibit 1 shall be quoted upon request.

5. Client Credits:

This Section 5 of Exhibit A sets forth various rebates and credits to be paid or credited by Caremark to Client (collectively "Client Credits"). It is the intention of the parties that, for purposes of the Federal Anti-Kickback Statute, these Client Credits shall constitute and shall be treated as discounts against the price of drugs within the meaning of 42 U.S.C. 1320a 7b(b)(3)(A).

5.1 Drug Rebates:

In lieu of rebates, Caremark has provided an improved AWP discount for mail service and retail claims. If for any reason, Caremark's ability to receive rebates from pharmaceutical companies' rebate programs is materially adversely impacted, the parties shall re-negotiate the AWP discount for mail service and retail claims. Furthermore, the parties agree to renegotiate the AWP discount for mail service and retail claims if: (i) a generic version of a branded product is unexpectedly introduced in the market; or (ii) a branded product is recalled or withdrawn from the market.

5.2 Implementation Credit.

Client shall receive an implementation credit of $3.00 per net new Plan Participant_enrolled under the terms of this Agreement. Such implementation credit may be used exclusively to offset the documented expenses associated with the implementation of any Caremark Products, Services, Additional Services or miscellaneous fees.

Identification of the transition and implementation expenses attributable to this credit shall occur no later than six (6) months after the Effective Date. Examples of transition and implementation expenses include costs of customized Plan Participant I.D. cards, postage expense for direct mail of I.D. cards and other communication materials to Plan Participants, and special programming required by Client's prior pharmacy benefit manager to provide data to Caremark. Client shall provide Caremark with documentation of expenses actually incurred in the form of an invoice, an account statement, or other detailed documentation. For agreed upon implementation or transition services provided by Caremark towards this credit, Caremark will provide expense detail for such items. Expenses applied to the implementation credit will not exceed fair market value of such expenses. If Client terminates this agreement prior to the expiration of its Initial Term for any reason (other than Caremark's breach) or if Caremark terminates the agreement as a result of Client's breach, Client shall refund to Caremark an amount equal to the pro rata portion (based on the length of the Initial Term) of the transition and implementation expenses incurred by Caremark. The parties acknowledge and agree that the payments or credits provided by Caremark are commercially reasonable and necessary services related to the implementation of this Agreement and represent fair market value for the services provided.

Both parties agree that, for purposes of the Federal Anti-Kickback Statute, the credits provided to Client by Caremark, and any payment made thereunder, constitute discounts against the products and services pursuant to 42 U.S.C. 1320a7(b)(3)(A). The parties further agree to comply with any disclosure requirements with respect to such discounts in accordance with government health care program rules and regulations.

6. Miscellaneous:

6.1 Plan Participant Cost Share. Caremark may, but shall not be obligated to, dispense a Prescription even if the Prescription is not accompanied by the Cost Share. Caremark will refund any amount submitted by Plan Participant in excess of the Plan Participant's Cost Share. In the event a Plan Participant submits to Caremark an insufficient Cost Share and the Plan Participant fails to remit the balance of the Cost Share amount to Caremark within thirty (30) days of Caremark's request, then Caremark shall have the right to invoice Client for, and Client shall have an obligation to pay Caremark, the amount of the uncollected Cost Share(s). Shipping of Prescriptions submitted without the appropriate Cost Share may be delayed.

ATTACHMENT A
Specialty Drug List

PBM Biotechs/Biological and High Cost Drugs

Drug Name	*Therapy Class*	*Manufacturer*	*Indicated for*	*GPI (10 digit)*
ABELCET	Infectious Disease Therapies	LIPOS	Systemic Fungal Infections	11-00-00-10-30
ACTIMMUNE	Miscellaneous	GENEN	Primary Immune Deficiency	21-70-00-60-70
ACTIVASE	Miscellaneous	GENEN	Myocardial Infarction	85-60-10-10-00
ADAGEN	Enzyme Deficiency	ENZON	Adenosine Deaminase deficiency	20-00-00-50-00
ADVATE	Hemophilia	BAXTER	Hemophilia	Not Available
ALDURAZYME	Enzyme Deficiency	GENYME	Mucopolysaccharidosis I	30-90-65-50-00
ALFERON N	Miscellaneous	INTER	Genital Warts	21-70-00-60-30
ALPHANATE	Hemophilia	ALPHA	Hemophilia A	85-10-00-10-00
ALPHANINE SD	Hemophilia	ALPHA	Hemophilia B	85-10-00-28-00
AMBISOME	Infectious Disease Therapies	FUHLT	Systemic Fungal Infections	11-00-00-10-40
AMPHOTEC	Infectious Disease Therapies	SEQUP	Systemic Fungal Infections	11-00-00-10-10
ANTIHEMOP	Hemophilia	AM RC	Hemophilia A	85-10-00-10-00
ARALAST	Miscellaneous	BAXTER	Alpha 1 Antitrypsin Deficiency	45-10-00-10-10
ARANESP	Blood Modifiers	AMGEN	Anemia	82-40-10-15-12
AUTOPLEX T	Hemophilia	NABI	Hemophilia	85-10-00-20-00
AVONEX	Multiple Sclerosis	BIOGE	Multiple Sclerosis	62-40-30-60-45
BAYGAM	IGIV	BAYER	Primary Immune Deficiency	19-10-00-50-00
BAYRHO-D	IGIV	BAYER	Primary Immune Deficiency	19-10-00-50-00
BEBULIN VH	Hemophilia	IMMUN	Hemophilia B	85-10-00-30-00
BENEFIX	Hemophilia	GENET	Hemophilia B	85-10-00-28-20
BETASERON	Multiple Sclerosis	BERLX	Multiple Sclerosis	62-40-30-60-50
BIOCLATE	Hemophilia	CENTN	Hemophilia A	85-10-00-10-20
BOTOX	Miscellaneous	ALLERG	Strabismus, Blepharospasm	86-80-70-12-00
CEREDASE	Enzyme Deficiency	GENZM	Gaucher's Disease	82-70-00-20-00
CEREZYME	Enzyme Deficiency	GENZM	Gaucher's Disease	82-70-00-50-00
CERTIVA	Vaccine	NAMVC	Vaccine for DTaP	18-99-00-03-20
COMVAX	Vaccine	MSD	Vaccine for Infant HIB	17-99-00-02-30
COPAXONE	Multiple Sclerosis	HOEMR	Multiple Sclerosis	62-40-00-30-10
COPEGUS	Hepatitis C	ROCHE	Hepatitis C	12-35-30-70-00
CYTOGAM	IGIV	MEDIM	Cytomegalovirus Disease	19-10-00-05-00
DAUNOXOME	Oncology Therapies	NXSTR	Kaposi's Sarcoma	21-20-00-30-05
DOXIL	Oncology Therapies	SEQUP	Kaposi's Sarcoma	21-20-00-40-40
ENBREL	Arthritis	IMMNX	Rheumatoid Arthritis	66-29-00-30-00
ENGERIX-B	Vaccine	SKBEE	Vaccine for Hepatitis B	17-10-00-10-20

EPOGEN	Blood Modifiers	AMGEN	Anemia	82-40-10-20-00
FABRAZYME	Enzyme Deficiency	GENZYME	Fabry's Disease	30-90-36-10-10
FEIBA VH	Hemophilia	IMMUN	Hemophilia	85-10-00-20-00
FERTINEX	Infertility Therapies	SERON	Infertility	30-06-20-90-10
FERTINEX	Infertility Therapies	SERON	Infertility	30-06-20-90-00
FOLL/ANTAGON	Infertility Therapies	ORGAN	Infertility	30-06-99-02-25
FOLLISTIM	Infertility Therapies	ORGAN	Infertility	30-06-20-30-10
FORTEO	Miscellaneous	LILLY	Osteoporosis	30-04-40-70-00
GAMASTAN	IGIV	BAYER	Primary Immune Deficiency	19-10-00-20-00
GAMIMUNE N	IGIV	BAYER	Primary Immune Deficiency	19-10-00-20-10
GAMMAGARD INJ	IGIV	BAXHY	Primary Immune Deficiency	19-10-00-20-10
GAMMAGARD SD	IGIV	BAXHY	Primary Immune Deficiency	19-10-00-20-10
GAMMAR-P IV	IGIV	CENTN	Primary Immune Deficiency	19-10-00-20-10
GENOTROPIN	Growth Hormone	PH&UP	Growth Deficiency	30-10-00-20-00
GEREF	Growth Hormone Releasing Hormone	SERON	Growth Deficiency	94-20-00-87-10
GEREF	Growth Hormone Releasing Hormone	SERON	Growth Deficiency	30-15-00-80-10
GLEEVEC	Oral Oncology Therapies	NOVAR	Chronic Myeloid Leukemia	21-53-40-35-10
GONAL-F	Infertility Therapies	SERON	Infertility	30-06-20-30-05
HAVRIX	Vaccine	SKBEE	Vaccine for Hepatitis A	17-10-00-08-00
H-BIG	IGIV	NABI	Primary Immune Deficiency	19-10-00-10-00
HELIXATE	Hemophilia	CENTN	Hemophilia A	85-10-00-10-20
HELIXATE FS	Hemophilia	CENTN	Hemophilia A	85-10-00-10-20
HEMOFIL M	Hemophilia	BAXHY	Hemophilia A	85-10-00-10-00
HERCEPTIN	Oncology Therapies	GENENTECH	Breast Cancer	21-35-30-70-00
HUMATE-P	Hemophilia	CENTN	Hemophilia A	85-10-00-15-10
HUMATROPE	Growth Hormone	LILLY	Growth Deficiency	30-10-00-20-00
HUMIRA	Arthritis	ABBOTT	Rheumatoid Arthritis	66-27-00-15-00
HYATE:C	Hemophilia	SPEYW	Hemophilia A	85-10-00-10-10
IMMUNE GLOBU	IGIV	AMRED	Primary Immune Deficiency	19-10-00-20-10
INFANRIX	Vaccine	SKBEE	Vaccine for DPT	18-99-00-03-20
INFERGEN	Hepatitis C	AMGEN	Chronic Hepatitis C infection	12-35-30-40-10
INTRON-A	Hepatitis C	SCHER	Cancer and Viral infections	21-70-00-60-20
IRESSA	Oncology Therapies	ASTRAZENECA	Lung	21-53-40-30-00
IVEEGAM	IGIV	IMMUN	Primary Immune Deficiency	19-10-00-20-10
KINERET	Arthritis	AMGEN	Arthritis	66-26-00-10-00
KOATE-DVI	Hemophilia	BAYER	Hemophilia A	85-10-00-10-00
KOATE-HP	Hemophilia	BAYER	Hemophilia A	85-10-00-10-00
KOGENATE	Hemophilia	BAYER	Hemophilia A	85-10-00-10-20
KOGENATE FS	Hemophilia	B PHA	Hemophilia A	85-10-00-10-20
KONYNE 80	Hemophilia	BAYER	Hemophilia	85-10-00-30-00
LEUKINE	Blood Modifiers	IMMNX	Neutropenia	82-40-20-50-00
LEUPROLIDE	Gn RH Analog	EON	Multiple Uses	21-40-50-10-10

LUPRON	Gn RH Analog	TAP	Multiple Uses	21-40-50-10-10
LUPRON DEPOT	Gn RH Analog	TAP	Multiple Uses	21-40-50-10-10
LUPRON DEPOT	Gn RH Analog	TAP	Multiple Uses	21-40-50-10-15
LUPRON DEPOT	Gn RH Analog	TAP	Multiple Uses	21-40-50-10-20
LYMERIX	Vaccine	SKBEE	Vaccine for Lyme Disease	17-20-00-35-00
MONARC M	Hemophilia			
MONOCLATE-P	Hemophilia	CENTN	Hemophilia A	85-10-00-10-00
MONONINE	Hemophilia	CENTN	Hemophilia B	85-10-00-28-00
MYLOTARG	Oncology Therapies	WYETH	Acute myeloid leukemia	21-35-50-30-20
MYOBLOC	Miscellaneous	ATHEN	Cervical Dystonia	74-40-00-20-10
NABI-HB	Miscellaneous			
NEUMEGA	Blood Modifiers	GENET	Severe thrombocytopenia	82-40-30-60-00
NEUPOGEN	Blood Modifiers	AMGEN	Neutropenia	82-40-15-20-00
NORDITROPIN	Growth Hormone	NOVO	Growth Deficiency	30-10-00-20-00
NOVANTRONE	Non Biotech	IMMUNEX	Oncology, Multiple Sclerosis	21-20-00-55-00
NOVOSEVEN	Hemophilia	NOVO	Hemophilia	85-10-00-26-20
NUTROPIN	Growth Hormone	GENEN	Growth Deficiency	30-10-00-20-00
NUTROPIN AQ	Growth Hormone	GENEN	Growth Deficiency	30-10-00-20-00
NUTROPIN DEPOT	Growth Hormone	GENEN	Growth Deficiency	30-10-00-20-00
ONCASPAR	Oncology Therapies	RORER	Lymphoblastic leukemia	21-70-00-10-50
ONTAK	Oncology Therapies	LIGAN	T cell lymphoma	21-70-00-24-00
ORTHOCLONE	Transplant Therapies	ORTBI	Organ Transplant	99-40-50-50-00
OVIDREL	Infertility Therapies	SERON	Infertility	30-06-20-22-05
PANGLOBULIN	IGIV	AMRED	Primary Immune Deficiency	19-10-00-20-10
PEGASYS	Hepatitis C	ROCHE	Hepatitis C	12-35-30-60-05
PEG-INTRON	Hepatitis C	SCHER	Hepatitis C	12-35-30-60-10
PHOTOFRIN	Oncology Therapies	SAN P	Esophagus and lung cancers	21-70-70-70-10
POLYGAM S/D	IGIV	AM RC	Primary Immune Deficiency	19-10-00-20-10
PREVNAR	Vaccine	LDRLE	Vaccine for pneumococcal disease	17-20-00-65-10
PROCRIT	Blood Modifiers	ORTBI	Anemia	82-40-10-20-00
PROFILATE-HT	Hemophilia	ALPHA	Hemophilia	85-10-00-10-00
PROFILNINE	Hemophilia	ALPHA	Hemophilia B	85-10-00-30-00
PROLEUKIN	Oncology Therapies	CHIRO	Renal and Metastatic carcinoma	21-70-30-20-00
PROPLEX T	Hemophilia	BAXHY	Hemophilia	85-10-00-30-00
PROTROPIN	Growth Hormone	GENEN	Growth Deficiency	30-10-00-10-00
PULMOZYME	Respiratory Disease	GENEN	Cystic Fibrosis	45-30-40-20-00
RABAVERT	Vaccine	CHIRO	Rabies Vaccine	17-10-00-70-20
REBETOL	Hepatitis C			12-35-30-70-00
REBETRON	Hepatitis C	SCHER	Chronic Hepatitis C	12-99-50-02-60
REBIF	Multiple Sclerosis	SERONO	Multiple Sclerosis	62-40-30-60-45
RECOMBINATE	Hemophilia	BAXHY	Hemophilia A	85-10-00-10-20
RECOMBIVAX HB	Vaccine	MSD	Vaccine for Hepatitis B	17-10-00-10-20
REFACTO	Hemophilia	GENET	Hemophilia A	85-10-00-10-20
REFLUDAN	Miscellaneous	HOEMR	Heparin Induced thrombocytopenia	83-33-40-50-10

REGRANEX	Miscellaneous	MNEIL	Diabetic Neuropathic ulcers	90-94-50-20-00
REMICADE	Arthritis	CENTOCOR	Crohn's Disease	52-50-50-40-00
REMODULIN	Pulmonary Hypertension	United Therapeutics	Pulmonary Hypertension	40-17-00-80-10
RESPIGAM	Respiratory Disease	MEDIM	Respiratory Syncytial Virus	19-10-00-47-00
RITUXAN	Oncology Therapies	GENEN	Non-Hodgkin's Leukemia	21-35-30-60-00
ROFERON-A	Hepatitis C	ROCHE	Hairy Cell Leukemia, Hepatitis C	21-70-00-60-10
SAIZEN	Growth Hormone	SERON	Growth Deficiency	30-10-00-20-10
SAIZEN	Growth Hormone	SERON	Growth Deficiency	30-10-00-20-00
SANDOGLOBULIN	IGIV	NOVAR	Primary Immune Deficiency	19-10-00-20-10
SEROSTIM	Growth Hormone	SERON	AIDs wasting, Cachexia	30-10-00-20-00
SIMULECT	Transplant Therapies	NOVAR	Organ Transplant	99-40-50-15-00
STIMATE	Hemophilia	CENTN	Hemophilia A, von Willebrand Disease	30-20-10-10-10
SYNAGIS	Respiratory Disease	MEDIM	Preventions of RSV	19-50-20-60-00
TEMODAR	Oral Oncology Therapies	SCHERING	Refractory Anaplastic	21-10-40-70-00
TEVTROPIN	Growth Hormone	TEVA	Growth Deficiency	30-10-00-20-00
THALOMID	Oral Oncology Therapies	CELGENE	Leprosy	99-39-20-70-00
THYMOGLOBULIN	Transplant Therapies	SANGS	Organ Transplant	19-10-00-30-20
THYROGEN	Miscellaneous	GENZYME	Diagnostic	94-20-00-90-10
TOBI	Respiratory Disease	PATHO	Cystic Fibrosis	07-00-00-70-00
TRACLEER	Pulmnary Hypertension	ACTLN	Pulmonary Arterial Hypertension	40-16-00-15-00
TRIPEDIA	Vaccine	PMCON	Vaccine for DPT	18-99-00-03-20
TYPHIM VI	Vaccine	PMCON	Typhoid	17-20-00-80-10
VAQTA	Vaccine	MSD	Vaccine for Hepatitis A	17-10-00-08-00
VARIVAX	Vaccine	MSD	Vaccine for Chickenpox	17-10-00-87-10
VENOGLOBUL-I	IGIV	ALPHA	Primary Immune Deficiency	19-10-00-20-10
VENOGLOBUL-S	IGIV	ALPHA	Primary Immune Deficiency	19-10-00-20-10
VESANOID	Oncology Therapies	ROCHE	Leukemia	21-70-80-80-00
VISTIDE	Infectious Disease Therapies	GILEA	Cytomegalovirus retinitis	12-20-00-10-00
WINRHO SD	IGIV	NABI	Rh isoimmunization suppression	19-10-00-50-00
WINRHO SDF	IGIV	NABI	Rh isoimmunization suppression	19-10-00-50-00
XELODA	Oral Oncology Therapies	Roche	Breast Cancer	21-30-00-05-00
XOLAIR	Respiratory Disease	GENENTECH	Alergic Asthma	44-60-30-60-22
ZENAPAX	Transplant Therapies	ROCHE	Organ Transplant	99-40-50-30-00

Exhibit 2
Business Associate Obligations

In accordance with the Standards for Privacy of Individually Identifiable Health Information ("The Privacy Rule" at 45 CFR part 160 and part 164, subparts A and E) and the Standards for Security of Electronic Protected Health Information at 45 CFR parts 160 and 164, subpart C (the "Security Rule") under HIPAA, to the extent it acts in its capacity as a Business Associate to the Plan, Caremark shall adhere to the applicable requirements established in the Privacy Rule and Security Rules for Business Associates as set forth below. For purposes of this Agreement, Protected Health Information shall have the meaning given such term at 45 CFR 160.103, but limited to that information created or received by Caremark in its capacity as a pharmacy benefit manager (and not as a mail service pharmacy or other health care provider) on behalf of the Plan. Capitalized terms used but not otherwise defined herein, or in the Agreement, shall have the same meaning as such terms are defined in the Privacy or Security Rule.

1. Obligations and Activities of Caremark. Caremark agrees:

1.1. To not use or disclose Protected Health Information other than as permitted or required by this Agreement or by law.
1.2. To use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as permitted by this Agreement.
1.3. To mitigate, to the extent practicable, any harmful effect that is known to Caremark of a use or disclosure of Protected Health Information by Caremark in violation of the requirements of this Agreement
1.4. To report to the Plan, any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.
1.5. To ensure that any agent, including a subcontractor, to whom Caremark delegates any services performed for the Plan under the Agreement and to whom it provides Protected Health Information received from, or created or received by Caremark in connection with this Agreement agrees to the same restrictions and conditions on the use and disclosure of PHI that apply to Caremark with respect to such information.
1.6. Upon the Plan's written request, to provide access, in a reasonable time and manner, to Protected Health Information held by Caremark in a Designated Record Set, to the Plan, or, as directed by Plan, in its written request, to the Individual in accordance with the requirements of 45 CFR 164.524.
1.7. Upon the written request of the Plan, make any amendment(s) to Protected Health Information held by it in a Designated Record Set that the Plan directs or agrees to pursuant to 45 CFR 164.526 in a reasonable time and manner.
1.8. To make its internal practices, books, and records, including policies and procedures relating to the use and disclosure of Protected Health Information received from, or created or received by Caremark, on behalf of the Plan, available upon request to the Secretary of the Department of Health and Human Services for purposes of determining the Plan's compliance with the Privacy Rule. Client shall reimburse Caremark for its actual and reasonable expenses incurred in complying with this Section 1.8.
1.9. To document such disclosures of Protected Health Information made by it and information related to such disclosures as would be required for the Plan to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.
1.10. Upon the Plan's written request, provide to the Plan, or as directed by the Plan in its written request, to an Individual, the information collected in accordance with Section 1.9 of this Exhibit 2, to permit the Plan to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.
1.11. Caremark agrees to use commercially reasonable safeguards to protect against use or disclosure of the Protected Health Information not provided for by the Agreement or this Exhibit 2. Caremark also agrees, to (i) implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic Protected Health Information that it creates, receives maintains, or transmits on behalf of Client; and (ii) report to Plan on a quarterly basis (or such other

periodic basis as mutually agreed to by the parties) any Security Incidents involving electronic PHI of which it becomes aware.

2. Permitted Uses and Disclosures by Caremark. Except as otherwise limited in this Agreement, Caremark may use or disclose Protected Health Information:

2.1 To perform or improve its Services for Client and the Plan, as specified in this Agreement, provided that management and such use or disclosure would not violate HIPAA if done by the Plan.
2.2 For the management and administration of Caremark or to carry out its legal responsibilities, provided that in the case of disclosures for these purposed such disclosures are permitted or required by Law, or Caremark obtains reasonable assurances from the person to whom the Information is disclosed that it will remain confidential and used or further disclosed only as permitted or required by law or for the purpose for which it was disclosed to the person, and that the person will notify Caremark of any instances of which it is aware in which the confidentiality of the information has been breached.
2.3 To provide Data Aggregation services to the Plan as permitted by 45 CFR 164.504(e)(2)(i)(B).
2.4 To report violations of Law to appropriate federal and state authorities, consistent with 45 CFR 164.502(j)(1).
2.5 To de-identify the information in accordance with 45 CFR 164.514(b), which de-identified information may be used and disclosed by Caremark as permitted by law.
2.6 For the treatment, payment or health care operations for other covered entities as permitted by 45 CFR 164.506(c).
2.7 Pursuant to an authorization that meets the requirements of 45 CFR 164.508.
2.8 As otherwise authorized in writing by Client or Plan.

3. Obligations of the Plan. The Plan shall provide Caremark with a written list of those individuals of its workforce that are authorized to receive or access Protected Health Information on its behalf, and to provide reasonable prior written notice to Caremark of any changes to such list. In the absence of such list, Caremark may assume that those individuals of the workforce of Client who request or receive Protected Health Information are performing plan administration activities for the Plan, and are authorized to receive or access Protected Health Information on its behalf.

4. Regulatory References. A reference in this Exhibit 2 to a section in HIPAA means the section as in effect or as amended and for which compliance is required

5. Interpretation. Any ambiguity in this Exhibit 2 shall be resolved to permit the parties to comply with HIPAA.

Exhibit 3
Terms of Use of Name

Caremark International Inc. owns federal trademark registrations for the mark CAREMARK and variations thereof in connection with goods and services in the health care and medical field (the "Caremark Mark"). No use of the Caremark Mark, including use of any of Caremark's logos, is allowed without the prior written permission of Caremark International Inc.

Upon grant of permission to use the Caremark Mark, Client may use the Caremark Mark only in the following manner:

a. CAREMARK is to be used in block letters only;

b. The symbol "®" in superscript shall be placed directly after the Caremark Mark on any usage of the Caremark Mark; and

c. No modifications to font style, orientation or color shall be made to the Caremark Mark that are inconsistent with the depiction of the Caremark Mark.

Within thirty (30) days of notification by Caremark International Inc., or upon termination of this Agreement, Client must cease all use of the Caremark Mark in any form.

Exhibit 4
Audit Guidelines

An audit of the Services is intended to enable Client to confirm that Caremark has complied with its obligations under the Agreement related to administration of the PDD. To accomplish the review in an efficient and timely manner, the following guidelines will apply to the audit process:

Audit Notification Letter

A Client request for an audit of Caremark will be directed to the Client Contract Audit Manager either in writing on Client's letterhead, or by e-mail.

Teleconference

Upon Caremark's receipt of a request for an audit, Caremark will organize and conduct an initial teleconference between Client and Caremark. This teleconference will address the following:

- Individual audit participants
- Requirement and purpose of an approved confidentiality agreement (for use with outside audit firms or other Client representatives, as applicable)
- Onsite requirements
- Mutually established timelines
- Claims tape needs and costs
- Prescription copies: timelines, availability and cost
- Guidelines for acceptable verification of audit questions
- Caremark's right to respond within a reasonable time after questions arise and before audit results are disseminated by the auditor to Client
- Audit Process Confirmation Letter
- Other appropriate issues.

Mutually Agreed Timelines

Client and Caremark will mutually agree upon an audit timeline, taking into consideration individual circumstances and constraints. An example of a standard timeline is as follows (from the time a signed confidentiality agreement is secured):

- Claim tape request – two (2) weeks
- Standard screen prints – two (2) weeks
- Mail service prescription copies – six (6) weeks (cost is typically $5.00 per script copy)
- Audit Report Reply – one (1) month.

1.1. Response to Sampling Questions

The Client can submit to Caremark questions related to provided claim samples. Answers to sampling questions are normally provided within two (2) weeks after the questions have been presented.

1.2. Claims Tape Requests

Claims tape specifications shall be clarified during the initial teleconference and processed in the order of receipt of a signed Confidentiality Agreement. Delivery to the specified party normally takes place within two (2) weeks. The cost typically is $125.00 per month of data.

1.3. Audit Report

In the event of an audit by a third party, Caremark and Client will be provided a copy of any proposed audit report and Caremark will have a reasonable opportunity to comment on any such report before it is finalized.

1.4. Close of Audit

Upon finalization of audit results and agreement between Client and Caremark on any identified financial discrepancies, the period under review will be considered closed.

Exhibit 5
Clinical Service Programs

Caremark will provide the following services if selected by Client for an additional fee as set forth in Exhibit 1.

1. Overrides / Drug Limitations.

A. Rejection of Claims Requiring Coverage Override. Under Caremark's override program, for those drug/Plan Participant situations that are identified as requiring a coverage override, Caremark will reject all Claims submitted unless a specific override written request has been received from Client and entered into Caremark's system.

B. Limitation of Dispensing to Specific Providers. Under Caremark's override program, for those drug/Plan Participant situations requiring specific provider limitations, Caremark will authorize only those Claims submitted by specified providers for which Client has authorized Caremark to enter into Caremark's system.

C. Written Notification from Client. Client will notify Caremark in writing of Plan Participants for whom an authorization has been made for specific drugs or drug classes. Upon entering that specific authorization into Caremark's system, future Claims for that Plan Participant and the specified drug or drug class, as the case may be, will be processed and paid until the expiration of the authorized period.

D. Drug Limitations. Under Caremark's drug limitation program, limitations on drug coverage may be established for specific drugs or drug classes, which are otherwise included in the PDD or are subject to coverage override. Claims for these drugs will be rejected if dispensing the drugs would cause any applicable drug coverage limitation to be exceeded.

E. Limitation on Services. Client acknowledges that Caremark's Override and Limitations programs are automated non-discretionary processing techniques intended to provide better management of Client's drug benefits based on objective criteria and the limited amount of Plan Participant information available to Caremark. Caremark will not undertake, and is not required hereunder, to determine medical necessity, appropriateness of therapies, to make diagnoses or substitute Caremark's judgment for the professional judgment and responsibility of the physician. Any action taken by Caremark authorizing or denying Claims for those drugs requiring coverage override will be made in accordance with written instructions received from Client.

2. Prior Authorization/Formulary Exception ("PA/FE").

Caremark may provide Client with a form of prospective drug utilization review known as the PA/FE Program. Caremark will supply a list of suggested criteria for review, modification, and/or adoption by Client. Client will have final approval over the criteria to be utilized that will be evidenced in writing by Client. Caremark will administer the criteria as approved by Client. No changes will be made to the criteria except pursuant to Client's written request. From time to time, new information on a specific drug therapy will become available. This new information may make it necessary or desirable to modify existing PA/FE criteria. Caremark will notify Client of changes to the criteria. If Client does not wish to accept the proposed changes to the PA criteria, Client agrees to notify Caremark in writing within ten business days and may terminate this program or adopt the customized criteria for a mutually agreed upon fee. Client shall be

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deemed to have approved any proposed changes to the criteria unless it timely notifies Caremark in writing of its objection.

Caremark will accept PA/FE requests from physicians and will approve or deny such requests in accordance with the PA/FE criteria approved by Client. Caremark will make clinical pharmacists available to provide professional support to the PA/FE unit as Caremark determines necessary to evaluate PA/FE requests and clarify Client's PA/FE criteria. Caremark's PA/FE unit will notify the physician who submitted the PA/FE request of the coverage determination for such request.

Approvals will be entered in the appropriate Caremark Claim adjudication system. Caremark's clinical pharmacists will review denials on a regular basis to assist Client in determining whether PA/FE criteria and/or processes warrant modification. Denial reports will be furnished to Client upon request for decisions regarding updates to PA/FE criteria. Reports of approvals and denials will be produced on a quarterly basis and included in quarterly reporting to Client.

Client covenants that under no circumstances shall Caremark be responsible or otherwise liable to Client with respect to any and all Losses arising from or as a result of Caremark's decision to authorize or deny coverage of any drug in accordance with the Plan design, except to the extent that any Losses arise from Caremark's failure to apply the Plan design.

3. On-Line Data Reporting/Editing.

Client may have on-line access to inquire, update Plan Design information, and, if applicable, input Claims. Client may be required to sign an addendum for the use of such services.

4. CustomCare - Retail.

In accordance with the CustomCare – Retail program, Caremark will:

a. Analyze available Plan Participant prescription data, which shall include each Plan Participant's integrated drug history derived from mail service and retail prescriptions. Caremark pharmacist will conduct a comprehensive clinical review of Plan Participant drug history to determine the appropriateness and cost effectiveness of prior drug usage and historical prescribing patterns as identified by Caremark's CustomCare Retail edits and clinical review to identify excessive therapy duration, drug-induced diseases, alternative or appropriate medications for Plan Participant, and possible complications of pre-existing conditions.
b. Based upon the foregoing analysis, provide the Prescriber, as necessary, with a detailed Prescription history of Plan Participant and letter suggesting modifications to a more appropriate drug therapy, including the use of therapeutic or generic equivalents.
c Encourage physician feedback by providing Plan Participant specific response form. All feedback is tracked at a Plan Participant level.
d. Track and monitor Plan Participant for further clinical review and savings calculations.

Caremark guarantees that the gross savings realized from these services over the Term of the Agreement for CustomCare-Retail will be 200% of the expense to Client for these services over the Term. Any additional savings will be equally shared between Caremark and Client. In the event Caremark fails to meet the targeted savings, Client will be credited for any guaranteed savings short-fall following the end of the applicable Term, up to the amount of fees paid by Client for CustomCare – Retail services during the Term.

Savings realized shall be calculated as follows: For each intervention letter sent to a Plan Participant's Prescriber suggesting alternative therapy within a particular therapeutic category, a savings period shall be tracked beginning on the first day of the month following the date of the letter and extending for the lesser of

(A) the average length of therapy for a therapeutic class or (B) three hundred sixty-five (365) days for non-controlled substances and one hundred eighty (180) days for controlled substances. The savings realized shall be the difference between the expected Gross Cost for all products dispensed in the subject therapeutic category to the Plan Participant during the savings period and the actual Gross Cost for all products dispensed in that therapeutic category to the Participant during the savings period, when the actual Gross Cost is less than the expected Gross Cost. "Gross Cost" means the cost to Client for a prescription drug as set forth in this Agreement, inclusive of the discounted drug cost, dispensing fees and Participant Cost Share, but exclusive of any administrative fee and any credits provided to Client in connection with this program. Expected Gross Cost shall be calculated as the Gross Cost that would have been incurred had no letter been sent, based upon the drugs being used within the therapeutic category as of the date of the intervention letter.

5. Performance Rx® Program. Pursuant to the Performance Rx® prescription management program, Caremark and the retail Participating Pharmacies will work together to encourage the use of Preferred Drugs by (i) identifying appropriate opportunities for converting a prescription from a non-Preferred Drug to a Preferred Drug, and (ii) contacting the Plan Participant and the prescriber to request that the prescription be changed to the Preferred Drug. A Preferred Drug is one on the Performance Drug List, which has been developed by Caremark as a clinically appropriate and economically advantageous subset of the Caremark Formulary, as revised by Caremark from time to time.

7. Miscellaneous Services.

A. Client-Specific Programming. If Client requests services or changes to services that require customized programming or systems work, Caremark will attempt to estimate to Client the time and cost for completion of such work. If Client authorizes Caremark to perform such work, Client will pay Caremark the cost of performing such work at Caremark's prevailing rate, or if Caremark must engage an outside vendor for programming, at a rate actually incurred by Caremark for such services.

B. Carrier/Group Rebate Reports on Tape. Caremark will provide Client with a detailed carrier/group Rebate tape through Caremark's standard carrier/group layout.

Exhibit 6
List of Plans (Employer)

City of Plano Pharmacy Benefit Plan

Exhibit 7
APPEALS

Whereas, Client maintains an employee benefit plan providing prescription drug benefits (the "**Plan**");

Whereas, Client and Caremark have entered into that certain agreement, as amended from time to time, under which Caremark is providing prescription benefit management services to Client (the "**Agreement**"); and

Whereas, Caremark and Client desire to have Caremark provide the Appeals Program to Client as part of the Services provided pursuant to the Agreement.

Now, therefore, Client and Caremark agree as follows:

1. Client represents that its Plan is NOT governed by the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**").

2. Client represents and warrants to Caremark that the Appeals Program, as described in Attachment 1 hereto, satisfies any and all Laws applicable to the Plan with respect to appeals from denials of claims for prescription drug benefits. Client shall promptly notify Caremark in writing in the event a Change in Law causes the Appeals Program to be in non-compliance with applicable Laws. Upon such notice, Caremark shall have the option of revising its Appeals Program to be in compliance with such Change in Law or terminating this Addendum.

3. Caremark may from time to time modify the Appeals Program. In the event of any such modification, Caremark shall provide Client with written notice of such modification at least thirty (30) days prior its implementation. If Client determines that any such modification would cause the Appeals Program to be in non-compliance with applicable Laws, Client shall so notify Caremark prior to the end of the thirty-day period. Caremark shall then have the option of further modifying its Appeals Program to be in compliance with applicable Laws or terminating this Addendum. If Client does not so notify Caremark, then Caremark shall implement the modification and shall continue to rely on the representation and warranty set forth in paragraph 2 above.

4. Client represents that it will provide Caremark with a current and accurate copy of the Plan Document. The Plan Document shall be the written document that sets forth the Plan Design and all other information concerning Client's prescription drug benefit plan including, but not limited to, eligibility for such benefits, the benefits to be provided, limitations on such benefits and the Plan's claims and review procedures. Throughout the term of this Addendum, Client, at its expense, will provide Caremark with at least sixty (60) days prior written notice of any amendments to the Plan Document.

5. Caremark will provide Client with Caremark's Appeals Program as described in Attachment 1, subject to change from time to time.

    a. *Review of Benefit Coverage.* Caremark shall conduct appeals relating to eligibility and coverage of prescription drug benefit determinations. Such reviews will be based on the Plan Document provisions and criteria approved by the Plan, with respect to coverage of prescription drug benefits only, and shall not include a review of medical necessity as may be defined under the terms of the Plan Document. With respect to such reviews, Caremark shall have the sole and absolute discretion to interpret the Plan Document and to make factual findings. The decision of

Caremark shall be final, subject to judicial review only for abuse of discretion. Caremark may, in its sole discretion, consider the opinions of additional medical and/or legal experts with respect to interpretation of the Plan Document. Under the Appeals Program, Caremark agrees to be a fiduciary solely for the purpose of reviewing appeals relating to the coverage of prescription drug benefits. Caremark will review appeals in accordance with the rules and procedures established by Caremark to govern appeals from the denials of claims, as may be amended from time to time.

b. *Review of Medical Necessity*. Caremark has contracted with an independent vendor(s) for the processing of appeals resulting from a denial of authorization of pharmacy benefits where the Plan beneficiary is entitled to obtain a review of the denial by an independent physician specialist. Caremark has entered or will enter into an agreement with the independent vendor(s), which provides for an appeals process consistent with the Appeals Program. With respect to such reviews, the independent vendor shall act as a fiduciary and shall have the sole and absolute discretion to interpret the Plan Document and to make factual findings. Caremark shall have no liability for such vendor's actions or decisions. The decision of the independent vendor shall be final, subject to judicial review only for abuse of discretion.

6. As consideration for the services provided hereunder, Client shall pay Caremark the fees set forth in Exhibit 1. Caremark will invoice such Fees in the same manner as set forth in the Agreement, and payment shall be due within thirty (30) days after Client's receipt of each invoice.

7. Client agrees that if Client fails to pay on or prior to the due date any amount owing to Caremark hereunder, Finance Charges shall be imposed on such overdue amount in accordance with the Agreement. In addition, Caremark shall have all rights and remedies for non-payment specified in the Agreement.

Attachment 1

CAREMARK
It all starts with care℠

Prescription Claim Appeal

Program Description

Purpose
To define the prescription appeal process for Plans that, although not subject to ERISA, agree to the same appeals process. As a contracted agent of Client, Caremark will process prescription drug coverage appeals in accordance with federal regulations defined under ERISA.

Definitions

- Appeal
  A written request made by a participant or participant's representative for reconsideration of an adverse determination.
- Denial
  Adverse determination of a prior authorization request or a submitted claim.
- ERISA
  Employee Retirement Income Security Act of 1974, as amended.
- Prescription Benefit Plan
  Client's written plan documentation providing for prescription drug benefits.
- Prior Authorization ("PA")
  Claim for a benefit with respect to which receipt of the benefit requires approval in advance of obtaining medical care. PA requests are usually pre-service
- Post Service
  Claim which the patient has received the medication and is requesting reimbursement.
- Urgent Care
  Claim which the physician specifies as urgent or the plan using judgment of a prudent layperson determines is urgent.

Prior to processing appeals, Caremark and Client enter into a mutually agreed upon written contract, which contract shall be this Addendum. This Addendum defines the requirements for processing appeals on Client's behalf. Client provides Caremark with a copy of its Plan Document and if available the Prescription Benefit Plan that describes the prescription benefits to the participant. Employees of Caremark may not participate in an appeals review if there is a personal, professional or financial conflict of interest with the appealing participant.

Appeal Overview
Once a participant or their representative is notified that a claim is wholly or partially denied, they have the right to appeal.

- The internal appeals process begins in the Caremark or Client's Member Services department. Once a participant or participant's representative (requestor) contacts Caremark with a request to appeal, they are instructed on how to submit an appeal.
- Acceptable submission methods would include fax or mail. In the case of Urgent Care appeals the participant's physician may make the request by phone.

- Appeals for PA denials may be forwarded directly to the Appeals Department as per the directions in the PA denial letters.
- A participant or their representative may submit an appeal to Caremark in writing no later than 180 days after receiving an adverse decision notification.
- Completed appeals forms and supporting documentation are sent directly to the Appeals department for processing.
- Appeals are to be processed within the following time frames from the date complete information is received.

  Prior Authorization 15 days
  Post Service 30 days
  Urgent Care 72 hours
- Initial reviews of appeals are performed based on Client's prescription benefit plan and approved prior authorization criteria.

Information Collection
All received appeals are entered and tracked by a password protected internal database. All data and information received is recorded on the database, kept confidential and filed in a locked cabinet.

Initial Benefit Reconsideration: (1st level)
The Initial Benefit Reconsideration review process includes the consideration of relevant and supporting documentation submitted by and for the requestor. Supporting documentation may include: a letter written by the practitioner in support of the appeal, a copy of the denial letter sent by Caremark, a copy of the participant's payment receipt or medical records, etc.

Upon receipt, the Appeals Analyst reviews and determines appeals relating to non-clinical benefits (e.g. eligibility determinations, copay issues, explicit exclusions under Client's prescription benefit plan). Appeals determinations regarding clinical knowledge (e.g. PA denials) are reviewed by the Appeals Pharmacist. All appeal determinations shall be final subject to any provisions for additional review by Client.

Medical Necessity Appeals / Independent Physician Specialist Review (2nd level)
Caremark has contracted with independent external review organizations ("IRO") to conduct independent specialist physician reviews of denials of authorization of benefits when the Plan participant or beneficiary is entitled to obtain such a review. These reviews will only be performed for denials of Prior Authorization requests upheld on Initial Benefit Reconsideration. An additional request from the participant or their representative must be made for this review to occur.

For such appeals, the following will occur:

- Caremark will forward or cause to have forwarded to the IRO applicable medical records, documentation, Plan language and specific criteria.
- The independent specialist selected by IRO to conduct the review will review documentation received with the case. If IRO considers additional information necessary or potentially useful in its review, IRO may contact the Plan participant's or beneficiary's provider to request such information.
- The independent specialist selected by IRO will review available medical records, review any additional information obtained from the provider, and will write an independent rationale in support of his or her final decision.
- The letter containing the rational will be forwarded to Caremark for communication to the participant or the participant's representative.

Appeal Determination Process

- Reviews are conducted within the applicable time frames listed above for the appeal type
- Appeal forms and associated documentation are stamped with the date and time of receipt.
- The appeal determination is rendered, and pertinent information is entered into the database.
- The determination is then communicated in writing to the participant or the participant's representative.
  - Communication is written in a manner calculated to be understood by the participant or their representative.
  - Communication includes general information that states the decision rendered.
- When the original determination is overturned, the communication explains the basic steps or process that either Caremark or the participant would need to follow.
- When the original determination is upheld, the communication provides the specific reason for the denial, and references the section of the prescription benefit plan on which the denial was based. Additional action may occur solely between the participant and Client.

Confidentiality

- All participant and Client appeal documentation is handled in a confidential manner and in accordance with applicable statutes and regulations to protect the participant's identity and their prescription history.
- To promote confidentiality of participant information, all appeal information becomes a part of a permanent case file. Case files are then:
  - Prepared for each appeal.
  - Retained in a locked filing cabinet.
  - Kept on file at Caremark for a period of two years and off site for an additional five years or longer if required by Law.

Exhibit 8
Performance Guarantees

Unless otherwise indicated with respect to a specific performance standard, Caremark' satisfaction of the proposed performance standards will be:

(i) Monitored internally by Caremark on a monthly basis for all PEBA members utilizing the same process platform, and

(ii) Measured by Caremark on a quarterly basis for all Caremark Clients utilizing the same process platform.

The maximum penalty that Caremark will have at risk for any plan year to PEBA will be $750,000.00 for ongoing guarantees. PEBA is solely responsible for allocating the total amount at risk among its participating groups. PEBA may allocate the total amount at risk at their discretion provided no more than 20% of the total amount at risk is assigned to any one guarantee and the total amount for all guarantees does not exceed $750,000.00. In no event shall the amount that Caremark shall have at risk exceed $750,000 to PEBA and its participating groups in the aggregate.

Caremark shall provide the Performance Guarantee Report Card no later than 90 days after the end of the applicable contract year. Any applicable amounts owed to PEBA will be credited on the month end invoice following the month of the reporting date

In the event Caremark fails to meet the proposed standards, the penalties described above will be the sole and exclusive remedy available to PEBA for such failure.

Guarantees

System Availability. Caremark's online claims processing system will be available for access by Caremark's contracted pharmacies no less than 99% of the time, excluding normal scheduled maintenance, as measured on a quarterly basis. This standard will not apply when Caremark does not have total control over the environment or communication links that impact the claims adjudication process due to third-party involvement. Scheduled maintenance will not be performed during routine pharmacy business hours.

ID Cards Production Turnaround Time. For ongoing eligibility updates, Caremark guarantees that 98% of new plan participants will be mailed ID cards and/or Welcome Booklets within five (5) business days of receipt of a clean, accurate and complete electronic file. For Initial implementations and card re-issues, Caremark guarantees that based on receipt of a clean, accurate and complete electronic eligibility file no later than the 5th day of the month that is prior to the effective date of the Agreement or mutually agreed upon re-issue date, that 98% of enrollees to Caremark will be mailed ID cards and/or Welcome Booklets five (5) days prior to the effective date or re-issue date. This is measured on a Client specific basis.

Account Management Issue Resolution. Caremark guarantees that if any issue cannot be resolved within 2 business days, Caremark will, within 1 business day of receipt by the account manager, provide an estimated time of resolution via electronic or verbal communication to requestor. Participating groups will be responsible for reporting any failure to meet the above stated guarantee to Caremark. This is measured on a Client/Employer specific basis. Should Caremark fail to meet the above-stated for any given contract quarter,

Caremark shall credit Client/Employer $1,000.00 per incident up to a quarterly maximum of $10,000.00 per Employer/client.

Account Management Responsiveness. Caremark guarantees that account service representative will acknowledge receipt of 95% of calls/emails from Client staff within one business day of receipt. Participating groups will be responsible for reporting any failure to meet the above stated guarantee to Caremark. This is measured on a Client specific basis. Should Caremark fail to meet the above-stated for any given contract quarter, Caremark shall credit Client as follows:

Above 95% - no penalty
94%-93% - $2,500
<93% - $5,000.00
No response at all - $1,000 per occurrence.

The total penalty amount in any contract quarter is limited to $10,000.00.

Account Management Satisfaction. A satisfaction survey shall be conducted annually among Client's management team Overall satisfaction ratings of at least 3 on a 5-point scale (5 is best rating) shall be guaranteed. Caremark shall be responsible for survey design, data collection, analysis and all costs associated with conducting the surveys. Upon receipt of written request by the Client, Caremark shall provide details of Account Management Satisfaction performance.

Account Management Client Meetings. During first quarter after the Effective Date, Caremark will be available to meet via conference call with Participating Groups on a minimum of a monthly basis and thereafter on a minimum of a quarterly basis as requested. Upon receipt of written request by the Client, Caremark will provide a report of the client meetings held each quarter.

Mail Service Prescription Accuracy. Caremark's accuracy in dispensing Prescriptions from its assigned mail service pharmacy (correct drug, correct strength, correct dosage form and correct participant) shall be at least 99.90%, as measured on a contract year basis. Upon receipt of written request by the Client, Caremark shall provide details of Mail Service Accuracy performance.

Mail Turnaround Time. Within an average of two (2) working days of receipt, Caremark shall dispense and ship at least 95% of all clean (not requiring intervention or clarification) mail service pharmacy Prescriptions from its assigned mail service pharmacy, as measured on a contract year basis. The average calculation is determined by taking the total number of prescriptions shipped (as recorded by Caremark's systems) multiplied by the number of days these prescriptions took to ship divided by the total number of shipped prescriptions. Upon receipt of written request by the Client, Caremark shall provide details of Mail Turnaround Time performance.

Generic Mail Substitution. At least 90% of total mail service Prescriptions with qualifying generics shall be dispensed with a generic product, where substitution is permitted by applicable law, the plan participant consents, and Caremark is unrestricted in its ability to promote the dispensing of generic drugs as measured on a contract year and Client specific basis. Upon receipt of written request by the Client, Caremark shall provide details of Generic Mail Substitution performance.

Generic Retail Substitution. At least 84% of all Prescriptions with qualifying generics that are dispensed to participants by retail pharmacies in Caremark's network shall be dispensed with a generic product, when the applicable law indicates that therapeutic substitution is appropriate, the plan participant consents and Caremark is unrestricted in its ability to promote the dispensing of generic drugs, as measured on a contract year and client specific basis. Upon receipt of written request by the Client, Caremark shall provide details of Generic Retail Substitution performance.

Plan Participant Satisfaction. Satisfaction surveys shall be conducted during the plan year among Caremark's base of prescription drug benefit plan participants. Survey respondents shall be selected at random from plan participants who have recent experiences with one or more of the following Caremark services: 1) Retail Pharmacy benefits; 2) Mail Service Pharmacy benefits; 3) Customer Care.

Based upon a statistically valid sample, overall satisfaction ratings of at least 90% shall be guaranteed. Caremark shall be responsible for survey design, data collection, analysis and all costs associated with conducting the surveys. Upon receipt of written request by the Client, Caremark shall provide details of Plan Participant Satisfaction performance.

Eligibility Updates. Caremark guarantees 98% of ongoing eligibility updates shall be processed within two (2) working days of receipt of a clean and complete eligibility file. This is measured on a Client specific basis.

Phone Abandonment Rate. Inbound calls to Caremark's toll-free customer service lines shall be answered with an abandonment rate of 4% or less, as measured on a quarterly and Client specific basis. Measurement excludes calls routed to an IVR and excludes calls abandoned by the participant within the first thirty (30) seconds. Upon receipt of written request by the Client, Caremark shall provide details of Phone Abandonment Rate performance.

Phone Average Speed of Answer. Inbound calls to Caremark's toll-free customer service lines shall be answered within an average time of thirty (30) seconds or less. Measurement excludes calls routed to an IVR. This is measured on a Client specific basis. Upon receipt of written request by the Client, Caremark shall provide details of Phone Average Speed of Answer performance.

Electronic Claims Processing Accuracy. Electronic claims processing accuracy for both retail and mail service pharmacies will be at least 99.5% in any contract year for which Client conducts a claims audit as provided in the Audit Rights section of this Agreement. Upon a final and conclusive determination of any discrepancies discovered by such a claims audit, the electronic claims processing accuracy rate shall be calculated based upon the following formula: ((total number of electronic retail and mail service paid claims processed in sample) - (number of electronic retail and mail service paid claims processed incorrectly in sample)) / (total number of electronic retail and mail service paid claims processed in sample). This is measured on a Client specific basis.

Participating Retail Pharmacy Access. Subject to the availability of any active retail pharmacy within the specified area, Caremark's retail national network shall include a pharmacy within ten (10) miles of the residence of at least 90% of Participants, when Participants have an active retail pharmacy within ten (10) miles of their residences, as

measured on a contract year and client specific basis. Upon receipt of written request by the Client, Caremark shall provide details of Participating Retail Pharmacy Access performance.

Plan Administration Accuracy. With written Client sign-off of the accuracy of Client plan design and/or requested changes and testing, including all required documentation, Caremark guarantees that Client's Plan Design changes will be implemented within 5 business days with 100% accuracy excluding pricing changes and special projects which require IT intervention. Client will be responsible for reporting any failure to meet the above stated guarantee to Caremark on an annual basis. This is measured on a Client specific basis.

Exhibit 9
Rx Navigator

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1. **Grant of License.**

a. Subject to the terms and conditions of this RxNavigator License (the "License"), Caremark hereby grants to Client a non-exclusive, non-transferable license for up to five (5) concurrent users, all of whom shall be employees of Client, to use the computer program known as "RxNavigator Web" (the "Program"), as well as the manuals and any other printed or digital material or CD or diskette used in connection with the Program ("Related Documents"), on any computer, server or network owned by Client and at the designated location, which for purposes of this License, is Client's corporate office. Client may use the Program and/or the Related Documents solely for Client's internal business purposes consistent with the requirements and limitations of this License. Client is granted no rights to modify, reproduce, or distribute the Program and/or the Related Documents for use on any computer system other than those designated in this provision. Client may not copy the Program and/or the Related Documents, nor may Client download or transmit the Program, electronically, via disk or via any other means, and/or the Related Documents except as provided for by this License. Client acknowledges that it may not reverse, engineer, decompile, dissemble or otherwise derive source code from the Program and/or the Related Documents. Client acknowledges that it may not provide any unlock code to any person not authorized to use the Program by this License. Client acknowledges that it may not alter or remove any copyright or proprietary rights notice or identification, which indicates Caremark's ownership of any part of the Program and/or the Related Documents.

b. Client shall comply with all terms and conditions for use of the Program and/or the Related Documents and access thereto as may be posted by Caremark from time to time on the Website or otherwise distributed or provided by Caremark to Client.

c. Client shall: (i) adopt and enforce such internal policies, procedures and monitoring mechanisms as are necessary to ensure that the Program and/or the Related Documents are used only in accordance with the terms of this License; (ii) not permit any third party to use or have access to the Program and/or the Related Documents, whether or not for consideration; (iii) take all steps necessary to ensure that no person or entity will have unauthorized access to the Program and/or the Related Documents, including policies concerning password protection; (iv) immediately notify Caremark in the event of termination of any employee with password access to the Program and/or the Related Documents; and (v) provide such assistance to Caremark as is requested by Caremark in the investigation and prosecution of any unauthorized use or disclosure, which investigation and prosecution shall be at the expense of Caremark unless such use or disclosure is due to Client's breach of this License.

d. Client is responsible for acquiring the following hardware listed on Schedule 1 attached hereto and for establishing connectivity.

e. To the extent that is commercially practicable, Client shall use all reasonable efforts to prevent unauthorized reproductions of the Program and/or the Related Documents.

2. **Intellectual Property**.
Client acknowledges and agrees that Caremark and its Licensors have and will retain all right, title, interest and ownership in and to the Intellectual Property associated with the Program and/or the Related Documents, including, but not limited to, the trademarks, copyrights, patents and trade secrets. Client acknowledges that the Program and/or the Related Documents include products licensed by

Caremark from MicroStrategy Incorporated ("MicroStrategy") and other third parties (together with MicroStrategy, the "Licensors"), and that the Program and/or the Related Documents constitutes proprietary information and trade secrets of Caremark and its Licensors. Client shall comply with the applicable licensing terms established by the Licensors, and with such additional terms and conditions not inconsistent with this License, as are provided to Client from time to time.

3. Use of the Program and Data.

a. Client acknowledges that it shall be allowed to generate up to an aggregate of 200 reports per calendar month

b. Claims data is available on-line for the current calendar year and the prior two (2) calendar years and is archived thereafter. Storage is available for a period exceeding the foregoing at Caremark's prevailing rate. Data, which has been archived, can be made available to Client for on-line query purposes upon thirty (30) days notice and at Caremark's prevailing rate. Client acknowledges that not all data has been archived by Caremark.

c. Client acknowledges and agrees that: (i) Client retains ownership of all prescription drug records and other data, information and reports obtained or generated by Client through the use of the Program ("Data"); (ii) the Program, Related Documents and the Data shall be maintained in strict confidence by Client; (iii) Client may use the Program, Related Documents and the Data only for internal reporting, research, analysis, or cost comparison purposes and for Client's internal decision-making and planning; (iv) Client shall not, directly or indirectly, sell, transfer, license or disclose the Data to any third party or to any entity controlling, controlled by, or under common control with Client; and (v) Client shall not use any Data for the purpose of soliciting any Caremark client, for any other purpose adverse to Caremark's business interests, or for any other purpose except as designated by this License.

4. Training, Maintenance and Support Services.

a. Caremark shall provide one day of initial training for up to five (5) users at Caremark's corporate headquarters. Client shall be responsible for the cost of any training for additional users at Caremark's prevailing rate plus any travel and other related expenses.

b. Caremark shall provide telephone support through Caremark's Help Desk for up to twenty-four (24) inquiries per year relating to functional and technical issues from 6:00 a.m. to 6:00 p.m., Central Standard Time. Caremark shall provide support in excess of twenty-four (24) inquiries per year at Caremark's prevailing rate.

c. Consulting services are available upon Client's request at Caremark's prevailing rate. Consulting services include service in excess of the initial training and support services provided to Client hereunder, on-site services and providing any customized service. Client shall be responsible for all travel and expenses for any on-site services.

5. Term and Termination.

The license granted to Client pursuant to this License, will commence on the date hereof and continue thereafter for the Term of the prescription Benefit Services Agreement unless earlier terminated as provided herein. This License shall immediately terminate, without further notice to Client, if Client breaches or violates any term of this License and fails to correct such breach or violation to the satisfaction of Caremark within ten (10) days after receiving notice of such breach or violation. Upon

such termination, Client agrees to cease all use of the Program and all Related Documents, delete the Program and all Related Documents from any hard drive and/or network and destroy the Program and all Related Documents. In furtherance of the foregoing, Client shall, promptly upon any such termination, destroy or cause to be destroyed any and all physical and electronic embodiments of the Program and all Related Documents which may be in its possession or in the possession of any of its agents or subcontractors, and shall certify such destruction to Caremark. Upon termination of this License, the rights and licenses granted to Client pursuant to this License will automatically terminate and Client shall immediately cease any and all use of the Program, Related Documents and any Confidential Information as designated herein.

6. Disclaimer of Warranties.

CAREMARK MAKES NO EXPRESS OR IMPLIED WARRANTIES IN ANY WAY NOR DOES IT REPRESENT THAT THE FUNCTIONS CONTAINED IN THE PROGRAM AND/OR THE RELATED DOCUMENTS WILL MEET LICENSEE'S REQUIREMENTS OR THAT THE OPERATION OF THE PROGRAM WILL BE UNINTERRUPTED OR ERROR FREE. ALL WARRANTIES RELATING TO THE PROGRAM OR THE OPERATION OR USE THEREOF, EXPRESS OR IMPLIED, ARE HEREBY EXCLUDED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ANY WARRANTY ARISING FROM USAGE OF TRADE OR COURSE OF DEALING OR ANY WARRANTY THAT THE PROGRAM WILL BE UNINTERRUPTED OR ERROR FREE. Client IS EXCLUSIVELY RESPONSIBLE FOR THE RESULTS OBTAINED FROM ITS USE OF THE PROGRAM.

7. Limitation of Remedies.

Client acknowledges and agrees that it has independently verified that the Program and/or the Related Documents are appropriate for the purposes for which Client intends to use it. NEITHER CAREMARK NOR ITS LICENSORS SHALL BE LIABLE FOR ANY DAMAGE OR LOSS, WHETHER DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL (INCLUDING LOST PROFITS), RELATING TO THE PROGRAM AND/OR THE RELATED DOCUMENTS, EVEN IF CAREMARK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8. Indemnification.

Caremark will indemnify Client from and against any liability to third parties to the extent arising from a claim that the Program and/or the Related Documents infringes upon any third party's U.S. patent or copyright, provided Client: (i) promptly gives Caremark written notice of the claim; (ii) gives Caremark full authority, information and assistance to defend such claim; and (iii) gives Caremark sole control of the defense of such claim and all negotiations for the compromise or settlement thereof. THE PROVISIONS OF THIS SECTION 8 STATE EACH PARTY'S ENTIRE LIABILITY AND OBLIGATION (EXPRESS, STATUTORY, IMPLIED OR OTHERWISE) WITH RESPECT TO INTELLECTUAL PROPERTY INFRINGEMENT, OR CLAIMS THEREFORE.

9. Limitation of Liability.

To the maximum extent allowable by law, and notwithstanding anything to the contrary in this License, Caremark will not be liable for any special, incidental, indirect or consequential damages, including but not limited to damages for loss of profits or confidential or other information, legal malpractice, business interruption, personal injury, loss of privacy, failure to meet any duty including that of good faith or of reasonable care, negligence, and any other loss, pecuniary or otherwise, that may arise out of use, misuse or the inability to use the Program and Related Documents, or arising in any way, even if Caremark has been advised of the possibility of such damages. Client acknowledges

that Caremark is not engaged in rendering legal or other professional advice and this Program and documentation are not a substitute for the advice of an attorney.

10. Sublicense.

Client acknowledges that it does not have the right to sublicense any of the rights granted by this License. Client further acknowledges that it may not rent or lease the Program and/or the Related Documents to others for any purpose.

11. Confidentiality.

Client acknowledges that the Program and Related Documents constitute valuable proprietary products and trade secrets of Caremark embodying substantial confidential information, ideas and expressions. Confidential information means written, oral or technical information and shall include, but is not limited to, the Program, whether in source code or object code format, the Related Documents, business records, business plans, marketing plans; web site concepts; financial statements; customer lists and records; trade secrets; products; inventions; product design information; pricing structure, discounts and costs; computer programs and listings; trademarks, copyrights and any other intellectual property; and, any other proprietary information, and any other information disclosed by Caremark and identified as "confidential" or "proprietary." Caremark shall have and will retain all right, title, interest and ownership in and to the Confidential Information. Client agrees that any Confidential Information disclosed pursuant to this Letter shall be safe-guarded with the same degree of care used to protect Client's own confidential information, but in no event less than a reasonable degree of care. Confidential Information will not be disclosed to a third party without the prior written consent of Caremark. In the event of a breach of this provision by Client, then Client shall reimburse Caremark for its reasonable legal fees and expenses incurred in enforcing this provision. Client acknowledges and agrees that Client will observe complete confidentiality as to all aspects of the Program, and the Related Documents, including without limitation, agreement not to disclose or otherwise permit any other individual or business not subject to the License with Caremark any access to, in any manner, the Program or any part of it or the Related Documents in any form whatsoever. Client further agrees to notify Caremark promptly and in writing of any circumstances surrounding use of the Program or any part of it or the Related Documents by any individual or business not subject to a license with Caremark. Client further agrees that it will not, directly or indirectly, (a) use any Confidential Information for any purpose, (b) keep or make copies of any documents, records, or property of any nature whatsoever containing any Confidential Information, or (c) assist any third party in engaging in any of the foregoing, except as necessary to comply with the terms of this License or as explicitly approved in advance in writing by Caremark.

Notwithstanding the foregoing, Confidential Information may be disclosed by Client in response to a request made pursuant to an applicable state Public Records Law, insofar as disclosure is required by that Law. Client shall provide Caremark with (i) notice of its intent to disclose Confidential Information and (ii) an opportunity for Caremark to object to such disclosure in accordance with Law. Caremark acknowledges that PEBA and the Participating Groups are subject to the Texas Public Information Act, Chapter 522, Texas Government Code.

12. Security and Notification.

Client agrees to use all Confidential Information, to the extent permitted under this License, under carefully controlled conditions in accordance with this License. Client shall inform all of its employees who are given access to any Confidential Information by Client that the Confidential

Information represents confidential trade secrets of Caremark. Client agrees that it will inform each of its employees working with, or having access to, any Confidential Information of its confidentiality obligations hereunder. In the event Client discovers any unauthorized access by a third party to any Confidential Information, or any attempt at such access, Client shall provide written notice of such occurrence to Caremark, specifying the factual circumstances giving rise to the access or attempt, the nature of the Confidential Information affected and the security measures taken to prevent similar access or attempts. Upon Caremark's request, Client shall take all other reasonable steps necessary to recover, or to prevent similar access or attempts to access, the Confidential Information involved. The cost of taking any and all such steps shall be borne solely by Client. Client acknowledges that any breach of any of its obligations under this provision will cause irreparable harm to Caremark, and accordingly, Client agrees that, in such event, Caremark shall be entitled to equitable relief to protect its interests, including but not limited to preliminary and permanent injunctive relief, as well as money damages.

13. Employees.

Any failure of any of Client's employees or agents to comply with the terms of this License, or any act or omission by any of Client's employees or agents that, if committed by Client, would constitute a breach of this License, shall be deemed to be a breach of this License by Client and be the responsibility of Client.

14. Binding Effect; Assignment.

This License shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and permitted assigns. MicroStrategy is a third party beneficiary of this License. Client may not assign this License or any of its rights or obligations hereunder without the prior written consent of Caremark. Any such attempted assignment by Client without the written consent of Caremark shall have no force and effect.

15. Survival.

Sections 1(c)(v), 2, 3(c), 6, 7, 8, 9, 11 and 12 of this Exhibit shall survive the termination of this License.

Exhibit 9
RxNavigator

SCHEDULE 1

Web Client Hardware:

Requirement	Minimum for Pure HTML Interface
Processor	486 MHz or higher
RAM	16 MB

Recommended	Minimum for Pure HTML Interface
Processor	500 MHz or higher
RAM	64 MB

Web Client Software:

- At a minimum, browser must support HTML tables and cookies.
- Recommended browsers include full CSS and DHTML support.
- Recommended resolution for the browser monitor is 1024 x 768 or higher with 256 color palette minimum.
- Any spreadsheet application that supports CSV file type can be used as an export alternative to Microsoft Excel.

Web Client Operating System:

Operating System	Status
Windows XP Professional Edition	Certified-US English only
Windows 2000 (Professional, Server, Advanced Server)	Certified
Windows 98 (Latest service release)	Certified
Win NT 4.0 (Workstation, Server)	Certified

Web Client Browser:

Browser	Status
Microsoft Internet Explorer 6.0	Certified
Microsoft Internet Explorer 5.5 SP2	Certified
Microsoft Internet Explorer 5.5 SP1	Certified
Microsoft Internet Explorer 5.5	Certified
Microsoft Internet Explorer 5.01 SP2	Certified
Microsoft Internet Explorer 4.01	Certified
Netscape Navigator 4.7x	Certified

Export Applications:

Application	Status
Microsoft Office 2000 SR1	Certified
Microsoft Office 97	Certified (no support for exporting graph reports or report formatting)

Exhibit 10
Affidavit of No Prohibited Interest

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

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

_____
Name of Contractor

By: _____
Signature

_____
Print Name

_____
Title

_____
Date

Exhibit 11
Insurance

City of Plano
Contractor Insurance Requirements and Agreement

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

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

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

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

A PURCHASE ORDER WILL NOT BE ISSUED WITHOUT EVIDENCE OF INSURANCE.

AGREEMENT

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

Project/Bid #: _____

Company: _____

Printed Name: _____

Vendor # (if applicable) _____

Signature: _____

Date: _____

Return Signed Form
to: _____

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:	**12/11/06**	Reviewed by Legal	☐ Yes	☒ Not Applicable
Department:	Parks and Recreation		Initials	Date
Department Head	Don Wendell	Executive Director		12-1-06
Dept Signature:	Don Wendell	City Manager		12/1/06
Agenda Coordinator (include phone #):	**Linda Benoit**			

ACTION REQUESTED: ☐ ORDINANCE ☐ RESOLUTION ☐ CHANGE ORDER ☐ AGREEMENT ☐ APPROVAL OF BID ☐ AWARD OF CONTRACT ☒ OTHER PURCHASE OFF PISD CONTRACT #3708/CITY OF PLANO INTERLOCAL AGREEMENT CONTRACT #2007-43-1

CAPTION

Approval of the purchase and installation of infield conditioner in the amount of $47,300 from Masterturf Products through an existing contract/agreement with PISD, and authorizing the City Manager or his designee to execute all necessary documents. PISD Contract #3708/City of Plano Interlocal Contract #2007-43-I.

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☒ OPERATING EXPENSE ☐ REVENUE ☐ CIP

FISCAL YEAR: **2006-07**	**Prior Year (CIP Only)**	**Current Year**	**Future Years**	**TOTALS**
Budget	0	340,355	0	**340,355**
Encumbered/Expended Amount	0	-39,904	0	**-39,904**
This Item	0	-47,300	0	**-47,300**
BALANCE	0	253,151	0	**253,151**

FUND(S): **GENERAL FUND AND RECREATION REVOLVING FUND**

COMMENTS: Funding for infield maintenance and improvement is available in the FY 2006-07 approved budget for Heritage Yards fields. Remaining funds will be used for other contractual items.

STRATEGIC PLAN GOAL: This item relates to the City's Goal of "Premier City in Which to Live."

SUMMARY OF ITEM

Staff recommends purchase of infield conditioner from Masterturf Products through Interlocal Contract #2007-43-I.

The infield conditioner will be installed on Heritage Yards fields 6-9. This same product was installed on Heritage Yards fields 1-5 in 2005. Staff and users have found the product to be superior to traditional clay products for playability and recovery after rain. The price also includes installation.

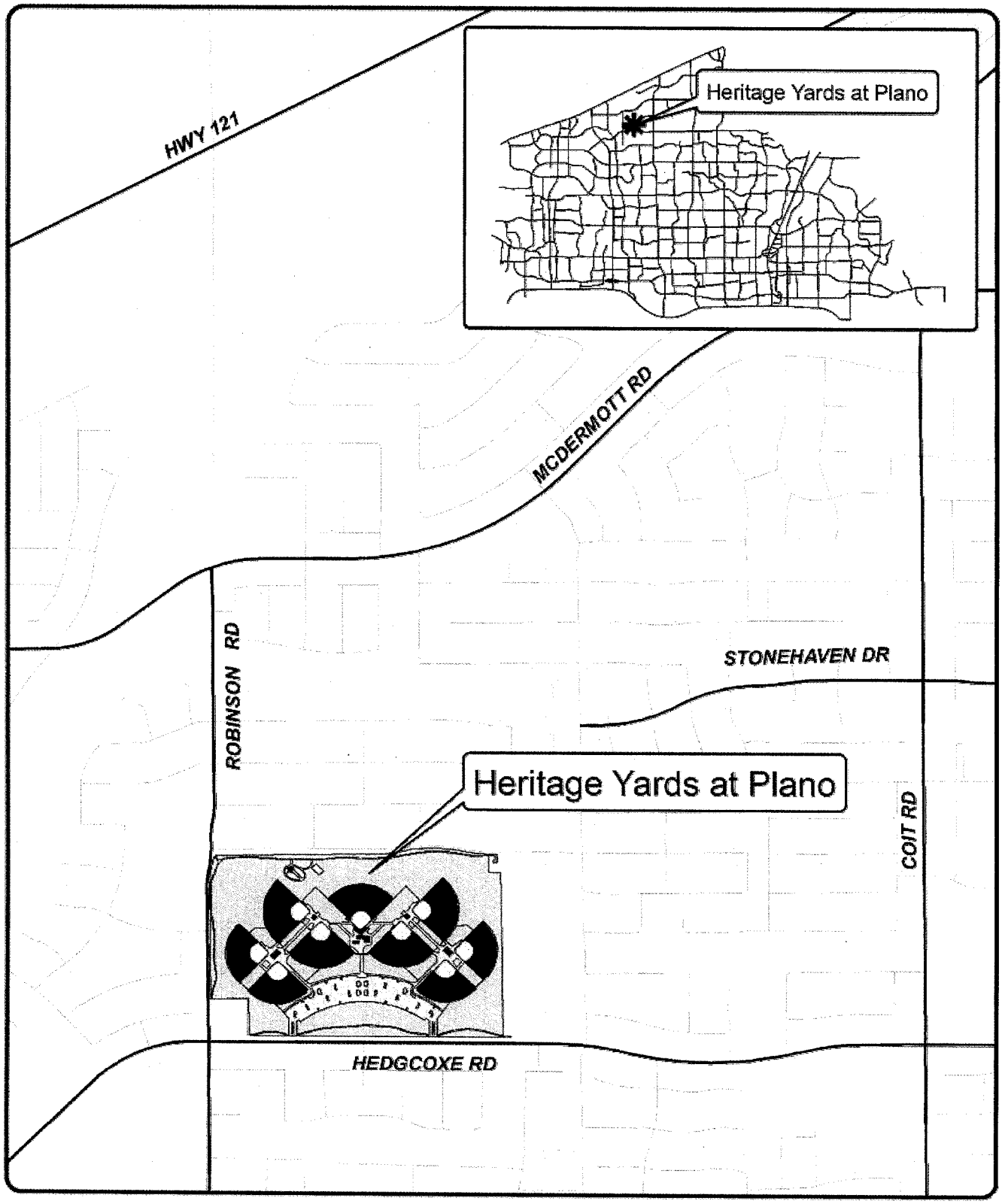
List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
Location Map	

REV 08/98 h-1

Park Planning Division
City of Plano, Texas

Location Map

Heritage Yards at Plano



1,000 500 0 1,000 Feet

h.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:	12/11/06	Reviewed by Legal	☒ Yes	☐ Not Applicable
Department:	Purchasing		Initials	Date
Department Head	Mike Ryan	Executive Director		
Dept Signature:	Diane Palmer for	City Manager	RA	12/4/06
Agenda Coordinator (include phone #):	January Cook X7376			

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

CAPTION

Approval of contract by and between the City and JCW Electronics I Ltd., L.L.P., doing business as JCW Electronics Inc., for Jail Inmate Telephone System, and authorizing the City Manager or his designee to execute all necessary documents (RFO No. 2006-197-C).

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☐ OPERATING EXPENSE ☒ REVENUE ☐ CIP

FISCAL YEAR: 2006-07	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0

FUND(S): GENERAL FUND (01)

COMMENTS: This revenue contract approves a three year contract, with an optional one year renewal, for a jail inmate telephone system, and also generates revenues for the City of Plano, based on gross billable revenues. The projected revenue to be received in FY 2006-07 is $33,500. This amount is included in the approved 2006-07 Budget.

STRATEGIC PLAN GOAL: A jail inmate telephone system which generates revenues relates to the City's goal of "Service Excellence".

SUMMARY OF ITEM

Staff recommends offer of JCW Electronics Inc. I Ltd., L.L.P., doing business as JCW Electronics, be accepted as the best offer received in response to RFO No. 2006-197 for Jail Inmate Telephone System & Percentage of Commission on Gross Billable Revenue, conditioned upon timely execution of any necessary contract documents. This will establish a three year contract with one City optional one year renewal. This will be a revenue generated contract.

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

CITY OF PLANO

Request for Offer No. 2006-197-C
RFP – Jail Inmate Telephone System & Percentage of Commission on Gross Billable Revenue

RECAP

Opening Date/Time: August 21, 2006 @ 3:30pm

Number of Vendors Notified: 1,604

Vendors Submitting "No Response": None

Vendors Submitting Proposal	Final Combined Evaluation Score
AGM Telecom	4.47
Evercom	4.67
Infinity Networks	4.68
Inmate Communications Corporation	4.62
JCW Electronics I LTD., L.L.P.	4.88

Recommended Vendor	Percent of Commission
JCW Electronics I LTD., L.L.P.	52%

January M. Cook

January M. Cook, CPPB
Senior Buyer
Purchasing Division

November 30, 2006
Date

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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:	12/11/06	Reviewed by Legal	☐ Yes	☒ Not Applicable
Department:	Engineering Department		Initials	Date
Department Head	Upchurch	Executive Director		12/1/06
Dept Signature:	Alan L Upchurch	City Manager		12/1/06
Agenda Coordinator (include phone #):	Irene Pegues (7198)			Project No. 5281

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 agreement by and between the City and Alliance Geotechnical Group, Inc. in the amount of $26,894.16 for material testing on the Plano Parkway – Tollroad to Park Boulevard and West Plano Quiet Zone Improvements and authorizing the City Manager or his designee to execute all necessary documents.

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☒ CIP

FISCAL YEAR: 2006-07	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	6,850	2,330,150	0	**2,337,000**
Encumbered/Expended Amount	-6,850	-2,330,150	0	**-2,337,000**
This Item	0	-26,894	0	**-26,894**
BALANCE	**0**	**-26,894**	**0**	**-26,894**

FUND(S): STREET IMPROVEMENT CIP

COMMENTS: Funds are included in the 2006-07 Street Improvements CIP. This item, in the amount of $26,894, will exceed the current year balance by $26,894 for the Plano Parkway – Tollway to Park project. The overage will be funded through savings and reallocation from the Dominion – Headquarters to Hedgcoxe project.

STRATEGIC PLAN GOAL: Arterial Concrete Repair relates to the City's Goal of Safe, Efficient Travel.

SUMMARY OF ITEM

This agreement with Alliance Geotechnical Group, Inc. is for engineering material testing for Plano Parkway – Tollroad to Park Boulevard and West Plano Quiet Zone Improvements. The contract fee is for $26,894.16.

Funding is available from the Street Improvement Community Investment Program. Staff feels the fee is reasonable for this project.

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
Location Map	N/A
Exhibit "C"	

EXHIBIT "C" SCHEDULE OF FEES
FOR
CONSTRUCTION MATERIALS ENGINEERING & TESTING
PLANO PARKWAY, TOLLWAY TO PARK BLVD PLANO,TEXAS PROPOSAL NO. P06-1037CR

DESCRIPTION OF SERVICES	QUANTITY		UNIT FEE	UNIT	FEE
A. SUBGRADE TESTING & INSPECTION					
• Moisture/Density Relationship of Soils (ASTM D-698)	6	@	$135.00	each	$810.00
• Atterberg Limits	6	@	$45.00	each	$270.00
• Sr. Engineering Tech to perform field density testing	78	@	$37.50	hour	$2,925.00
• Lime Series (5 point Atterberg Limit method)	4	@	$220.00	each	$880.00
• Lime Treated Subgrade Gradations (3 test min per trip)	15	@	$25.00	each	$375.00
• Project Manager	4	@	$65.00	hour	$260.00
• In-Place Density Test* (ASTM D2922) (3 test min per trip) (1 FDT per 300 LF)	108	@	$20.00	each	$2,160.00
• Project Manager for Pre-con Meeting	2	@	$65.00	hour	$130.00
• Vehicle Charge	15	@	$25.00	trip	$375.00
				Estimate	**$8,185.00**
B. CONCRETE TESTING & INSPECTION					
• Concrete Test Cylinders	224	@	$14.50	each	$3,248.00
• Sr. Engineering Tech to perform field concrete testing	178	@	$37.50	hour	$6,675.00
• Sr. Engineering Tech - Overtime	32	@	$46.88	hour	$1,500.16
• Concrete Thickness Cores (as needed) 4 core min per trip, 2" dia by 6" depth		@	$45.00	each	$0.00
• Concrete Core Penetration Charge for depths greater than 6"		@	$6.00	inch	$0.00
• Concrete Mix Design Review		@	$75.00	hour	$0.00
• Project Manager	4	@	$65.00	hour	$260.00
• Vehicle Charge	52	@	$25.00	trip	$1,300.00
				Estimate	**$12,983.16**
C. UTILITY BACKFILL TESTING & INSPECTION					
• Moisture/Density Relationship of Soils (ASTM D-698)	2	@	$135.00	each	$270.00
• Atterberg Limits	2	@	$45.00	each	$90.00
• In-Place Density Test* (ASTM D2922) (3 test min per trip) (1 FDT per 300 LF)	52	@	$20.00	each	$1,040.00
• Concrete Test Cylinders for Inlets, etc.(4 per set)	48	@	$14.50	each	$696.00
• Sr. Engineering Tech to perform field density testing	80	@	$37.50	hour	$3,000.00
• Project Manager	2	@	$65.00	hour	$130.00
• Vehicle Charge	20	@	$25.00	trip	$500.00
				Estimate	**$5,726.00**

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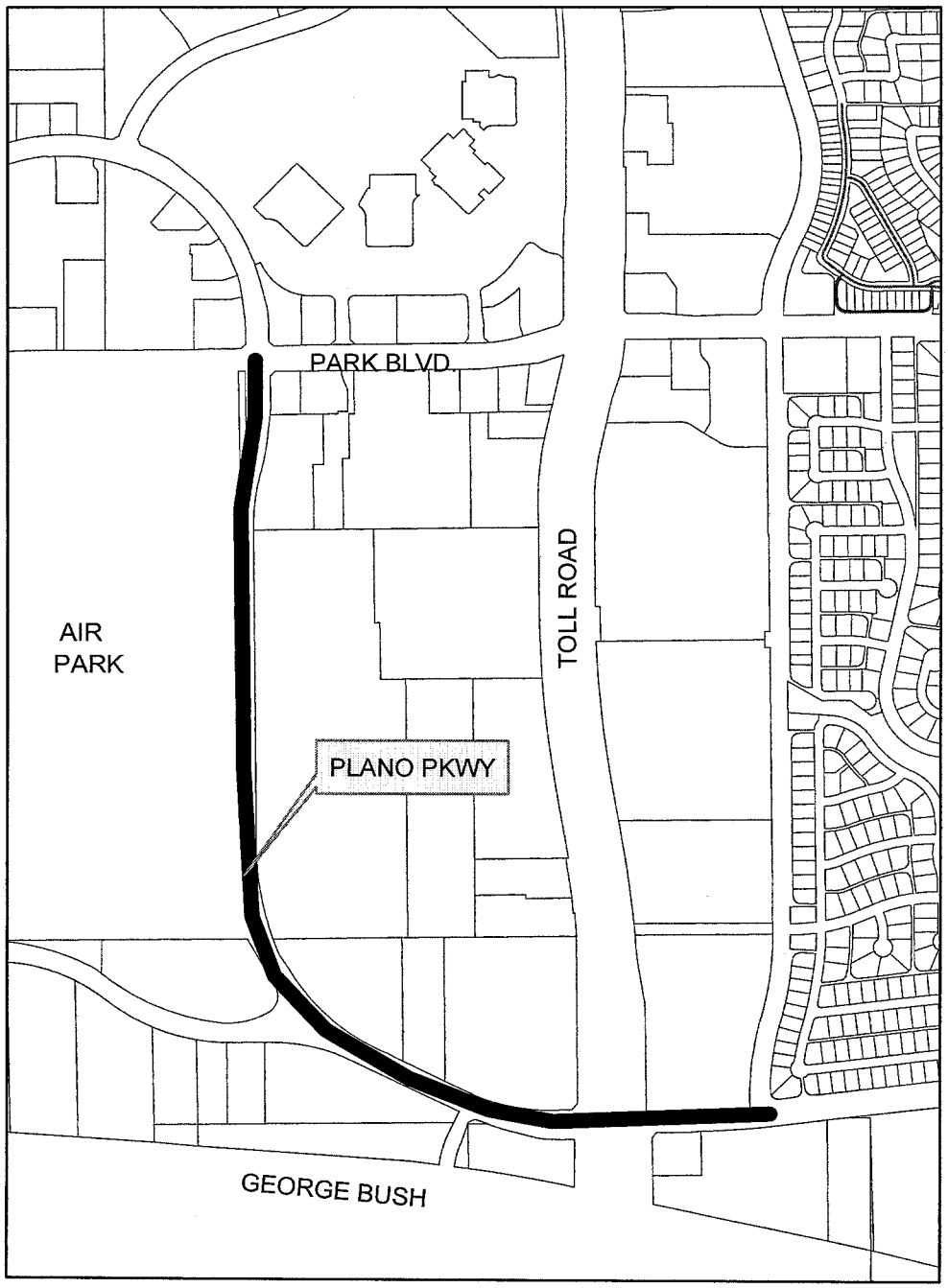
EXHIBIT "C" SCHEDULE OF FEES
FOR
CONSTRUCTION MATERIALS ENGINEERING & TESTING
PLANO PARKWAY, TOLLWAY TO PARK BLVD PLANO,TEXAS PROPOSAL NO. P06-1037CR

DESCRIPTION OF SERVICES	QUANTITY	UNIT FEE	UNIT	FEE
D. DRILLED PIER INSPECTION & TESTING (AS NEEDED)				
• Sr. Engineering Tech to perform field density testing	@	$37.50	hour	$0.00
• Concrete Test Cylinders for Inlets, etc.(4 per set)	@	$14.50	each	$0.00
• Project Manager	@	$65.00	hour	$0.00
• Vehicle Charge	@	$25.00	trip	$0.00
			Estimate	**$0.00**
		TOTAL ESTIMATE		**$26,894.16**

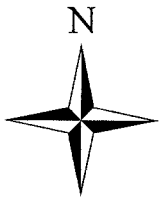
NOTES:

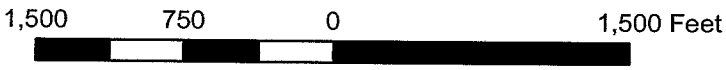
1. Overtime rates of 1.25 times the regular hourly rate will be charged for hours worked over eight (8) hours per day Monday thru Friday or any time before 6:00 a.m. or after 6:00 p.m. Service performed on Saturdays will also be billed at 1.25 times the regular hourly rate. Services performed on recognized holidays and Sundays will be billed at 2.0 times the regular hourly rate.
2. All laboratory test fees are F.O.B. our laboratory; additional charge for sample pickup may apply.
3. Any additional tests will be billed on a hourly rate and charged at the applicable rate, portal-to-portal.
4. Additional test not specified in this proposal will be quoted upon request.
5. This proposal does not include any technician stand-by, non-readiness charges, and/or trips or re-tests of the previous failing tests.
6. The above does not include any field density testing of Franchise Utilities.
7. The above unit rates are based on the following assumptions:
   * all concrete to be placed during day time hours.
   * Drilled pier inspection is on an as needed basis.
   * One set of cylinders are to be made for paving every 150 cyd or fraction thereof.
   * Field Density tests are to be made at every turn lane and every 300 lf

PLANO PKWY. - PARK BLVD. TO TOLL ROAD



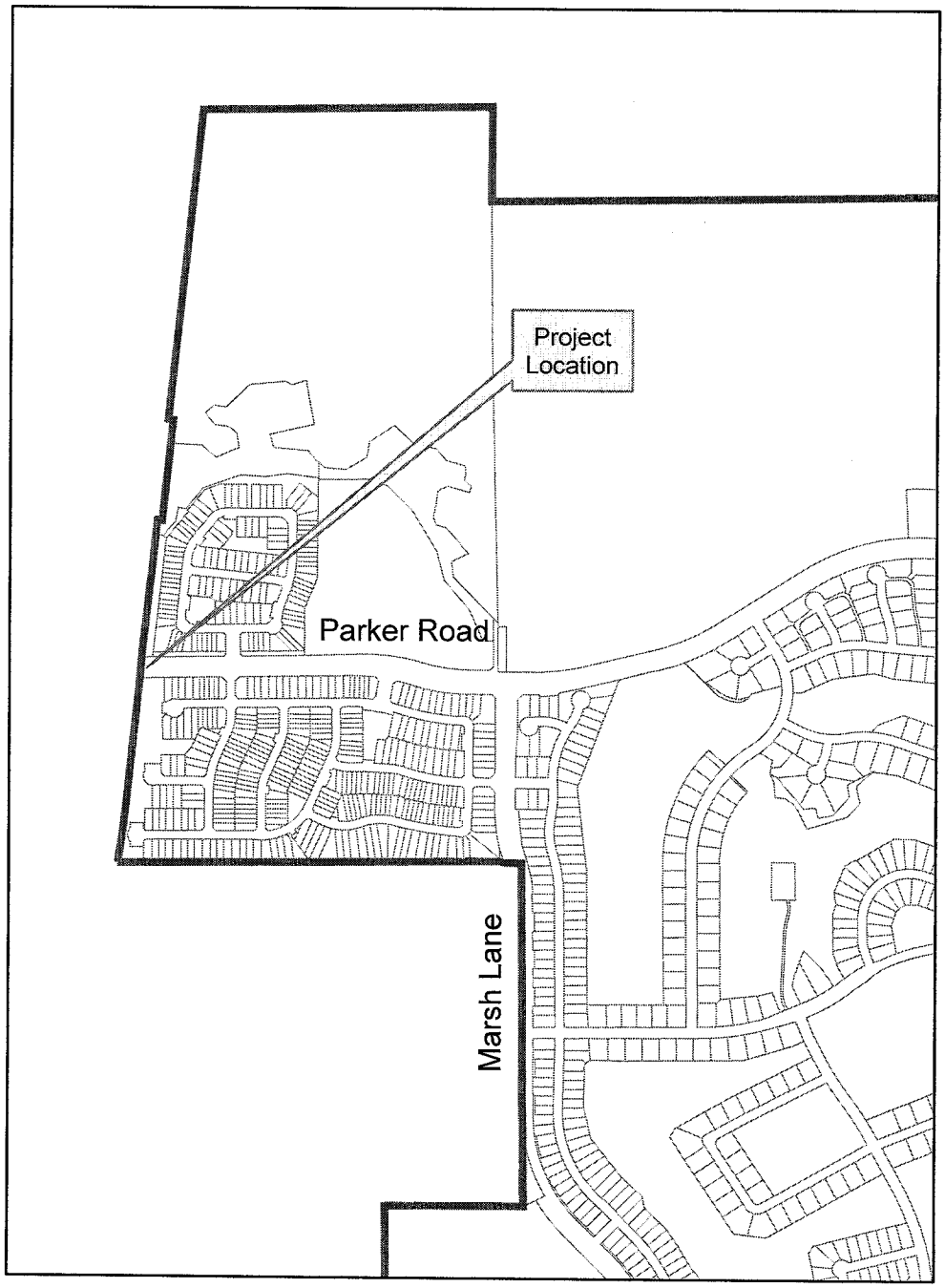
CITY OF PLANO ENGINEERING DEPT.



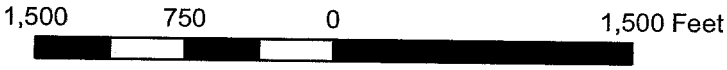


J-4

West Plano
Quiet Zone Improvements



CITY OF PLANO ENGINEERING DEPT.



JS

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:	12/11/06	Reviewed by Legal	☒ Yes	☐ Not Applicable
Department:	Engineering		Initials	Date
Department Head	Alan L. Upchurch	Executive Director		12/4/06
Dept Signature:		City Manager		12/4/06
Agenda Coordinator (include phone #):	Irene Pegues (7198)		Project No. 5281	

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

CAPTION

Boundary Adjustment Agreement for Plano Parkway between Hebron and Plano.

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 Boundary Adjustment Agreement would relocate the common boundary between Plano and Hebron to the west side of Plano Parkway adjacent to Air Park. The property owner has dedicated right of way required for Plano to construct the west half of Plano Parkway. This adjustment allows Plano to construct and control the west half of Plano Parkway.

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
Boundary Adjustment Agreement	N/A

LS\AGENDA2006:1211BoundaryAdjAgr-Hebron-PP

R-1

STATE OF TEXAS §
§
COUNTY OF DENTON §

BOUNDARY ADJUSTMENT AGREEMENT-PLANO PARKWAY

This Boundary Adjustment Agreement ("Agreement") is entered into as of the ___ day of _____ 200__, between the City of Plano ("Plano") and the Town of Hebron ("Hebron"), a municipality organized under the general laws of the State of Texas, (collectively, the "cities") and is to witness the following:

WHEREAS, Plano and Hebron are adjacent municipalities which desire to make mutually agreeable changes in their boundaries of areas that are less than 1,000 feet in width, pursuant to the authority of §43.031 of the Texas Local Government Code; and

WHEREAS, it is the desire of Hebron to disannex and Plano to acquire jurisdiction of the tract described herein to adjust the boundary limits lines between the municipalities as shown by the map attached hereto as Exhibit "A"; and

WHEREAS, the cities deem such agreement to be beneficial to the public interest and to enhance the future growth and development of each; Now, Therefore,

In consideration of the premises and of the agreements contained herein, the cities agree as follows:

I.
DISANNEXATION AND RELEASE OF EXTRATERRITORIAL JURISDICTION

1.01 Hebron agrees that it will disannex and waive extraterritorial jurisdiction over the 2.852 acre tract of land described in Exhibit "B", attached hereto and made part hereof for all purposes, in the manner provided by Chapter 43 of the Texas Local Government Code.

1.02 Upon the disannexation and waiver of extraterritorial jurisdiction by Hebron as provided in Section 1.01 above, Plano will acquire jurisdiction of the tract.

II.
ZONING AND PLATS

Both parties recognize that the property that is subject to this Agreement may receive a temporary zoning classification under the Plano zoning ordinance and be subject to the platting requirements of Plano.

R-2

III.
CHARACTER OF AGREEMENT; BREACH

The parties agree that this Agreement is entered into only for the adjustment of the boundary between the two cities and Hebron's disannexation of the tract described herein and Plano's acquisition of jurisdiction and is not an interlocal cooperation agreement for the joint performance of any services by the parties. Failure of any city to perform the terms of this Agreement shall constitute a breach hereof, and the aggrieved municipality may file suit in a court of competent of jurisdiction to enforce the provisions of this Agreement, including recovery of court costs and attorney's fees.

IV.
PERFORMANCE

The parties agree that the legislative acts to be performed hereunder will be coordinated between them so as to be performed simultaneously or as close thereto as possible, consistent with applicable law.

V.
SEVERABILITY

If any provision of this Agreement is held to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining provisions of this Agreement shall not be affected and shall remain in full force and effect.

In witness whereof, the cities, acting under the authority of their respective governing bodies, have caused this Agreement to be executed in multiple originals as of the date first written above.

CITY OF PLANO, TEXAS

BY: _____
MAYOR

ATTEST:

_____

TOWN OF HEBRON, TEXAS

BY: _____
MAYOR

ATTEST:

_____

APPROVED AS TO FORM:

Diane C. Wetherbee

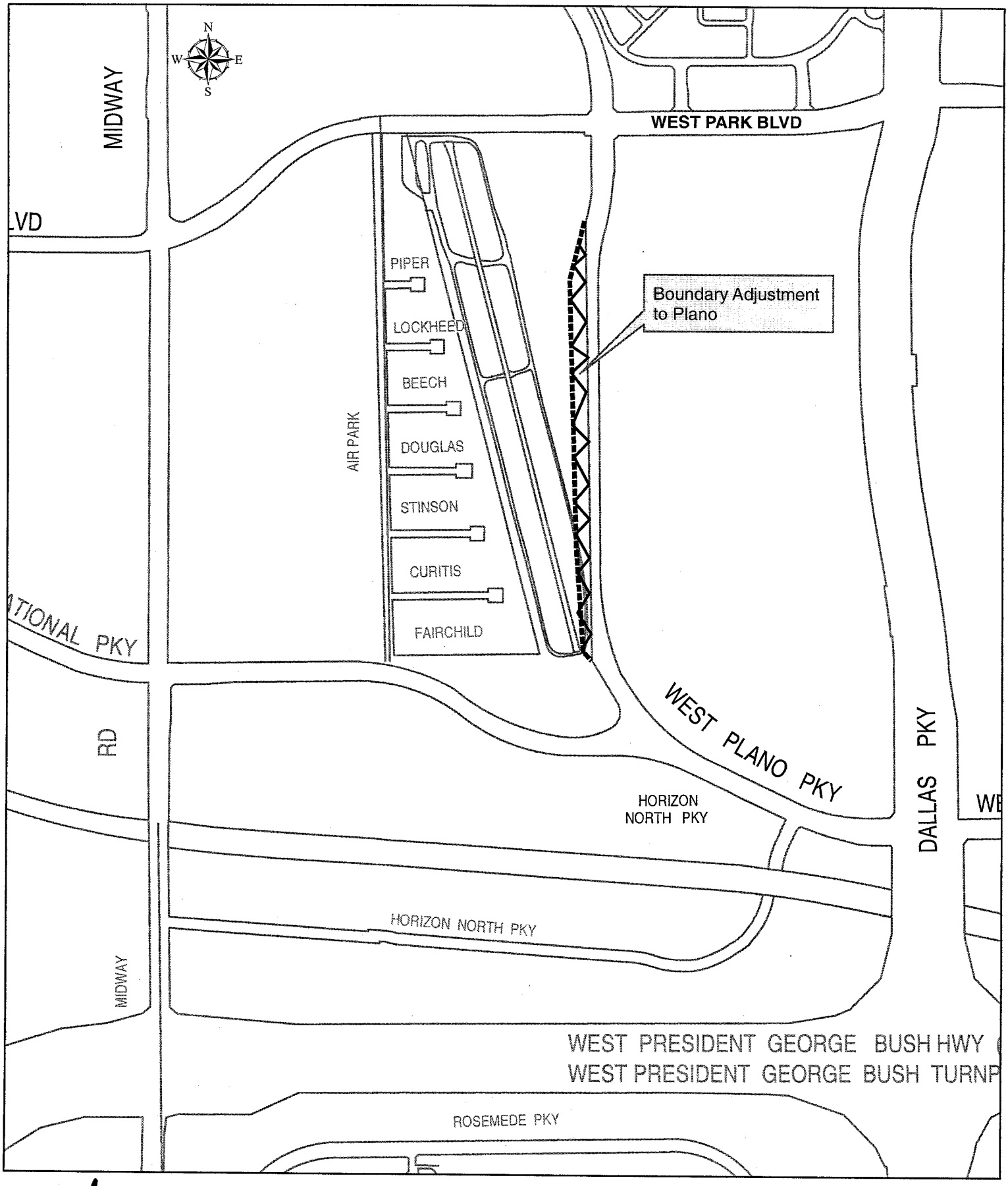
Diane C. Wetherbee, CITY ATTORNEY

LS\LEGAL2006:HebronBoundaryAdjAgr-PlanoPkwy

k-3

71724

EXHIBIT "A"



k-4

LOCATION MAP

11/15/06

EXHIBIT "B"

R.O.W. Parcel No. 1

Plano Parkway

Description 2.852 Acres (124,260 Square Feet)

SITUATED in Collin County, Texas, in the Mary Ann Taylor Survey, Abstract No. 897, being a survey of part of the 83.60 Acre Tract described in a deed from Milton J. Noell, and wife, Adelaide A. Noell to Crow-Billingsley Air Park, Ltd., dated July 1, 1983, recorded in Volume 1685, Page 237 of the Collin County deed records, being described by metes and bounds as follows:

COMMENCING at an one inch iron pin set at the southeast corner of said 83.60 acre tract and the southwest corner of the 3.0766 acre tract to the City of Plano recorded in volume 3124, page 730; THENCE North 00° 01' 00" East, with the east line of said 83.60 acre tract and with the west right-of-way line of Plano Parkway, 50.98 feet to an one inch iron pin set for the PLACE OF BEGINNING; same being in a curve, the radius point bears North 73° 07' 37" East, 1255.00 feet;

THENCE around a curve to the right through a central angle of 16° 48' 44" an arc distance of 368.25 feet a chord bearing of North 08° 28' 01" West, 366.93 feet to an one inch iron pin set at the P.T. of said curve;

THENCE North 00° 03' 39" West, 1756.89 feet to an one inch iron pin set at the P.C. of a curve to the right;

THENCE around a curve to the right through a central angle of 15° 27' 08", an arc distance of 326.86 feet a chord bearing of North 07° 39' 55" East, 325.87 feet to an one inch iron pin set at the P.T. of said curve;

THENCE North 15° 23' 29" East, 49.52 feet to an one inch iron pin set in the east line of said 83.60 acre tract and in the west right-of-way line of said Plano Parkway;

THENCE South 00° 01' 00" West, with the east line of said 83.60 acre tract and in the west right-of-way line of said Plano Parkway, 2490.53 feet to the PLACE OF BEGINNING and containing 124,260 square feet or 2.852 acres.

The above-described tract of land was surveyed on the ground under my supervision in July 1, 2003.

Bruce Geer, Registered Professional Land Surveyor No. 4117
1512 W. University, Suite 300
McKinney, Texas 75069
(972) 562-3959

STATE OF TEXAS
REGISTERED
BRUCE GEER
4117
PROFESSIONAL
LAND SURVEYOR

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:	12/11/06	Reviewed by Legal	☒ Yes	☐ Not Applicable
Department:	Engineering		Initials	Date
Department Head	Alan L. Upchurch	Executive Director		12/4/06
Dept Signature:		City Manager		11/14/06
Agenda Coordinator (include phone #):	Irene Pegues (7198)		Project No. 5590.1	

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

CAPTION

Boundary Adjustment Agreement for Parker Road and BNSF Railroad between Hebron and Plano.

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 Boundary Adjustment Agreement would relocate the common boundary between Plano and Hebron to the west side of the BNSF Railroad so the entire Parker Road crossing is within Plano jurisdiction. This adjustment would allow Plano to implement and control a quiet zone for the Parker Road crossing of the BNSF Railroad.

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
Boundary Adjustment Agreement	N/A

LS\AGENDA2006:1211BoundaryAdjAgr-Hebron-Parker&BNSF

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STATE OF TEXAS §
§
COUNTY OF DENTON §

BOUNDARY ADJUSTMENT AGREEMENT- PARKER ROAD

This Boundary Adjustment Agreement ("Agreement") is entered into as of the ___ day of _____ 200__, between the City of Plano ("Plano") and the Town of Hebron ("Hebron"), a municipality organized under the general laws of the State of Texas, (collectively, the "cities") and is to witness the following:

WHEREAS, Plano and Hebron are adjacent municipalities which desire to make mutually agreeable changes in their boundaries of areas that are less than 1,000 feet in width, pursuant to the authority of §43.031 of the Texas Local Government Code; and

WHEREAS, it is the desire of Hebron to disannex and Plano to acquire jurisdiction of the tract described herein to adjust the boundary limits lines between the municipalities as shown by the map attached hereto as an exhibit; and

WHEREAS, the cities deem such agreement to be beneficial to the public interest and to enhance the future growth and development of each; Now, Therefore,

In consideration of the premises and of the agreements contained herein, the cities agree as follows:

I.
DISANNEXATION AND RELEASE OF EXTRATERRITORIAL JURISDICTION

1.01 Hebron agrees that it will disannex and waive extraterritorial jurisdiction over the 11,084.0 square feet tract of land described in Exhibit "A", attached hereto and made part hereof for all purposes, in the manner provided by Chapter 43 of the Texas Local Government Code.

1.02 Upon the disannexation and waiver of extraterritorial jurisdiction by Hebron as provided in Section 1.01 above, Plano will acquire jurisdiction of the tract.

II.
ZONING AND PLATS

Both parties recognize that the property that is subject to this Agreement may receive a temporary zoning classification under the Plano zoning ordinance and be subject to the platting requirements of Plano.

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III.
CHARACTER OF AGREEMENT; BREACH

The parties agree that this Agreement is entered into only for the adjustment of the boundary between the two cities and Hebron's disannexation of the tract described herein and Plano's acquisition of jurisdiction and is not an interlocal cooperation agreement for the joint performance of any services by the parties. Failure of any city to perform the terms of this Agreement shall constitute a breach hereof, and the aggrieved municipality may file suit in a court of competent of jurisdiction to enforce the provisions of this Agreement, including recovery of court costs and attorney's fees.

IV.
PERFORMANCE

The parties agree that the legislative acts to be performed hereunder will be coordinated between them so as to be performed simultaneously or as close thereto as possible, consistent with applicable law.

V.
SEVERABILITY

If any provision of this Agreement is held to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining provisions of this Agreement shall not be affected and shall remain in full force and effect.

In witness whereof, the cities, acting under the authority of their respective governing bodies, have caused this Agreement to be executed in multiple originals as of the date first written above.

CITY OF PLANO, TEXAS

BY: _____
MAYOR

ATTEST:

_____
CITY SECRETARY

TOWN OF HEBRON, TEXAS

BY: _____
MAYOR

ATTEST:

_____
TOWN SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

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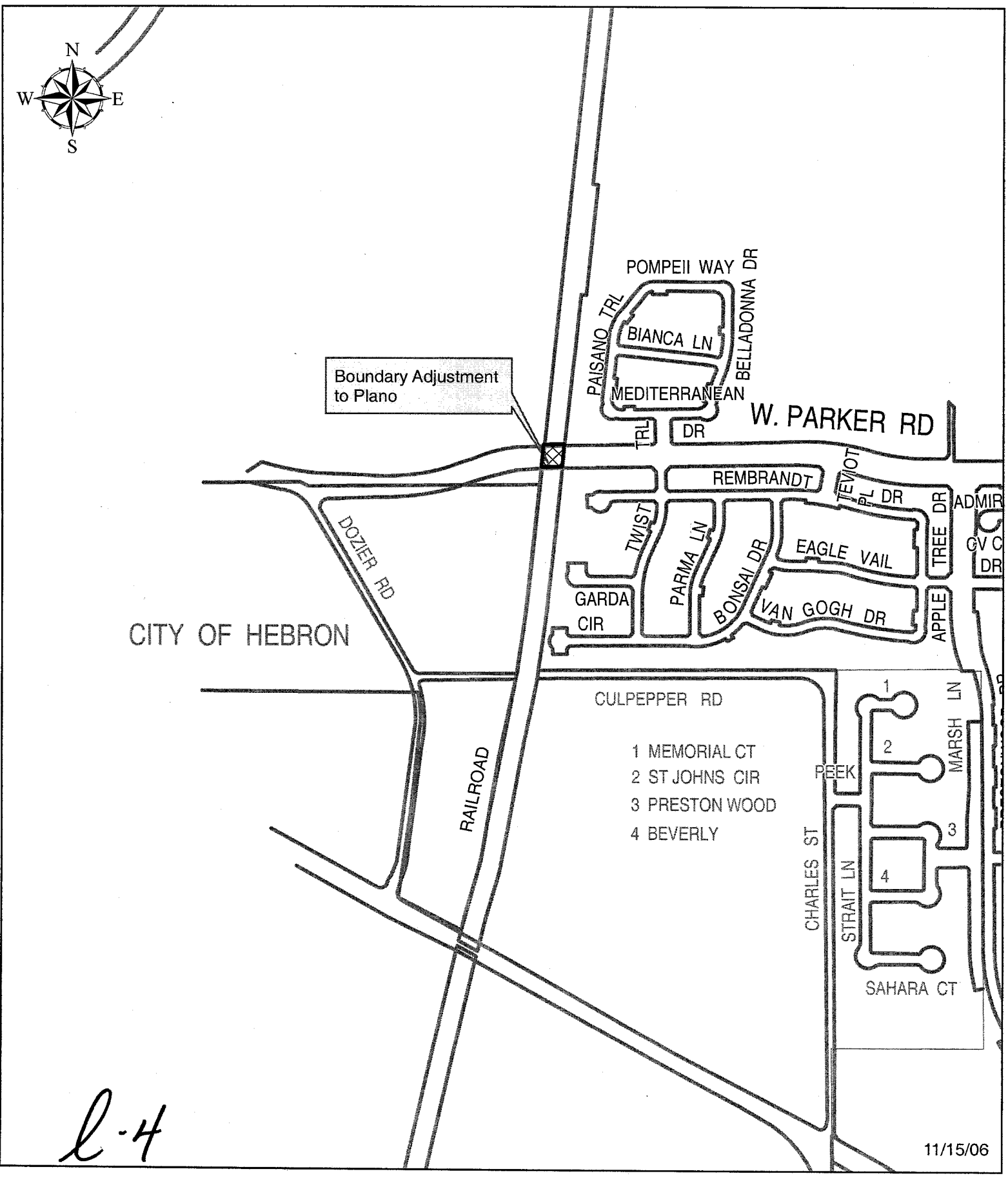
LS\LEGAL2006:HebronBoundaryAdjAgr-ParkerRd

71724

EXHIBIT "A"



l-4

LOCATION MAP

EXHIBIT "B"

DESCRIPTION

BEING AN 11,984.0 SQUARE FOOT TRACT OF LAND SITUATED IN THE S. BROWN SURVEY, ABSTRACT NO. 111, ALSO BEING PART OF THE BURLINGTON NORTHERN & SANTA FE RAILROAD (100 FEET WIDE) AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A CONCRETE MONUMENT SET FOR THE NORTHWEST CORNER OF PASQUINELLI'S PARKER ESTATES, PHASE 2, A 146 LOT RESIDENTIAL ADDITION TO THE CITY OF PLANO, TEXAS AS RECORDED IN CABINET V, PAGE 718 OF THE PLAT RECORDS OF DENTON COUNTY, TEXAS ON NOVEMBER 8, 2002, SAID POINT BEING ON THE SOUTH RIGHT-OF-WAY OF PARKER ROAD A 110 FOOT WIDTH RIGHT-OF-WAY AND THE EAST LINE OF THE BURLINGTON NORTHERN & SANTA FE RAILROAD A 100 FOOT WIDTH RIGHT-OF-WAY;

THENCE S89°27'56"W, 100.62 FEET TO A POINT FOR CORNER, SAID CORNER BEING ON THE WEST LINE OF THE BURLINGTON NORTHERN & SANTA FE RAILROAD RIGHT 0F WAY;

THENCE N06°34'14"E, 110.84 FEET ALONG THE WEST BURLINGTON NORTHERN & SANTA FE RIGHT OF WAY TO A POINT FOR CORNER;

THENCE N89°27'56"E, 100.62 FEET TO A CONCRETE MONUMENT CORNER ON THE NORTH RIGHT-OF-WAY LINE OF PARKER ROAD, SAID POINT ALSO BEING THE SOUTHWEST CORNER OF PASQUINELLI'S PARKER ESTATES, PHASE III, A 117 LOT RESIDENTIAL ADDITION TO THE CITY OF PLANO, TEXAS AS RECORDED IN CABINET V, PAGE 871 OF THE PLAT RECORDS OF DENTON COUNTY, TEXAS ON SEPTEMBER 15, 2004;

THENCE S06°34'14"W ALONG THE EAST LINE OF THE BURLINGTON NORTHERN & SANTA FE RIGHT-OF-WAY A DISTANCE OF 110.84 FEET TO THE PLACE OF BEGINNING AND CONTAINING 11,084.0 SQUARE FEET OF LAND MORE OR LESS.

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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:	12/11/06	Reviewed by Legal WS	☒ Yes	☐ Not Applicable
Department:	Engineering		Initials	Date
Department Head	Alan L. Upchurch	Executive Director		12/4/06
Dept Signature:	Alan L Upchurch	City Manager		12/4/06
Agenda Coordinator (include phone #):	Irene Pegues (7198)		Project No. 5590.1	

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

CAPTION

To approve the terms and conditions of an Interlocal Agreement by and between the City of Plano and Town of Hebron, Texas, concerning the improvements to Parker Road west of the BNSF Railroad.

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 Interlocal Agreement will allow Plano to make certain road improvements within the town limits of Hebron. These improvements are needed to allow Plano to implement a quiet zone at the Parker Road crossing of the BNSF Railroad. Also included are the repairs of deteriorated pavement.

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

LS\AGENDA2006:1211ILA-Hebron-Parker&BNSF

M-1

INTERLOCAL AGREEMENT
BETWEEN CITY OF PLANO AND TOWN OF HEBRON
CONCERNING THE IMPROVEMENTS TO PARKER ROAD
WEST OF THE BNSF RAILROAD

THIS AGREEMENT is made between the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation (hereinafter referred to as "Plano") and the **TOWN OF HEBRON, TEXAS**, a general law municipality (hereinafter referred to as "Hebron"), acting by and through their authorized representatives, as follows:

WITNESSETH:

WHEREAS, Plano and Hebron (hereinafter the "parties") desire to enter into an agreement concerning the construction of improvements to Parker Road within the Hebron Town limits to allow Plano to make pavement repairs to the east and west bound lanes of Parker Road west of the Burlington Northern Santa Fe Railroad right of way in the Town of Hebron, Denton County, Texas, and for the payment of the costs thereof (hereinafter the "Project"); and

WHEREAS, the Interlocal Cooperation Act (Texas Government Code Chapter 791) authorizes any local government to contract with one or more local governments to perform governmental functions and services under the terms of the Act; and

WHEREAS, Section 313.022 of the Texas Transportation Code provides that a municipality may contract with another municipality for one municipality to make an improvement to a part of a highway and for the other to pay a part of the cost of the improvement if the boundary between the municipalities is on or along the highway or the edge of the highway and the governing bodies of the municipalities determine the improvement is necessary; and

WHEREAS, the construction of improvements to Parker Road is a governmental function which will benefit the citizens of both parties; and

WHEREAS, the parties will have current funds available to satisfy their obligations at the time those obligations become due; and

WHEREAS, the parties have determined that the Parker Road improvements may be constructed most expeditiously and economically by implementing this Agreement as set forth below.

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NOW, THEREFORE, this Agreement is made and entered into by Plano and Hebron for the mutual consideration stated herein.

ARTICLE ONE
Parker Road Improvements

Plano shall make improvements to Parker Road within the Hebron Town limits to make pavement repairs to Parker Road just west of the Burlington Northern Santa Fe Railroad tracks on a one-time basis. A copy of the construction plans are on file with the City Engineer of the City of Plano and are attached herewith as Exhibit "A", hereinafter called the "Parker Road Improvements" or "Improvements."

ARTICLE TWO
Design

Plano shall arrange and coordinate the design of the Improvements as provided above. All Improvements shall be designed to meet or exceed current design standards and shall be constructed in accordance with the plans and specifications approved by the parties. Plano will provide Hebron with a copy of the design plans for comment prior to finalization.

ARTICLE THREE
Right of Way

Hebron will provide all existing public right-of-way required for the Parker Road Improvements.

ARTICLE FOUR
Construction Contract

Plano shall prepare plans and specifications for the Improvements, accept bids and award a contract to construct the Improvements and administer the construction contracts. In all such activities, Plano shall comply with all state law requirements. Plano will also provide Hebron with a copy of the executed construction contract for the Project.

ARTICLE FIVE
Duties and Payment

Plano will pay for one hundred percent (100%) of the Parker Road Improvements referenced herein.

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ARTICLE SIX
Maintenance Responsibility

The parties agree upon completion and acceptance of the Improvements herein, Plano shall be responsible for maintaining the Parker Road Improvements as shown on Exhibit "A", located within Hebron's corporate limits.

ARTICLE SEVEN
Funding

The Parties agree that the Party paying for the performance of governmental functions or services shall make those payments only from current revenues legally available to the paying party at the time the payment becomes due.

ARTICLE EIGHT
Hold Harmless

9.01 Each party does hereby agree to waive all claims against, release, and hold harmless the other party and its respective officials, officers, agents, employees, in both their public and private capacities, from any and all liability, claims, suits, demands, losses, damages, attorney's fees, including all expenses of litigation or settlement, or cause of action which may arise by reason of injury to or death of any person or for loss of, damage to, or loss of use of any property arising out of or in connection with this Agreement.

9.02 In the event of joint or concurrent negligence of the parties, 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 either party individually under Texas law. Plano shall be responsible for its sole negligence. Hebron shall be responsible for its sole negligence. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

ARTICLE NINE
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, expressed or implied,

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other than those set forth herein, and this Agreement shall not create any rights in parties not signatories hereto.

ARTICLE TEN
Notices

All notices required under the provisions of this Agreement must be in writing, hand-delivered or sent by registered or certified mail to the addresses below:

Plano:	City of Plano, Texas Attention: Alan Upchurch, City Engineer P. O. Box 860358 Plano, TX 75086-0358
With copy to:	City of Plano, Texas Attention: City Attorney P. O. Box 860358 Plano, TX 75086-0358
Hebron:	Town of Hebron, Texas Attention: Kelly Clem, Mayor P. O. Box 118916 Carrollton, TX 75010
With copy to:	Town of Hebron, Texas Attention: Robert L. Dillard III 500 N. Akard, Suite 1800 Dallas, TX 75201

The name and address for notification may be changed by notice to the other party.

ARTICLE ELEVEN
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.

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ARTICLE TWELVE
Successors and Assigns

This Agreement shall be binding upon the parties hereto, their successors, heirs, personal representatives and assigns. Neither party will assign or transfer an interest in this Agreement without the written consent of the other party.

ARTICLE THIRTEEN
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 Denton County, Texas, and that exclusive venue shall lie in Denton County, Texas.

ARTICLE FOURTEEN
Interpretation

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

ARTICLE FIFTEEN
Remedies, Non-Waiver

No right or remedy granted herein or reserved to the parties is exclusive of any right or remedy granted by law or equity, but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this Agreement may be waived without the express written consent of the parties. It is further agreed that one or more instances of forbearance by either party in the exercise of its respective rights under this Agreement shall in no way constitute a waiver thereof.

ARTICLE SIXTEEN
Entire Agreement

This Agreement embodies the entire agreement between the parties and may only be modified in writing executed by both parties.

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ATTEST:

By: _____
Name: Elaine Bealke
Title: City Secretary
Date: _____

CITY OF PLANO, TEXAS

By: _____
Name: Thomas H. Muehlenbeck
Title: City Manager
Date: _____

Executed on behalf of the City of Plano pursuant to City Council Resolution No. _____

APPROVED AS TO FORM:

By: Diane Wetherbee
Name: Diane Wetherbee
Title: City Attorney
Date: 12-1-06

ATTEST:

By: _____
Name: _____
Title: Town Secretary
Date: _____

TOWN OF HEBRON, TEXAS

By: _____
Name: _____
Title: _____
Date: _____

Executed on behalf of the City of Hebron pursuant to City Council Resolution No. _____

APPROVED AS TO FORM:

By: _____
Name: _____
Title: Town Attorney
Date: _____

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ACKNOWLEDGMENTS

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2006, by **THOMAS H. MUEHLENBECK,** City Manager of the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, on behalf of said municipal corporation.

_____
Notary Public, State of Texas

STATE OF TEXAS §
§
COUNTY OF DENTON §

This instrument was acknowledged before me on the _____ day of _____, 2006, by **KELLY CLEM**, Mayor of the **TOWN OF HEBRON, TEXAS**, a general law city, on behalf of said Town.

_____
Notary Public, State of Texas

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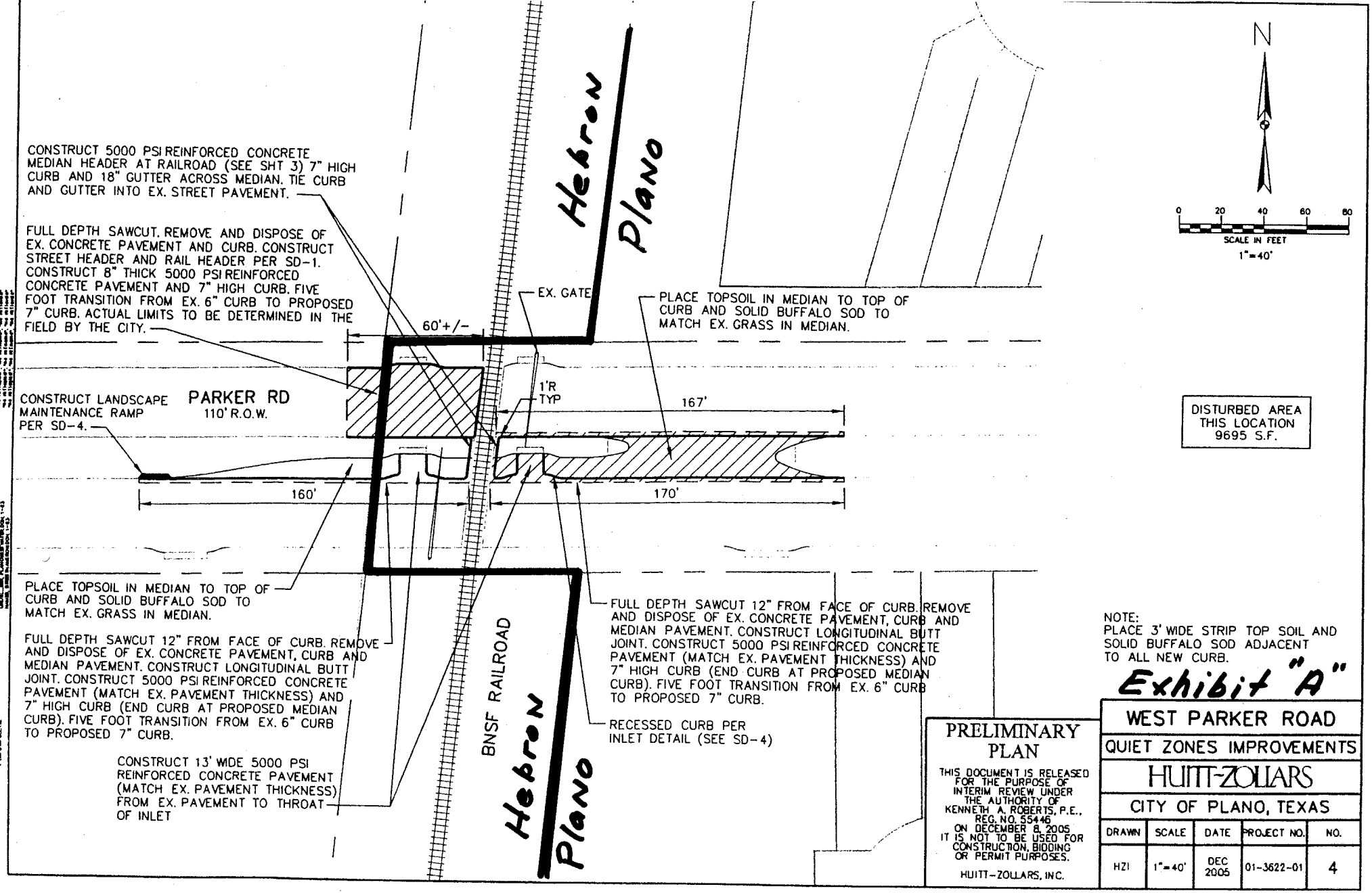
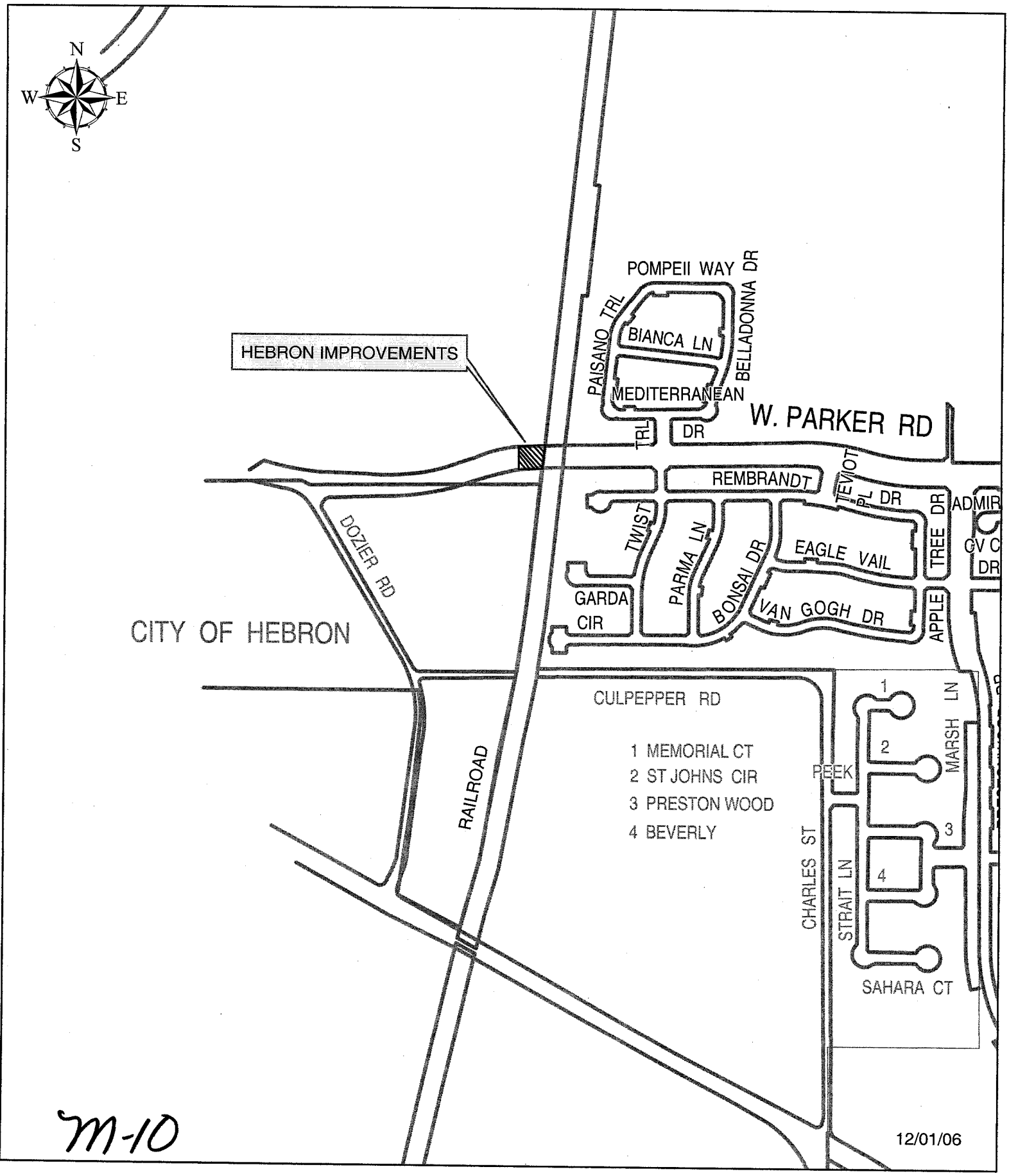

CONSTRUCT 5000 PSI REINFORCED CONCRETE MEDIAN HEADER AT RAILROAD (SEE SHT 3) 7" HIGH CURB AND 18" GUTTER ACROSS MEDIAN. TIE CURB AND GUTTER INTO EX. STREET PAVEMENT.
FULL DEPTH SAWCUT. REMOVE AND DISPOSE OF EX. CONCRETE PAVEMENT AND CURB. CONSTRUCT STREET HEADER AND RAIL HEADER PER SD-1. CONSTRUCT 8" THICK 5000 PSI REINFORCED CONCRETE PAVEMENT AND 7" HIGH CURB. FIVE FOOT TRANSITION FROM EX. 6" CURB TO PROPOSED 7" CURB. ACTUAL LIMITS TO BE DETERMINED IN THE FIELD BY THE CITY.
CONSTRUCT LANDSCAPE MAINTENANCE RAMP PER SD-4.
PARKER RD
110' R.O.W.
60'+/-
EX. GATE
1'R TYP
167'
160'
170'
PLACE TOPSOIL IN MEDIAN TO TOP OF CURB AND SOLID BUFFALO SOD TO MATCH EX. GRASS IN MEDIAN.
PLACE TOPSOIL IN MEDIAN TO TOP OF CURB AND SOLID BUFFALO SOD TO MATCH EX. GRASS IN MEDIAN.
FULL DEPTH SAWCUT 12" FROM FACE OF CURB. REMOVE AND DISPOSE OF EX. CONCRETE PAVEMENT, CURB AND MEDIAN PAVEMENT. CONSTRUCT LONGITUDINAL BUTT JOINT. CONSTRUCT 5000 PSI REINFORCED CONCRETE PAVEMENT (MATCH EX. PAVEMENT THICKNESS) AND 7" HIGH CURB (END CURB AT PROPOSED MEDIAN CURB). FIVE FOOT TRANSITION FROM EX. 6" CURB TO PROPOSED 7" CURB.
FULL DEPTH SAWCUT 12" FROM FACE OF CURB. REMOVE AND DISPOSE OF EX. CONCRETE PAVEMENT, CURB AND MEDIAN PAVEMENT. CONSTRUCT LONGITUDINAL BUTT JOINT. CONSTRUCT 5000 PSI REINFORCED CONCRETE PAVEMENT (MATCH EX. PAVEMENT THICKNESS) AND 7" HIGH CURB (END CURB AT PROPOSED MEDIAN CURB). FIVE FOOT TRANSITION FROM EX. 6" CURB TO PROPOSED 7" CURB.
RECESSED CURB PER INLET DETAIL (SEE SD-4)
CONSTRUCT 13' WIDE 5000 PSI REINFORCED CONCRETE PAVEMENT (MATCH EX. PAVEMENT THICKNESS) FROM EX. PAVEMENT TO THROAT OF INLET
BNSF RAILROAD
Hebron
Plano
Hebron
Plano
N
0 20 40 60 80
SCALE IN FEET
1"=40'
DISTURBED AREA THIS LOCATION 9695 S.F.
NOTE:
PLACE 3' WIDE STRIP TOP SOIL AND SOLID BUFFALO SOD ADJACENT TO ALL NEW CURB.
Exhibit "A"
PRELIMINARY PLAN
THIS DOCUMENT IS RELEASED FOR THE PURPOSE OF INTERIM REVIEW UNDER THE AUTHORITY OF KENNETH A. ROBERTS, P.E., REG. NO. 55446 ON DECEMBER 8, 2005 IT IS NOT TO BE USED FOR CONSTRUCTION, BIDDING OR PERMIT PURPOSES.
HUITT-ZOLLARS, INC.
WEST PARKER ROAD
QUIET ZONES IMPROVEMENTS
HUITT-ZOLLARS
CITY OF PLANO, TEXAS
DRAWN HZI
SCALE 1"=40'
DATE DEC 2005
PROJECT NO. 01-3622-01
NO. 4

6-ML



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LOCATION MAP

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:	12/11/06	Reviewed by Legal	☐ Yes	☒ Not Applicable
Department:	Planning		Initials	Date
Department Head	Phyllis M. Jarrell	Executive Director		12/4/06
Dept Signature:	P. Jarrell	City Manager		12/4/06
Agenda Coordinator (include phone #):	Lynn Woodall, ext. 7156			

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

CAPTION

Geographic Information System (GIS) Annual Maintenance with Environmental Research Systems Institute (ESRI) in the amount of $57,115.27.

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☒ OPERATING EXPENSE ☐ REVENUE ☐ CIP

FISCAL YEAR: 2006-2007	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	85,900	0	**85,900**
Encumbered/Expended Amount	0		0	
This Item	0	-57,115	0	**-57,115**
BALANCE	0	**28,785**	0	**28,785**

FUND(S): GENERAL FUND

COMMENTS: Funds are included in the 2006-2007 Planning Department budget. This item, in the amount of $57,115 will leave a current year balance of $28,785 to be used for other GIS maintenance expenses.

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

SUMMARY OF ITEM

The item is a sole source vendor item in the amount of $57,115.27. The GIS software developer/vendor, Environmental Systems Research Institute (ESRI), holds all contracts and licensing of the use of their software. The item covers annual maintenance, support, and right-to-use licensing for the City's GIS software. The annual maintenance contract covers all GIS software in use within the City with the exception of Public Works, which is covered within their departmental budget.

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
Maintenance Quote #25222822	

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ESRI Inc
380 New York Street
REDLANDS CA 92373

SUBJECT: MAINTENANCE QUOTE

DATE: 09/08/2006
TO: Ron Reynolds
ORGANIZATION: CITY OF PLANO
PLANNING DEPT
FAX #: 972-941-7396 **PHONE #:** 972-941-7242

FROM: Erick Arial
FAX #: 909-307-3083 **PHONE #:** 909-793-2853 Ext. 3341
EMAIL: earial@esri.com

Number of pages transmitted (including this cover sheet): 6

QUOTATION #25222822

Please find the attached quotation for your forthcoming software maintenance term. Keeping your maintenance current helps you stay up-to-date with the rapid advancements in GIS technology, and provides you with tools that enable you to be more successful while using ESRI software. For details about the maintenance program benefits for your licensing, please visit http://gis.esri.com/software/maintenance/qualifying.cfm

Customers who have multiple copies of some ESRI products may have the option of supporting some of their licenses with secondary maintenance. Secondary maintenance entitles users to software upgrades and technical support through a primary license. Users must support at least one primary license for every ten copies of each version of a product (e.g., ArcView 3.x licensing is regarded as separate from ArcView 9.x). Please contact Customer Service to find out more about the availability of secondary maintenance.

If you are using ESRI products that are at previous versions, or if you have software that is not currently covered by one of our programs, please contact us for information about the different options that are available to you.

Do you need training? You can get affordable ESRI software training for your entire organization with a subscription to ESRI Virtual Campus. To find out how, visit the campus: http://campus.esri.com/campus/catalog/subscriptions

If you have any questions or need additional information, please contact Customer Service at 888-377-4575.

M-2

380 New York Street
REDLANDS, CA 92373
Phone: 909-793-28533341
Fax #: 909-307-30833341

Quotation

Date: 09/08/2006 **Quotation Number:** 25222822

Send Purchase Orders To:
ESRI, Inc.
380 New York Street
Redlands, CA 92373-8100
Attn: Erick Arial

Please include the following remittance address on your Purchase Order:
ESRI Inc.
File #54630
Los Angeles, CA 90074-4630

CITY OF PLANO
PLANNING DEPT
1520 AVE K STE 250
PLANO TX 75074
Attn: Ron Reynolds

Customer Number: 6245

For questions regarding this document, please contact Customer Service at 888-377-4575.

Item	Qty	Product#	Unit Price	Extended Price
10	2	52384 ArcInfo Floating Primary Maintenance Start Date: 12/22/2006 End Date: 12/21/2007	3,000.00	6,000.00
20	10	52385 ArcInfo Floating Secondary Maintenance Start Date: 12/22/2006 End Date: 12/21/2007	1,200.00	12,000.00
30	1	52390 Network Floating Primary Maintenance Start Date: 12/22/2006 End Date: 12/21/2007	500.00	500.00
40	1	52391 Network Floating Secondary Maintenance Start Date: 12/22/2006 End Date: 12/21/2007	200.00	200.00
50	1	52396 ArcCOGO Floating Primary Maintenance Start Date: 12/22/2006	500.00	500.00

This quotation is valid for 90 days and is subject to your ESRI License Agreement. The quotation information is proprietary and may not be copied or released other than for the express purpose of system selection and purchase/license. This information may not be given to outside parties or used for any other purpose without consent from Environmental Systems Research Institute, Inc. (ESRI).

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Issued By: Erick Arial **Ext:** 3341

[ARIALE]

To expedite your order, please reference your customer number and this quotation number on your purchase order.

11-3

380 New York Street
REDLANDS, CA 92373
Phone: 909-793-28533341
Fax #: 909-307-30833341

Quotation

Date: 09/08/2006 **Quotation Number:** 25222822

Item	Qty	Product#	Unit Price	Extended Price
		End Date: 12/21/2007		
60	1	86497 ArcEditor Concurrent Use Primary Maintenance Start Date: 12/22/2006 End Date: 12/21/2007	1,500.00	1,500.00
70	2	86500 ArcEditor Concurrent Use Secondary Maintenance Start Date: 04/25/2007 End Date: 12/21/2007	792.33	1,584.66
80	3	86500 ArcEditor Concurrent Use Secondary Maintenance Start Date: 12/22/2006 End Date: 12/21/2007	1,200.00	3,600.00
90	3	87194 ArcView Concurrent Use Primary Maintenance Start Date: 12/22/2006 End Date: 12/21/2007	700.00	2,100.00
100	22	87195 ArcView Concurrent Use Secondary Maintenance Start Date: 12/22/2006 End Date: 12/21/2007	500.00	11,000.00
110	1	87232 ArcGIS Spatial Analyst Concurrent Use Primary Maintenance Start Date: 12/22/2006 End Date: 12/21/2007	500.00	500.00
120	1	87233 ArcGIS Spatial Analyst Concurrent Use Secondary Maintenance Start Date: 12/22/2006 End Date: 12/21/2007	200.00	200.00
130	1	87198 ArcGIS 3D Analyst Concurrent Use Primary Maintenance	500.00	500.00

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Issued By: Erick Arial **Ext:** 3341

[ARIALE]

To expedite your order, please reference your customer number and this quotation number on your purchase order.

M-4

380 New York Street
REDLANDS, CA 92373
Phone: 909-793-28533341
Fax #: 909-307-30833341

Quotation

Date: 09/08/2006 **Quotation Number:** 25222822

Item	Qty	Product#	Unit Price	Extended Price
		Start Date: 12/22/2006 End Date: 12/21/2007		
140	2	93094 ArcView with Extension Single Use Primary Maintenance Start Date: 12/22/2006 End Date: 12/21/2007	1,000.00	2,000.00
150	8	87193 ArcView Single Use Secondary Maintenance Start Date: 12/22/2006 End Date: 12/21/2007	300.00	2,400.00
160	1	93303 ArcEditor Single Use Primary Maintenance Start Date: 03/09/2007 End Date: 12/21/2007	1,183.56	1,183.56
170	1	87768 ArcLogistics Route without Data Annual Maintenance Start Date: 12/22/2006 End Date: 12/21/2007	1,000.00	1,000.00
180	1	87213 ArcSDE Developer Support Group Maintenance for One Server Two CPUs and Five Read and Write Connections Start Date: 12/22/2006 End Date: 12/21/2007	3,000.00	3,000.00
190	2	97534 ArcIMS One Server Two CPUs Maintenance Start Date: 12/22/2006 End Date: 12/21/2007	2,000.00	4,000.00
200	1	97534 ArcIMS One Server Two CPUs Maintenance Start Date: 01/18/2007 End Date: 12/21/2007	1,852.05	1,852.05
210	1	85232	1,495.00	1,495.00

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Issued By: Erick Arial **Ext:** 3341

[ARIALE]

To expedite your order, please reference your customer number and this quotation number on your purchase order.

11-5

380 New York Street
REDLANDS, CA 92373
Phone: 909-793-28533341
Fax #: 909-307-30833341

Quotation

Date: 09/08/2006 **Quotation Number:** 25222822

Item	Qty	Product#		Unit Price	Extended Price
			ArcIMS Developer Support Group Priority Maintenance Start Date: 12/22/2006 End Date: 12/21/2007		

Subtotal	57,115.27
Shipping & Handling	0.00
Estimated Tax	0.00
Total	**$ 57,115.27**

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Issued By: Erick Arial **Ext:** 3341

[ARIALE]

To expedite your order, please reference your customer number and this quotation number on your purchase order.

M-6

380 New York Street
REDLANDS, CA 92373
Phone: 909-793-28533341
Fax #: 909-307-30833341

Quotation

Date: 09/08/2006 **Quotation Number:** 25222822

Item	Qty	Product#	Unit Price	Extended Price

BY SIGNING BELOW, YOU ARE INDICATING THAT YOU ARE AUTHORIZED TO OBLIGATE FUNDS FOR YOUR ORGANIZATION. DO NOT USE THIS FORM FOR ORDER ACTIVATION IF YOUR ORGANIZATION WILL NOT HONOR AND PAY AN INVOICE THAT HAS BEEN ISSUED AT YOUR DIRECTION WITHOUT ADDITIONAL AUTHORIZING PAPERWORK.

To expedite your order, either attach a copy of this quotation to your purchase order when it is remitted to ESRI, or sign below and return this quotation to indicate your acceptance. ESRI's address and fax number are provided on the first page of this quotation.

If you have made ANY alterations to the line items included in this quote and have chosen to sign the quote to indicate your acceptance, you must fax ESRI the signed quote in its entirety in order for the quote to be accepted. You will be contacted by your Customer Service Representative if additional information is required to complete your request.

If your organization is a US Federal, state, or local government agency; an educational facility; or a company that will not pay an invoice without having issued a formal purchase order, a signed quotation will not be accepted unless it is accompanied by your purchase order.

If you choose to discontinue your support, you will become ineligible for support benefits and services. All maintenance fees from the date of discontinuation will be due and payable if you decide to reactivate your support coverage at a later date.

By signing below, you are authorizing ESRI to issue a software maintenance invoice in the amount of: $_____, plus sales taxes if applicable.

Please check one of the following:

_____ I agree to pay any applicable sales tax.

_____ I am tax exempt, please contact me if exempt information is not currently on file with ESRI.

_____ _____
Signature of Authorized Representative Date

_____ _____
Name (Please Print) Title

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Issued By: Erick Arial **Ext:** 3341

[ARIALE]

To expedite your order, please reference your customer number and this quotation number on your purchase order.

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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:	12/11/06	Reviewed by Legal WS	☐ Yes	☒ Not Applicable
Department:	Public Works - Michael Rapplean MR		Initials	Date
Department Head	Jimmy Foster	Executive Director		11-30-06
Dept Signature:	M Rapplean for	City Manager		11/30/06
Agenda Coordinator (include phone #):	Margie Stephens (X4104)			

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

CAPTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, AUTHORIZING AN EXPENDITURE OF FUNDS NOT TO EXCEED FORTY NINE THOUSAND EIGHT HUNDRED EIGHTY NO/100 DOLLARS ($49,880.00) TO MACAULAY CONTROLS COMPANY, THE EXCLUSIVE REPRESENTATIVE IN THE STATE OF TEXAS OF MARSH MCBIRNEY, FLO-TOTE 3 ELECTROMAGNETIC OPEN CHANNEL FLOW METERS, A SOLE MANUFACTURED PRODUCT AND SYSTEM OF MARSH MCBIRNEY HACH CORPORATION; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO TAKE SUCH ACTION AND EXECUTE SUCH DOCUMENTS AS NECESSARY TO EFFECTUATE THIS EXPENDITURE; AND PROVIDING AN EFFECTIVE DATE.

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☒ CIP

FISCAL YEAR: 2006-07	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	725	225,275	200,000	**426,000**
Encumbered/Expended Amount	-725	-27,024	0	**-27,749**
This Item	0	-49,880	0	**-49,880**
BALANCE	0	148,371	200,000	**348,371**

FUND(S): SEWER CIP

COMMENTS: Funds are included in the 2006-07 Sewer CIP. This item, in the amount of $49,880, will leave a current year balance of $148,371 for the Inflow/Infiltration Program project.

STRATEGIC PLAN GOAL: Purchase of open channel flowmeters relates to the City's Goals of Safe, Livable Neighborhoods.

SUMMARY OF ITEM

The Public Works Department recommends the purchase of 18 Marsh McBirney Model FLO-TOTE 3 open channel flow meters, including shipping from Macaulay Controls Company in the amount of $49,880.00

The Department currently has Flo-Tote flow monitors which are obsolete and are no longer maintained by Marsh McBirney. By purchasing these new, more durable units, the department will be able to continue using the FlowWare Software currently installed on our existing March McBirney flow meters and the new meters will be easier to calibrate and repair. The City will receive $850.00 trade-in for each existing flow meter replaced.

The City is authorized to purchase from a Sole Source provider pursuant to Section 252.022 (a) (7) of the local government code and by doing so is exempt from the competitive bid process.

CITY OF PLANO
COUNCIL AGENDA ITEM

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
Resolution Sole Source letter	

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November 21, 2006

City of Plano
PO Box 860358
Plano, TX 75086-0358

Attn: Harry Shearouse
Utility Operations Superintendent

Dear Mr. Shearouse,

Marsh-McBirney-Hach Company is the sole manufacturer and supplier worldwide of the Flo-Tote 3 Electromagnetic Open Channel Flowmeter (Model 3000-1000 and 3000-2000) and loggers or Flowstation. Macaulay Controls Company is the exclusive representative for Marsh-McBirney-Hach Company flow instrumentation in Texas.

The Flo-Tote 3 can be used with the same Floware software that you are currently using with your existing flowmeters.

Please feel free to contact me at (301) 874-5599 should you require additional information.

Sincerely,

Carol Misina
Customer Support Representative

4539 Metropolitan Court • Frederick, Maryland 21704
Phone (301) 874-5599 • (800) 368-2723 • FAX (301) 874-2172
VISIT OUR WEB SITE: www.marsh-mcbirney.com

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RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, AUTHORIZING AN EXPENDITURE OF FUNDS NOT TO EXCEED FORTY NINE THOUSAND EIGHT HUNDRED EIGHTY NO/100 DOLLARS ($49,880.00) TO MACAULAY CONTROLS COMPANY, THE EXCLUSIVE REPRESENTATIVE IN THE STATE OF TEXAS OF MARSH MCBIRNEY, FLO-TOTE 3 ELECTROMAGNETIC OPEN CHANNEL FLOW METERS, A SOLE MANUFACTURED PRODUCT AND SYSTEM OF MARSH MCBIRNEY HACH CORPORATION; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO TAKE SUCH ACTION AND EXECUTE SUCH DOCUMENTS AS NECESSARY TO EFFECTUATE THIS EXPENDITURE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Plano, Texas, desires to replace 18 existing obsolete Marsh McBirney open channel flow meters and

WHEREAS, Marsh McBirney Hack is the sole manufacturer and supplier of the Flo-Tote 3 Electromagnetic Open Channel Flowmeters and Macaulay Controls Company is the exclusive representative of Marsh McBirney Hach products in the State of Texas; and

WHEREAS, The Public Works Department is currently using out dated Marsh McBirney flowmeters, which can no longer be repaired or calibrated by the manufacturer; and

WHEREAS, the City Council is of the opinion that the Mash McBirney Flo-Tote 3 is available from only one source in the State of Texas, Macaulay Controls Company and therefore the product and service are exempt from competitive bid as provided for in *V.T.C.A., Local Governmental Code, Section 252.022(a)(7)*; and

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

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

Section I. The City Council hereby finds and determines that Macaulay Controls Company is the sole source provider of the Marsh McBirney Hach, Flo-Tote 3 Electromagnetic Open Channel Flowmeters for monitoring and recording of sanitary sewer flows and, therefore, the purchase of such materials and service is exempt from competitive bid as provided for in *V.T.C.A., Local Government Code, Section 252.022(a)(7).*

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Section II. The City Manager or his designee is hereby authorized to take such action and execute such documents with Macaulay Controls Company, as necessary to purchase eighteen (18) Flo-Tote Electromagnetic Open Channel Flowmeters, in an amount not to exceed the sum of **FORTY NINE THOUSAND EIGHT HUNDRED EIGHTY AND NO/DOLLARS ($49,880.00).**

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

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

_____
Pat Evans, MAYOR

ATTEST:

_____
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

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CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☐ Yes	☒ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget	☒ Yes	☐ Not Applicable
Council Meeting Date:	12/11/06	Reviewed by Legal	☒ Yes	☐ Not Applicable
Department:	Budget		Initials	Date
Department Head	Karen Rhodes	Asst City Manager		
Dept Signature:	Karen Rhodes	City Manager		11/28/06
Agenda Coordinator (include phone #):	Anita Bell x7194			

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 AND AUTHORIZING THE REFUNDS OF PROPERTY TAX OVERPAYMENTS; AND PROVIDING AN EFFECTIVE DATE.

FINANCIAL SUMMARY

☒ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☐ CIP

FISCAL YEAR: 2006-07	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	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

This will authorize the City's Tax Assessor/Collector to make the appropriate property tax refunds totalling **$899.53**.

List of Supporting Documents:

Refund request listing provided by Collin County Tax Office

Other Departments, Boards, Commissions or Agencies

REV 11/97

P-1

RESOLUTION NO._____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING AND AUTHORIZING THE REFUNDS OF PROPERTY TAX OVERPAYMENTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 31.11 of the Texas Property Tax Code authorizes refunds of certain payments of taxes upon application to the City; and

WHEREAS, under said Section 31.11 of the Texas Property Tax Code, refunds must be presented to the governing body of the taxing unit for approval; and

WHEREAS, the City Council has been presented a list of tax payments made, a copy of which is attached hereto, made a part hereof and marked Attachment "A", which payments are requested to be refunded because such payments were erroneous or excessive; and

WHEREAS, upon full review and consideration of the above, and all matters attendant and related thereto, the City Council is of the opinion that the tax payments should be refunded.

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

Section I. The City Council of the City of Plano, Texas, finds and determines that the tax payments listed in Attachment "A" were paid erroneously or were in excess of taxes due and shall be refunded in accordance with Section 31.11 of the Texas Property Tax Code.

Section II. The Tax Assessor/Collector for the City of Plano, Texas, or her designee, is hereby authorized to take the necessary action to effectuate the refunds approved under this Resolution.

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

DULY PASSED AND APPROVED this _____day

of_____, 2006.

_____
Pat Evans, MAYOR

ATTEST:

_____
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

P-3

KENNETH L. MAUN
TAX ASSESSOR COLLECTOR
COLLIN COUNTY
1800 N. GRAVES ST., STE 170
P.O. Box 8006
McKinney, TX 75070-8006
(972) 547-5020
METRO (972) 424-1460 ext. 5020
FAX (972) 547-5053
Email: taxassessor@co.collin.tx.us

November 15, 2006

Plano City
Karen Rhodes
P.O. Box 860358
Plano, TX 75086-0358

Dear Ms. Rhodes:

Please place a request for approval of the following "Overpayment Refund Listing" on the agenda for the next Plano City Council Meeting. The amount of refunds requested for the overpayment listings is: $899.53

Each listing and the amounts are as follows:

OPAP#1	$899.53	OPAP#8
OPAP#2		OPAP#9
OPAP#3		OPAP#10
OPAP#4		OPAP#11
OPAP#5		OPAP#12
OPAP#6		OPAP#13
OPAP#7		OPAP#14

The listings represent refunds caused by overpayments.
All requests for refunds of ad valorem taxes are substantiated by documentation that is available upon request.

Please notify our office upon Council approval so that we may issue and mail the checks.

If you have any questions, please let me know.

Sincerely,

Kenneth L. Maun

Kenneth L. Maun
Tax Assessor Collector

KLM:br
Enclosure

P-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:	12/11/2006	Reviewed by Legal	☒ Yes	☐ Not Applicable
Department:	FINANCE		Initials	Date
Department Head	John McGrane	Executive Director		
Dept Signature:	John McGrane	City Manager		12/4/06
Agenda Coordinator (include phone #):	Brianna Alvarado x7479			

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

CAPTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN ECONOMIC DEVELOPMENT PROGRAM AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS AND INSIGHT DIRECT USA, INC., AN ILLINOIS CORPORATION, TO PROMOTE STATE AND LOCAL ECONOMIC DEVELOPMENT AND TO STIMULATE BUSINESS AND COMMERCIAL ACTIVITY IN THE CITY AND COUNTY; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR, IN HIS ABSENCE, AN EXECUTIVE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☐ CIP

FISCAL YEAR: 2007-2008	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	**0**
Encumbered/Expended Amount	0	0	0	**0**
This Item	0	0	0	**0**
BALANCE	0	0	0	**0**

FUND(S): GENERAL

COMMENTS: For the Insight Direct USA, Inc., an Illinois corporation, economic development grant, the City agrees to provide the Company the following incentive; a grant in an amount equal to fifty percent (50%) of the Sales Tax Receipts for each month during the term.

SUMMARY OF ITEM

This Resolution approves the terms and the conditions of a proposed Economic Development Program Agreement for Insight Direct USA, Inc, which will promote state and local economic development and stimulate and promote buisness and commercial activity in the City and the County.

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

REV 08/98

Q-1

CITY OF PLANO
COUNCIL AGENDA ITEM

Resolution and Economic Development Incentive Agreement	Joint Committee on Tax Abatement, CCCCD, Collin County Community College

Q-2

REV 08/98

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN ECONOMIC DEVELOPMENT PROGRAM AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS AND INSIGHT DIRECT USA, INC., AN ILLINOIS CORPORATION, TO PROMOTE STATE AND LOCAL ECONOMIC DEVELOPMENT AND TO STIMULATE BUSINESS AND COMMERCIAL ACTIVITY IN THE CITY AND COUNTY; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR, IN HIS ABSENCE, AN EXECUTIVE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Chapter 380 of the Texas Local Government Code authorizes the governing body of a municipality to make loans and grants of public money to promote local economic development and stimulate business and commercial activity in the municipality; and

WHEREAS, the City Council has been presented a proposed Economic Development Program Agreement by and between the City of Plano, Texas and Insight Direct USA, Inc., an Illinois corporation to promote state and local economic development and to stimulate business and commercial activity in the City and County, a substantial copy of which is attached hereto 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

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of the City of Plano, substantially according to the terms and conditions set forth in the License Agreement.

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

DULY PASSED AND APPROVED this the 11th day of December, 2006.

_____
Pat Evans, MAYOR

ATTEST:

_____
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

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ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

This Economic Development Incentive Agreement (this "Agreement") dated December 11, 2006 (the "Effective Date"), is made by and among the City of Plano, Texas (the "City") and Insight Direct USA ,Inc., Illinois corporation (the "Company"), each acting by and through their respective authorized officers and representatives.

WITNESSETH:

WHEREAS, the City has created economic development programs authorized by Texas law and approved by the City Council, including those authorized by Chapters 380 of the Texas Local Government Code, to promote state and local economic development and to stimulate business and commercial activity in the City, thereby generating additional sales tax revenue for the City; and

WHEREAS, the Company has advised the City that a contributing factor that would induce the Company to relocate its headquarters to the City and that would generate local sales tax revenue for the City, would be an agreement by the City to provide an economic development grant to the Company; and

WHEREAS, the City has determined that making an economic development grant to the Company in accordance with the terms and conditions set forth in this Agreement will further the objectives of the City, benefit the City and the City's inhabitants and promote local economic development and stimulate business and commercial activity in the City;

NOW THEREFORE, in consideration of the foregoing and the premises, mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby covenant and agree as follows:

ARTICLE I
DEFINITIONS

1.01. "Affiliate(s)" shall mean an entity that is from time-to-time under common control with, controlled by or controlling the Company. For purposes of this definition, "control" means 50% or more of the ownership of the Affiliate as determined by value or vote.

1.02. "City Sales Tax" shall mean the local sales and use tax imposed by the City pursuant to Chapter 321 of the Texas Tax Code (or any successor statute) during each year in the Term.

1.03. "Commencement Date" shall mean January 1, 2007.

1.04. "Facility" shall mean the Company's principal offices at which a majority of its employees are located and which address from and after the Commencement Date will be 3460

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and 3480 Lotus Drive, Plano, Texas 75075, at which the Company will operate a business of reselling computer software, which includes sales of Taxable Items that will be consummated in the City.

1.05. "Grant" shall mean periodic payments to the Company from lawfully available funds, in the amount(s) set forth in Section 3.01.

1.06. "Program" shall mean the economic development program established by this Agreement, as authorized by Chapters 380 of the Texas Local Government Code, as the same may be amended from time-to-time.

1.07. "Sales Tax Receipts" shall mean the City's net receipts from the State resulting from and representing the City's share of the taxes paid by the Company to the State during the Term. The parties expressly acknowledge and agree that the Sales Tax Receipts are being used only as a measurement for the City's payment of Grants through the use of general funds.

1.08. "State" shall mean the State of Texas and all taxing authorities thereof, including, without limitation, the Comptroller of Public Accounts of the State of Texas.

1.09. "Taxable Items" shall have the same meaning assigned by Chapter 151, TEX. TAX CODE, as amended.

1.10. Capitalized terms not otherwise defined above shall have the meaning given such capitalized terms in this Agreement.

ARTICLE II
TERM

The term of this Agreement (the "Term") shall begin on the Effective Date and continue until the tenth anniversary date of the Commencement Date, unless sooner terminated as provided herein. At the end of the Term the parties may negotiate for an extension of this Agreement.

ARTICLE III
ECONOMIC DEVELOPMENT GRANT

3.01. Grant. During the Term as part of the Program and upon Company's compliance with the terms of this Agreement, the City agrees to provide the Company with an economic development grant from lawfully-available funds, payable as provided herein, in an amount equal to fifty percent (50%) of the Sales Tax Receipts for each month during the Term (each, a "Grant" and, collectively, the "Grants").

3.02. Grant Funds. The City shall not be required to pay any Grant until such time as the City has received Sales Tax Receipts from the State relating to the month for which such

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Grant payment is due. The City will not take any action that causes the State to delay remittance of Sales Tax Receipts for any month during the Term.

3.03. Grant Payment. The City shall, within forty-five (45) days after the later to occur of: (i) receipt by the City of Sales Tax Receipts from the State; and (ii) receipt of the sales and use tax information from the Company pursuant to Section 4.01, pay to the Company, or as directed by the Company, a Grant in an amount equal to fifty percent (50%) of the Sales Tax Receipts for such month.

3.04. Amended Returns. In the event the Company files an amended sales and use tax return or report, or if additional sales and use tax is due and owing by the Company to the State, and, as a result, Sales Tax Receipts for a previous calendar month are increased or decreased, then the Grant payment due from the City shall be increased or decreased accordingly for the calendar month immediately following the City receiving Sales Tax Receipts from the State attributable to such increase. This Section 3.04 shall survive the termination of this Agreement.

3.05. Refunds. Other than as provided in Section 3.04 above, in the event the State determines that the City erroneously received Sales Tax Receipts, or that the amount of sales and use tax paid to the City exceeds the correct amount of sales and use tax owed to the City, and, as a result, a previous Grant paid to the Company exceeded the amount actually due to the Company (calculated based on the State's determination) (any such excess amount being referred to herein as an "Excess Grant"), then the Company shall, within thirty (30) days after receipt of a written notice specifying the amount of the Excess Grant, repay the amount of the Excess Grant to the City. In lieu of repaying the amount of the Excess Grant to the City, the Company may instruct the City in writing to reduce the amount of the Grant payment for the month immediately following the Company's receipt of the City's written notice of the Excess Grant by the amount of the Excess Grant. In such case, the City shall deliver a written notice to the Company acknowledging the amount of the Excess Grant that has been deducted from any Grant payment. As a condition precedent to the Company's obligation to refund the amount of an Excess Grant to the City or authorize the City to reduce the Grant payment, the Company shall have received a copy of the State's written determination, if any, or such other evidence to substantiate the amount of the Excess Grant as is acceptable to the Company in its reasonable discretion.

ARTICLE IV
PROCEDURES RELATING TO GRANTS

4.01. Provision of Documentation to City. Within 10 days after each due date for payment of sales and use tax from the Company to the State (each a "Due Date"), the Company will provide the City with a copy of the sales and use tax return filed with the State for the applicable period.

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4.02. City Request for Information from State. Should the City wish to request from the State any or all documentation relating to the sales and use tax paid by the Company, the City is authorized to do so The Company will maintain an effective Waiver of Sales Tax Confidentiality on file with the City during the Term. The information authorized to be disclosed by such waiver may include the following, if it has been filed by the Company with the State, and nothing in this ARTICLE IV shall obligate the Company to prepare or provide to the City any documentation not required to be and actually filed with the State:

(a) Information regarding the amount of sales and use tax collected and paid to the State by the Company as a result of the sale of Taxable Items by the Company at the Facility;

(b) A copy of all sales and use tax returns and reports, sales and use tax prepayment returns, direct payment permits and reports, including amended sales and use tax returns or reports, filed by the Company for the previous calendar month showing sales and use tax collected (including sales and use tax paid directly to the State pursuant to a direct payment certificate) by the Company for the sale of Taxable Items consummated at the Facility;

(c) A copy of all direct payment and self-assessment returns, including amended returns, filed by the Company showing sales and use tax paid for the sale of Taxable Items by the Company consummated at the Facility;

(d) A summary of the sales of Taxable Items by the Company consummated at the Facility which resulted in sales and use tax paid, and copies of receipts for those purchases, in the event that the Company is ineligible or unable to file direct payment or self-assessment returns for the previous calendar month;

(e) Information concerning any refund or credit received by the Company of sales or use tax paid or collected by the Company (including any sales and use tax paid directly to the State pursuant to a direct payment permit) which has previously been reported by the Company as sales and use tax paid or collected; and

(f) Any information or reports of audits performed by the State Comptroller's Office.

4.03. Confidentiality. The City agrees, to the extent allowed by law, to keep all information and documentation received from the State pursuant to this ARTICLE IV (collectively, "Confidential Tax Information") confident. The City will only provide access to the Confidential Tax Information to its employees on a "need-to-know" basis. The City will use the Confidential Tax Information solely for the purposes of determining the amount of each month's Grant and the amount of other Grants related to the Facility that are dependent on the Confidential Tax Information and for no other purpose, and the City will not (and will cause any person to whom access to the Confidential Tax Information is granted not to), without the Company's prior written authorization, directly or indirectly, intentionally or inadvertently: (a)

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disclose to any other person, use or exploit the Confidential Tax Information (other than as expressly permitted above); (b) discuss the Company or its affairs with any person other than the Company's representatives; (c) copy, photograph, photocopy, reduce to writing or otherwise reproduce or duplicate the Confidential Tax Information; or (d) take any other actions which would be detrimental to the Company. The Company's Waiver of Sales Tax Confidentiality is solely for the limited purpose of allowing an appropriate set of City officials to verify the amount of the City's obligations under this Agreement. The City's obligations under this Section 4.03 shall survive the expiration or termination (for any reason) of this Agreement. Notwithstanding the above or Section 5.02 below, the parties acknowledge that the terms of this Agreement and the amount of any sales tax grant made pursuant to this Agreement constitute public information.

ARTICLE V
REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE PARTIES

5.01. No Violation. The City hereby represents to the best of its knowledge and belief that neither its execution and performance of this Agreement, nor its consummation of the transactions contemplated hereby (including, without limitation, the payment of Grants under the terms and conditions hereof), will: (a) conflict with, or result in a breach of, the terms, conditions or provisions of, or constitute a default under, any agreement, indenture or other instrument under which the City is bound; or (b) violate or conflict with any judgment, decree, order, statute, rule or regulation of any court or any public, governmental or regulatory agency or body having jurisdiction over the City or its properties, assets or conduct.

5.02. Publicity and Disclosures. Except to the extent required by law, the parties covenant and agree that neither party shall make any press release or public disclosure, either written or oral, regarding the transactions contemplated by this Agreement without the prior knowledge and consent of the other party; provided, that the foregoing shall not prohibit any disclosure to attorneys, accountants, real estate brokers, investment bankers or other agents of the parties assisting the parties in connection with the transactions contemplated by this Agreement.

ARTICLE VI
TERMINATION

6.01. Termination of this Agreement. This Agreement shall terminate upon any one of the following:

(a) Immediately upon written notice from the Company to the City in the event of a breach by the City of: (i) Section 4.03 with respect to Confidential Tax Information; or (ii) its representation under Section 5.02 or if such representation shall have been untrue on the date hereof;

(b) By the Company, upon nine (9) months prior written notice to City, on the date set forth in such written notice for termination; provided, that in such circumstance, the Company shall pay to the City the Termination Fee as calculated under Section 6.03(b);

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(c) By either party, immediately upon written notice to the other party, if any subsequent federal or state legislation or any decision of a court of competent jurisdiction declares or renders all or any portion of this Agreement invalid, illegal or unenforceable; provided, that such termination notice shall set forth an explanation of the terminating party's basis for termination under this subsection (c);

(d) By the Company, immediately upon written notice to the City, if the City fails to pay any Grant within the applicable time period provided under this Agreement; provided, that the Company shall first provide the City with written notice of such default and ten (10) days to cure the default; or

(e) By the City if the Company fails to maintain its principal office at 3460 and 3480 Lotus Drive, Plano, Texas; provided that in such circumstance, the Company shall pay to the City the Termination Fee as calculated under Section 6.03.

6.02. Effect of Termination.

(a) Upon a termination of this Agreement, the City shall remit all Grants relating to Sales Tax Receipts for the sale of Taxable Items by the Company at the Facility sold prior to the effective date of such termination (except that, if a termination is effected pursuant to Section 6.01(c), the City shall not be required to remit such Grants if the City is prohibited from doing so under federal or state legislation or the decision of a court of competent jurisdiction). Upon the applicable effective date of termination for any reason, the rights, responsibilities and liabilities of the Parties hereunder shall be extinguished, except for any obligations that accrued prior to such termination or as otherwise expressly provided herein.

(b) Notwithstanding the provisions of Section 6.02(a) above, upon termination of this Agreement by the Company under Section 6.01(d) above, the Company reserves the right to pursue any and all available claims or causes of action which may be available to the Company as a result of or in connection with the events giving rise to such termination, and such termination shall not constitute a waiver of any such claims or causes of action.

6.03. Termination Fee. In the event that the City terminates this Agreement pursuant to Section 6.01(e) or the Company terminates this Agreement pursuant to Section 6.01(b) the Company shall, on the effective date of such termination, pay the City a termination fee (the "Termination Fee"), calculated as follows:

(a) If termination occurs during the first five (5) years of the Agreement, the termination fee shall be an amount equal to 100% of the grant amount received by the Company during the nine (9)-month period immediately preceding the termination.

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(b) If termination occurs during years 6 or 7 of the Agreement, the termination fee shall be an amount equal to 50% of the grant amount received by the Company during the nine (9)-month period immediately preceding the termination.

(c) If termination occurs during years 8, 9, or 10 of the Agreement, the termination fee shall be zero.

ARTICLE VII
MISCELLANEOUS

7.01. Renegotiation. The parties acknowledge and agree that, in the event that the Company undergoes a significant change in its primary business for any reason whatsoever, that the parties will consider renegotiating (but shall be under no obligation to renegotiate) the terms and conditions set forth in this Agreement. If the parties do renegotiate the terms and conditions of this Agreement under such circumstances, the parties acknowledge and agree that such renegotiated terms and conditions may be more favorable or less favorable to one or both of the parties than the terms and conditions set forth in this Agreement, and may include revisions to the Term (including, without limitation, the elimination of any automatic renewal terms provided for herein).

7.02. Binding Agreement; Assignment. The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the parties hereto. This Agreement may not be assigned without the written consent of non-assigning party, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, without obtaining the City's consent, the Company may assign this agreement to: (i) one of its Affiliates; (ii) any entity which is a successor to the Company as a result of a consolidation; and/or (iii) a purchaser of all or substantially all of the Company's assets, provided that such Affiliate, successor and/or purchaser agrees to be bound by the terms of this Agreement.

7.03. No Joint Venture. It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties. Neither party shall have any authority to act on behalf of the other party under any circumstances by virtue of this Agreement.

7.04. Authorization. Each party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

7.05. Notice. Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below (or such other address as such party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered.

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If intended for City, to:

City of Plano
Attention: Mr. Thomas H. Muehlenbeck
City Manager
P.O. Box 860358
Plano, Texas 75086-0358

With a copy to:

City of Plano
Attention: Ms. Diane Wetherbee
P.O. Box 860358
Plano, Texas 75086-0358

If intended for the Company:

Prior to the Commencement Date:

Insight Direct USA, Inc.
Attention: _____
6820 S. Harl Ave.
Tempe, Arizona 85283

After the Commencement Date:

Insight Direct USA, Inc.
Attention: _____
3480 Lotus Drive
Plano, Texas 75075

In either case, with a copy to General Counsel at the same address.

7.06. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral agreement, oral or written, between the parties that in any manner relates to the subject matter of this Agreement.

7.07. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction. Subject to Section 7.15, venue for any disputes regarding this Agreement, the transactions contemplated hereby or the liabilities or obligations imposed hereunder shall be in any State District Court located in Collin County, Texas.

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7.08. Amendment. This Agreement may be amended or modified only by a written instrument signed by all the parties hereto.

7.09. Legal Construction. In the event 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 other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

7.10. Recitals. The recitals to this Agreement are incorporated herein.

7.11. Counterparts. This Agreement may be executed in one or more counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

7.12. Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

7.13. Headings. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

7.14. Interpretation. Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against either party.

7.15. Dispute Resolution.

(a) The parties to this Agreement specifically agree that any dispute, including, but not limited to any and all controversies, disputes or claims arising under, or related to, this Agreement, the Grants or any dealings between the City and the Company, shall first be submitted to mediation.

(b) The mediation shall be conducted before the American Arbitration Association ("AAA") in accordance with the AAA's Commercial Mediation Rules. Any mediation shall be conducted in Collin County, Texas.

(c) Unless otherwise provided by law, the cost of mediation shall be borne equally by the City and the Company. The parties specifically agree that notwithstanding anything to the contrary contained herein, the rights and obligations set forth in this paragraph shall survive the termination of this Agreement. The waiver or invalidity of any portion of this Section 7.15(c) shall not affect the validity or enforceability of the remaining provisions of this Section 7.15.

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7.16. Waiver of Sovereign Immunity. The City hereby expressly agrees that it waives any application of the doctrine of sovereign immunity as it relates to any breach of contract claim that may be raised by the Company hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement with effect from the date first written above.

THE CITY OF PLANO, TEXAS, a home rule Municipal Corporation

By: _____
Thomas H. Muehlenbeck
City Manager

ATTEST:

By: _____
Elaine Bealke
City Secretary

APPROVED AS TO FORM:

By: _____
Diane C. Wetherbee
City Attorney

INSIGHT DIRECT USA, INC.
An Illinois corporation

By: _____
Name: _____
Title: _____

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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:	12/11/06	Reviewed by Legal	☒ Yes	☐ Not Applicable
Department:	Planning		Initials	Date
Department Head	P. Jarrell	Executive Director		12/7/06
Dept Signature:	P. Jarrell	City Manager		12/4/06
Agenda Coordinator (include phone #):	Lynn Woodall, ext. 7156			

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

CAPTION

Approving a License Agreement By and Between the City of Plano and K&C Capital Partners, Ltd. for Use of an Approximate 9 x 20 foot portion of the public right-of-way for outdoor dining, located at 1424 K Avenue.

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	200	1,450	**1,650**
BALANCE	0	200	1,450	**1,650**

FUND(S): DOWNTOWN CENTER DEVELOPMENT FUND

COMMENTS: This funding agreement is for the use of public right-of-way for a seven (7) year period with optional three year renewals. The first two years will generate $200 per year for 2007 and 2008, and the remaining five years the rate is $250 per year for the years 2009 through 2013.

STRATEGIC PLAN GOAL: This licensing agreement for public use of right-of-way relates to the City's Goals of Livable and Sustainable Community and Diverse Business Center.

SUMMARY OF ITEM

Kelly's Eastside Restaurant, located at 1422 K Avenue, will be expanding into the lease space immediately north of the existing restaurant. The operators wish to expand the outdoor dining area as well. The outdoor dining area will be on property that is part of the K Avenue right-of-way, and this license agreement sets forth the terms and conditions for use of the public property. A similar license agreement was approved in 2003 for the existing outdoor dining area.

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

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RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING A LICENSE AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS, AND K & C CAPITAL PARTNERS, LTD., FOR USE OF AN APPROXIMATE NINE BY TWENTY FOOT PORTION OF THE PUBLIC RIGHT-OF-WAY SITUATED IN FRONT OF THE EXPANDED SPACE FOR KELLY'S EASTSIDE RESTAURANT LOCATED AT 1424 AVENUE K.

WHEREAS, the City Council has been presented a License Agreement by and between the City of Plano, Texas, and K & C Capital Partners, Ltd., ("Licensee") governing Licensee's usage of an approximate nine by twenty foot (9' x 20') area in the public right-of-way situated in front of the expanded space for Licensee's Restaurant at 1424 Avenue K for purposes of patio dining, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference; and;

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

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

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

Section II. The City Manager, or his designee, is hereby authorized to execute the License 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 License Agreement.

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

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

_____
Pat Evans, MAYOR

ATTEST:

_____
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

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LICENSE AGREEMENT
(1424 Avenue K)

STATE OF TEXAS §
§ **KNOW ALL MEN BY THESE PRESENTS:**
COUNTY OF COLLIN §

THIS LICENSE AGREEMENT is made and entered into by and between the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, hereinafter called Licensor and **K & C Capital Partners, Ltd., a Texas Limited Partnership**, hereinafter called Licensee. In consideration of the mutual covenants and agreements set forth herein, and other good and valuable consideration, Licensor does hereby grant to Licensee, a revocable nonexclusive license to use an approximate 9' x 20' area of the public sidewalk directly in front of Licensee's restaurant, located at 1424 Avenue K, Plano, Texas 75074, more particularly described by metes and bounds in Exhibit "A" which is attached hereto and made a part hereof for all intents and purposes (hereinafter "Premises").

This License is granted subject to the terms and conditions set out below:

1. License Term. The term of this License shall continue in force for a period of seven (7) years from the last date of execution of this Agreement indicated below and may thereafter be renewed and extended for successive terms of three (3) years subject to Licensor's written agreement to renew and extend the term.

2. Permitted Use. Licensee's use of the Premises is limited to patio dining, the serving of food and beverages in compliance with Licensee's Certificate of Occupancy, applicable zoning regulations, applicable City ordinances and permits and all State and Federal laws and regulations. In no event shall Licensee obstruct or interfere with the public's use of any sidewalk or public right-of-way, except as specifically permitted by this License Agreement.

3. Nonexclusive License. This License is nonexclusive and is subject to (i) any existing utility, drainage, or communication facility located in, under, or upon the Premises; (ii) to any existing license, easement or other similar interest in the Premises granted by Licensor to any individual, corporation or other entity, public or private; and (iii) to all other matters of record.

4. Superior Right. This License is subject and subordinate to the prior and continuing right of Licensor, its successors and assigns to use all of the public property for the public benefit. Licensor, for itself and other permitted users, reserves full rights, consistent with the rights herein granted to construct,

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reconstruct, locate, relocate, maintain and operate existing and additional facilities upon, across, over and beneath the Premises.

5. Revocable. This License is revocable and may be terminated by either party for convenience upon thirty (30) days written notice.

6. License Fee. Licensee shall pay Licensor the sum of **TWO HUNDRED AND NO/100 DOLLARS ($200.00)** per year, during the first two (2) years of this Agreement and **TWO HUNDRED AND FIFTY AND NO/100 DOLLARS ($250.00)** during each year thereafter. The first payment shall be due and payable within ten (10) days of Licensee executing this Agreement, and with all subsequent payments being due and payable on or before January 1st of each succeeding year beginning with January 1, 2008.

All annual license payments shall reference this License Agreement on the check and shall be paid to Licensor at the following address:

City of Plano, Texas
Attention: Accounting Department
P. O. Box 860279
Plano, TX 75086-0358

Annual License payments unpaid for thirty (30) days after their due date shall bear interest at the rate of eighteen percent (18%) per annum.

7. Liability Insurance. During the license term Licensee shall maintain a policy of general liability insurance at Licensee's expense insuring Licensee against liability assumed by Licensee hereunder and insuring Licensee and Licensor against liability arising out of or in any way incident to ownership, use, occupancy or maintenance of the Premises made the subject of this License. Such policy or policies shall also provide that the policy is primary and shall apply without regard to other policies separately carried. The initial amount of required insurance shall be at least $1,000,000.00 Combined Single Limit for Personal Injury, Bodily Injury including death and Property Damage and shall be subject to period increases based upon inflation, recommendation of professional insurance advisors, and other relevant factors.

Licensor, its elected officials, officers, agents and employees must be named as an additional insured under all liability insurance policies required by this Agreement. All policies shall be endorsed to provide a waiver of subrogation in favor of the Licensor. All policies shall be endorsed to include the following provision: "It is agreed that this policy is not subject to cancellation, nonrenewal, material change, or reduction in coverage until ten (10) days prior written notice has been given to the City Manager of the City of Plano." The Insurance carrier must be authorized to do business in the State of Texas and the City prefers that the insurance company be rated B VII or better by AM Best rating. A certificate

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of insurance reflecting the required coverage shall be presented to Licensor prior to Licensor's approval and execution of this Agreement. Subsequent certificates of insurance shall be provided to Licensor whenever Licensee renews, changes or amends their insurance policies or upon request by Licensor.

8. **Indemnity. Licensee shall defend, indemnify, protect and hold Licensor, its officers, directors, parents, subsidiaries, affiliates, agents, servants and employees harmless from and against any and all claims, expenses (including but not limited to attorney's fees), demands, judgments and causes of action of every kind and character, including but not limited to claims in contract, tort, including negligence, or strict liability arising in favor of any person (including but not limited to employees, servants, agents, customers or invitees of Licensee) or entity for personal injury, bodily injury, including death, or damage to property whether or not arising from the sole or concurrent negligence or fault of Licensor or employees or independent contractors directly responsible to Licensor arising out of, incident to, or in anyway connected with Licensee's exercise of rights herein granted or obligations pursuant thereto, including but not limited to separate operations being performed on the property or any condition of the property.**

9. Compliance With Law. Licensee shall, at its own cost and expense, comply with all applicable laws, including but not limited to existing zoning ordinances, governmental rules and regulations enacted or promulgated by any governmental authority and shall promptly execute and fulfill all orders and requirements imposed by such governmental authorities for the correction, prevention and abatement of nuisances in or upon or connected with said premises because of Licensee's use thereof. Licensee shall also comply with all laws and regulations pertaining to hazardous waste, hazardous materials and the environment.

10. Condition Upon Termination. Upon termination or revocation of this Agreement, Licensee shall immediately vacate the subject premises, removing all improvements and personal property so as to return the Premises to the condition in which they existed on the date this Agreement was executed. All personal property not removed at Licensor's request shall become Licensor's property at no cost or expense to Licensor.

11. Assignment and Subletting. This Agreement is personal to Licensee and may not be sold, transferred, assigned or sublet without prior written approval by an authorized representative of Licensor.

12. Lien on Property. During the period that this Agreement is in effect, Licensee shall take whatever steps are necessary to prevent any liens, including but no limited to, mechanics liens and materialmen's liens, from attaching to Licensor's property. Licensee shall immediately pay such sums as may be

necessary to discharge liens and encumbrances filed with respect to all or any portion of the Licensor's property resulting from the construction, maintenance or presence of any of Licensee's property.

13. Maintenance of Property. Licensee, at its own cost and expense, shall at all times during the term of this Agreement keep clean and maintain or cause to be kept clean and maintained, the Premises and all property which may be placed on the Premises by Licensee with Licensor's consent, in a good state of appearance and repair.

14. Notices. All written notices required under this License must be hand delivered or sent by certified mail, return receipt requested, and addressed to the proper party at the following addresses:

LICENSOR

City of Plano, Texas
Attention: City Manager
P. O. Box 860358
Plano, TX 75086-0358

with copy to:

City of Plano, Texas
Attention: City Attorney
P. O. Box 860358
Plano, TX 75086-0358

LICENSEE

Mr. Tim Kelly
K & C Capital Partners, Ltd.
1422 Avenue K
Plano, Texas 75074

Each party may change the address to which notices are to be sent by giving the other party notice, within ten (10) days, of the new address in the manner provided by this paragraph.

15. Default. It is understood and agreed that, in case of default by Licensee in any of the terms and conditions herein stated and such default continues for a period of ten (10) calendar days after Licensor notifies Licensee of such default, Licensor may, at its election, terminate this Agreement and upon such termination all rights of the Licensee hereunder shall cease and come to an end. If such termination results from Licensee's default there shall be no

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prorated refund to Licensee of the unearned portion of the license fee for the then current term; however, in the event that termination of this Agreement is for the convenience Licensor, Licensor shall refund to Licensee the prorated portion of the rental fee for the then current term.

16. Prior Agreements. This Agreement constitutes the sole and only Agreement of the parties to the License and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter of this License.

17. Texas Law. This Agreement shall be construed under, and in accordance with, the laws of the State of Texas. Venue shall lie in Collin County, Texas.

18. Amendment. No amendment, modification, or alteration of the terms of this License shall be binding unless it is in writing, dated subsequent to this License, and duly executed by the parties to this License.

EXECUTED as of the _____ day of _____, 2006.

LICENSOR

CITY OF PLANO, TEXAS
a home-rule municipal corporation

By: _____
Thomas H. Muehlenbeck
CITY MANAGER

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LICENSEE

K & C Capital Partners, Ltd.,
a Texas Limited Partnership

By: 1422 Avenue K, Inc., Managing General Partner

By: _____
Tim Kelly
President

ACKNOWLEGMENTS

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2006, by **Thomas H. Muehlenbeck**, City Manager of the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, on behalf of said corporation.

_____
Notary Public, State of Texas

STATE OF TEXAS §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2006, by **Tim Kelly**, President of **1422 Avenue K, Inc.,** a Texas Corporation, Managing General Partner of **K & C CAPITAL PARTNERS, LTD.,** a Texas Limited Partnership, on behalf of said corporation and partnership.

_____
Notary Public, State of Texas

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EXHIBIT "A"

Property Description

SITUATED in the State of Texas, County of Collin and City of Plano, being part of the Sanford Beck Survey, Abstract No. 73, being part of the right-of-way of "K" Avenue (variable width right-of-way) with said premises being more particularly described as follows:

COMMENCING at the northwest corner of a two story brick building in the east right-of-way line of "K" Avenue marking the southwest corner of a City of Plano property as recorded under County Clerk No. 95-0043037 of the Collin County Land Records and also being the northwest corner of Lot 3B, Block 10 of Original Donation to the City of Plano as recorded in Volume 1487, Page 243 of the Collin County Land Records;

THENCE with the west facing of an existing brick building, the east right-of-way line of "K" Avenue and the west line of Lot 3B, South 01°10'11" West, 22.51 feet to the POINT OF BEGINNING and northwest corner of Lot 4C and the southwest corner of Lot 3B;

THENCE continuing with the west facing of said existing brick building, the east right-of-way line of "K" Avenue and the west line of Lot 4C, South 01°10'11" West, 19.70 feet to the southwest corner of Lot 4C and the northwest corner of Lot 4B;

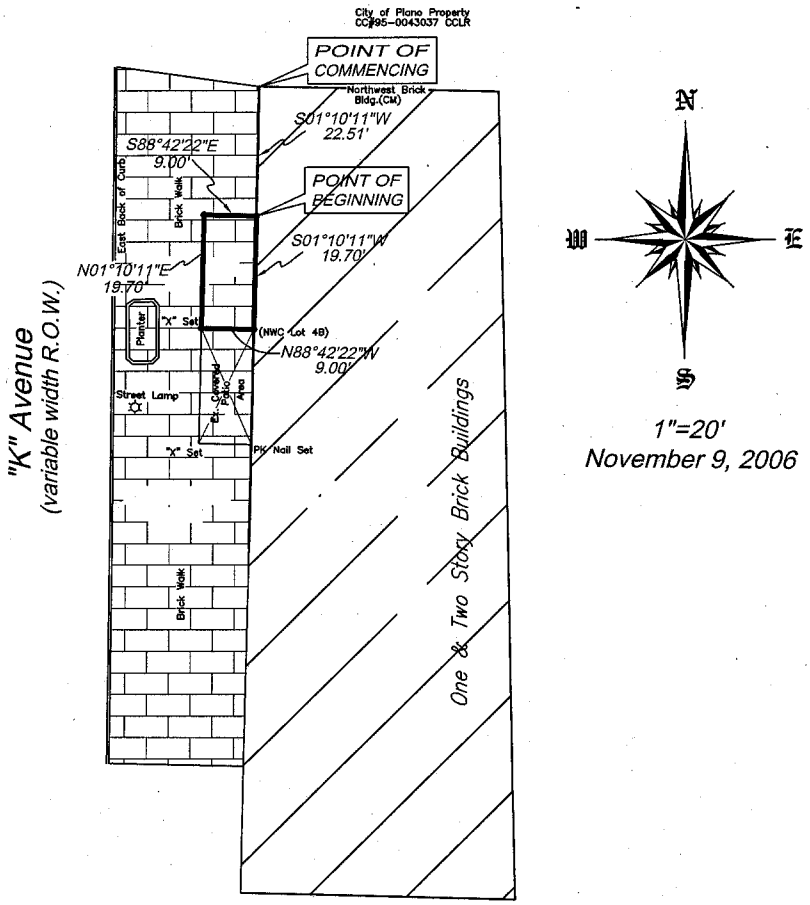
THENCE with the south line of said premises, North 88°42'22" West, 9.00 feet to the southwest corner of said premises;

THENCE with the west line of said premises, North 01°10'11" East, 19.70 feet to its northwest corner;

THENCE with the north line of said premises, South 88°42'22" East, 9.00 feet to the place of beginning and containing 177 square feet or 0.004 acre of land.

STATE OF TEXAS
REGISTERED
F.E. BEMENDERFER, JR.
4051
PROFESSIONAL
LAND SURVEYOR

Exhibit "A"
Restaurant Patio
1424 Avenue "K"
177 Sq.Ft. or 0.004 Ac.



Property Description

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THENCE with the west facing of an existing brick building, the east right-of-way line of "K" Avenue and the west line of Lot 3B, South 01°10'11" West, 22.51 feet to the POINT OF BEGINNING and northwest corner of Lot 4C and the southwest corner of Lot 3B;

THENCE continuing with the west facing of said existing brick building, the east right-of-way line of "K" Avenue and the west line of Lot 4C, South 01°10'11" West, 19.70 feet to the southwest corner of Lot 4C and the northwest corner of Lot 4B;

THENCE with the south line of said premises, North 88°42'22" West, 9.00 feet to the southwest corner of said premises;

THENCE with the west line of said premises, North 01°10'11" East, 19.70 feet to its northwest corner;

THENCE with the north line of said premises, South 88°42'22" East, 9.00 feet to the place of beginning and containing 177 square feet or 0.004 acre of land.

Surveyor's Certificate

To: City of Plano, Tim and Karen Kelly

I hereby certify that on the 3th day of November, 2006, this survey was made on the ground as per the field notes shown on the survey and is true, correct, and accurate as to the boundaries and areas of the subject property and the size, location, and types of buildings and improvements thereon, if any, and as to the other matters shown hereon, and correctly shows the location of all visible easements and rights-of-way and of all rights-of-way, easements, and any other matters of record, or of which I have knowledge or have been advised, whether or not of record, affecting the subject property, and the location of all curb cuts and driveways, if any.

Pedestrian ingress to and egress from the subject property is provided by "K"Avenue, same being paved, dedicated public right-of-way maintained by the City of Plano, which abut(s) the subject property, an is physically open and being used.

no part of the property is shown to lie within a Special Flood Hazard Area inundated by 100-year flood per Map No. 48085Co440 G of the F.E.M.A. Flood Insurance Rate Maps for Collin County, Texas and Incorporated Areas dated January 16, 1996 (Zone X).

F.E. Bemenderfer Jr.
Registered Professional Land
Surveyor No. 4051

STATE OF TEXAS
REGISTERED
F.E. BEMENDERFER JR.
4051
PROFESSIONAL
LAND SURVEYOR

ROOME LAND SURVEYING, INC.
2000 AVENUE G
SUITE 810
PLANO, TX 75074
Phone Number (972) 423-4372
Fax Number (972) 423-7523

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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:	12/11/06	Reviewed by Legal PM	☒ Yes	☐ Not Applicable
Department:	Planning		Initials	Date
Department Head	P. Jarrell	Executive Director		12/4/06
Dept Signature:	P. Jarrell	City Manager		12/4/06
Agenda Coordinator (include phone #):	Lynn Woodall, ext. 7156			

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

CAPTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, RATIFYING AND APPROVING THE EXPENDITURES OF COMMUNITY SERVICES FUNDS IN THE AMOUNT OF $508,010 FOR THE VARIOUS COMMUNITY SERVICES AND APPROVING THE TERMS AND CONDITIONS OF AGREEMENTS BETWEEN THE CITY OF PLANO AND VARIOUS COMMUNITY ORGANIZATIONS; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER, OR IN HIS ABSENCE, AN EXECUTIVE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE.

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☒ OPERATING EXPENSE ☐ REVENUE ☐ CIP

FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	508,010	0	**508,010**
Encumbered/Expended Amount		0	0	**0**
This Item	0	-469,010	0	**-469,010**
BALANCE	0	39,000	0	**39,000**

FUND(S): GENERAL FUND

COMMENTS: Funds are included in the 2006-07 Budget for Community Services. Of the $508,010 budgeted, $469,010 has been spent, leaving a balance of $39,000 owed to various organizations.

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

SUMMARY OF ITEM

City Council allocated $502,010 in the 2006-2007 budget for the Community Services grants for various non-profit agencies, along with an additional $6,000 for "in-kind" services to cover additional personnel costs associated with the Race for the Cure, for a total of $508,010. This resolution is typically presented to Council for action in early October after adoption of the budget; however, staff failed to schedule it for action at that time. The various agencies have already begun receiving funding; this resolution ratifies those expenditures while also approving the expenditure of the remaining funds.

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

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November 28, 2006

MEMO

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

FROM: Phyllis M. Jarrell, Director of Planning

SUBJECT: Community Services Grants

In the city's 2006-2007 budget, City Council included funds in the amount of $502,010 for Community Services grants to various social service agencies, plus $6,000 for in-kind services for the Susan G. Komen Race for the Cure event. In the past, after Council's adoption of the budget in September, staff immediately followed up with a resolution authorizing the execution of agreements with the agencies and the expenditure of the funds. This year, staff failed to follow through with this resolution in October. However, agencies have already signed the agreements and have received the allotted funding. We are asking that City Council now approve a resolution ratifying the expenditure of these funds and execution of the agreements. We will certainly make sure that approval of this resolution at the proper time gets into the calendar for next year's grant process.

Based on the recommendations of the Community Relations Commission, the following agencies received funding in the amounts listed:

CITY House	$ 2,400
Dental Health Programs	$25,000
Assistance Center	$25,277
Samaritan Inn	$63,200
AIDS Services of North Texas	$51,000
Turning Point	$20,800
Plano Children's Medical Clinic	$33,000
God's Food Pantry	$32,000
Hope's Door	$40,000
Big Brothers Big Sisters	$11,500
Geriatric Wellness Center	$30,000
Boys and Girls Club of Collin County	$18,000
Even Start	$27,002
Collin County Committee on Aging	$44,000
Practical Parent Education	$11,000
Crossroads Family Services	$15,000

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CASA of Collin County	$10,081
Plano Community Charity	$24,000
Children's Advocacy Center	$15,000
Avenues Counseling Center	$ 3,750
Total Available Funds	$502,010
Susan G. Komen Breast Cancer Foundation (In-Kind Services)	$ 6,000

Please let me know if you need additional information.

XC: Christina Day, Neighborhood Services Manager

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RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, RATIFYING AND APPROVING THE EXPENDITURES OF COMMUNITY SERVICES FUNDS IN THE AMOUNT OF $508,010 FOR THE VARIOUS COMMUNITY SERVICES AND APPROVING THE TERMS AND CONDITIONS OF AGREEMENTS BETWEEN THE CITY OF PLANO AND VARIOUS COMMUNITY ORGANIZATIONS; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER, OR IN HIS ABSENCE, AN EXECUTIVE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council previously allocated $502,010 in the 2006-2007 budget for the Community Services grants for various non-profit agencies, along with an additional $6,000 for "in-kind" services to cover additional personnel costs associated with the Race for the Cure, for a total of $508,010; and

WHEREAS, distribution of the Community Services funds to the various agencies as identified in Exhibit "A" has occurred prior to Council authorization; therefore, ratification for such expenditures by the City Council is necessary; and

WHEREAS, the City Council has been presented a proposed Agreement attached herein as Exhibit "B" to be individually executed by and between the City of Plano and each of the agency identified in Exhibit "A", establishing the terms and conditions of funding; and

WHEREAS, the City has determined that it is in the best interests of the citizens of Plano that the Community Services funds be utilized for the purposes for which they were granted to each of the entities listed herein, and that each such purpose is a valid public purpose; and

WHEREAS, upon full review and consideration of the proposed agreement, and all matters attendant and related hereto, the City Council is of the opinion that the expenditures of the Community Services funds should be ratified and approved, and the terms and conditions of the proposed agreement should be approved, and that the City Manager, or his designee, shall be authorized to execute them on behalf of the City of Plano.

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

Section I. The expenditures of the Community Services grant funds are hereby approved and ratified.

Section II. The terms and conditions of the proposed 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.

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

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

DULY PASSED AND APPROVED THIS THE 11TH DAY OF DECEMBER, 2006

_____
Pat Evans, MAYOR

ATTEST:

_____
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

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EXHIBIT "A"

CITY House	$ 2,400
Dental Health Programs	$25,000
Assistance Center	$25,277
Samaritan Inn	$63,200
AIDS Services of North Texas	$51,000
Turning Point	$20,800
Plano Children's Medical Clinic	$33,000
God's Food Pantry	$32,000
Hope's Door	$40,000
Big Brothers Big Sisters	$11,500
Geriatric Wellness Center	$30,000
Boys and Girls Club of Collin County	$18,000
Even Start	$27,002
Collin County Committee on Aging	$44,000
Practical Parent Education	$11,000
Crossroads Family Services	$15,000
CASA of Collin County	$10,081
Plano Community Charity	$25,000
Children's Advocacy Center	$15,000
Avenues Counseling Center	$ 3,750
Total Available Funds	$502,010
Susan G. Komen Breast Cancer Foundation (In-Kind Services)	$ 6,000

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FUNDING AGREEMENT BETWEEN CITY OF PLANO, TEXAS
AND
AGENCY NAME
Check State Certificate to get full agency name (esp. whether it's INC. or not)

THIS AGREEMENT is made and entered into by and between the **CITY OF PLANO, TEXAS**, a home rule municipal corporation (hereinafter referred to as "City"), and **AGENCY NAME,** a Texas non-profit corporation (hereinafter referred to as "Agency");

WHEREAS, it is deemed to be in the best interest of the residents and the City to expend public funds for Descript1; and

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

WHEREAS, Agency has established itself as being able to perform such activities.

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

SECTION I

Purposes/Consideration

The purpose of this Agreement is to provide terms and conditions under which City shall make the sum of up to **DOLLARS AND NO/100 DOLLARS ($)** available to the Agency for the purposes set forth in Exhibit "A" attached hereto and incorporated herein. The City's source of these funds is general revenues derived from the collection of property, sales and other taxes, as well as other sources. In consideration of City providing the above referenced funding specified in the 2006-2007 fiscal year, Agency shall abide by the terms and conditions of this Agreement.

SECTION II

Term

The term of this Agreement is October 1, 2006 through September 30, 2007. At the expiration of this Agreement, the Agency shall have the continuing obligation to complete any unfulfilled terms and conditions of this Agreement, including any written documentation requested by City to verify that Agency complied with the terms of this Agreement.

SECTION III

Permitted Uses of Funds; Conditions of Use

The Agency may use any and all funds furnished by the City under this Agreement for the purposes set forth in said Exhibit "A" and for no other purpose. If during the term of this Agreement, the Agency wishes to utilize funds for purposes other than stated in this Agreement, such change may be allowed only upon receiving written approval by the City Manager, or his designee.

The Agency further agrees to abide by the general conditions of the grant as set forth in the "General Conditions of Agreement" (hereinafter referred to as the "General Conditions"), which is attached hereto and incorporated herein for all purposes as Exhibit "B".

Any City funds which have not been expended by the Agency by September 30, 2007, will revert to the City's general revenues. Agency agrees to forward to City a written report by October 10, 2007, providing the total amount of expenditures for the term as defined under Section II above. Any funds not expended by September 30, 2007, shall be returned to the City no later than October 31, 2007.

SECTION IV

Non-Assignment

The Agency shall not assign any interest in this Agreement, whether in whole or part, without prior written approval of the City Council as evidenced by a Resolution properly approved by the Council.

SECTION V

Independent Contractor

The Agency covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of the City. Agency shall have exclusive control of and exclusive right to control the details of the services 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. The doctrine of respondent superior shall not apply as between City and Agency, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Agency.

SECTION VI

Disbursement Of Funds

Funds provided for under this Agreement shall be disbursed on or before January 31, 2007. Expenses incurred by Agency after this Agreement expires or is terminated will not be reimbursed or funded under this Agreement and the City shall assume no liability for same.

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SECTION VII

Reporting Requirements

Within thirty (30) days of the close of each preceding quarter of the Agreement term, Agency agrees to provide financial statements sufficiently describing the expenditure of funds provided by the City, as well as a description of program goals achieved and/or progress made toward the achievement of those goals for the preceding quarter. These reports shall be furnished in writing to the Contract Administrator at the following address:

Christina Day
Neighborhood Services Manager
City of Plano, Texas
P. O. Box 860358
Plano, TX 75086-0358

Telephone: 972-941-5262
Fax: 972-941-7396

At the end of the Agreement term or in the event of earlier termination, Agency shall provide to the Contract Administrator a final written report describing the accomplishments achieved by the use of the grant funds and accounting for all funds provided under this Agreement.

SECTION VIII

Affidavit of No Prohibited Interest

Agency 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 Agreement voidable. At the time of signing this Agreement, an authorized representative of Agency shall execute the Affidavit of No Prohibited Interest, attached and incorporated herein as Exhibit "C".

SECTION IX

Insurance Requirements/Indemnification

1. Insurance. At its own expense, Agency agrees to maintain during the term of this Agreement, or any extension thereof, insurance in the type and amounts as shown in Exhibit "D", a copy of which is attached hereto and incorporated herein. Such insurance shall be evidenced by properly executed certificates of insurance determined to be acceptable to City's Risk Manager and a current copy shall be provided to the Contract Administrator within ten (10) days of execution of this Agreement. A current copy of the certificate(s) shall be maintained by Agency and provided to City throughout the entire term of this Agreement.

2. Indemnification. Agency shall release, defend, indemnify, and hold City and its officers, agents, and employees harmless from and against all damages, injuries (including death), costs, including attorneys' fees and expenses, in any way arising out of, related to, or resulting from Agency's performance of the services under this Agreement or caused by the negligent act or omission of Agency, its officers, agents, employees, subcontractors, licensees, invitees, or any other third parties for whom Agency is legally responsible (hereinafter "Claims"). Agency is expressly required to defend City against all such Claims.

In its sole discretion, City shall have the right to select or to approve defense counsel to be retained by Agency 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 Agency's obligation to defend City or as a waiver of Agency's obligation to indemnify City pursuant to this Agreement. Agency 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 Agency fails to retain counsel within such time period, City shall have the right to retain defense council on its own behalf, and Agency shall be liable for all costs incurred by City.

This Section is solely for the benefit of the City and Agency and does not create or grant any rights, contractual or otherwise, to any other person or entity.

SECTION X
Termination

This Agreement may be terminated early by either party giving the other party written notice, with such notice to be given in writing not less than ninety (90) days before the desired early termination date. Any commitments and obligations of Agency existing prior to notice of early termination shall be honored and shall not prejudice the right of Agency to pay such costs

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previously incurred and to be paid out of the funds furnished by City. New commitments incurred after notice of termination is given shall not be funded by this Agreement. Notice of termination shall be given when written notice is sent to either party by certified mail, return receipt requested. The date and time of postmark shall be determinative. In the event of such early termination, or at the end of the term of this Agreement, the Agency agrees to return to City both the unused and the unencumbered balance of any funds previously disbursed to the Agency by City pursuant to this Agreement within ten (10) days of either event.

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

SECTION XI

Miscellaneous

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

2. Authority. The undersigned represents and warrants that he or she is the duly authorized representative of the Agency and that this Agreement has been approved and accepted by the Board of Trustees (or equivalent) of the Agency.

This Agreement shall not be considered fully executed or binding on the City until the same shall been executed by Agency and the City Manager or his designee, and approved and accepted by the City Council of the City of Plano in open meeting as required by law.

3. Successors and Assigns. This Agreement shall be binding upon the parties hereto, their successors, personal representatives and assigns.

4. Waiver. No waiver of the City's rights under this Agreement shall be deemed to have been made unless expressed in writing and signed by an authorized representative of the City. The waiver by the City of any breach of any term, covenant or conditions shall not be deemed to be a waiver of any other or subsequent breach of this same or any other term, covenant or condition herein contained.

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

City of Plano, Texas	Agency
Christina Day	Name
Neighborhood Services Manager	Title
City of Plano, Texas	AGENCY NAME
P. O. Box 860358	address
Plano, TX 75086-0358	Zip
Telephone: 972-941-5262	Telephone: phone
Fax: 972-941-7396	Fax: fax

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

7. Interpretation of Agreement. 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.

8. Venue. In the event of breach of this Agreement, venue for all causes of action shall exclusively lie in Collin County, Texas.

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

AGENCY NAME

Date:_____

By: _____

Name

Title

CITY OF PLANO, TEXAS

Date:_____

By:_____

Thomas H. Muehlenbeck

CITY MANAGER

APPROVED AS TO FORM:

_____

Diane C. Wetherbee, CITY ATTORNEY

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Z:ORD\RESOLUTIONS/RATIFICATION (PJ)

ACKNOWLEDGMENTS

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2006 by **NAME**, Title of **AGENCY NAME**, a Texas non-profit corporation, on behalf of said corporation.

_____
Notary Public, State of Texas

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me on the ____ day of _____, 2006 by **THOMAS H. MUEHLENBECK,** City Manager of the **CITY OF PLANO, TEXAS,** a home-rule municipal corporation, on behalf of said corporation.

_____
Notary Public, State of Texas

EXHIBIT "A"

PURPOSES

This grant may be used for expenses of

Not more than 50% of the grant expenditures may be for staff salary and benefits.

Other prohibited expenditures are as follows:

A. Social functions, parties, receptions, refreshments, or beverages.
B. Licensing fees of any kind.
C. Underwriting, investments, stocks, bonds, or any financial obligation.
D. Interest and/or depreciation on loans, fines, penalties, or costs of litigation.

EXHIBIT "B"

GENERAL CONDITIONS OF AGREEMENT

The Agency agrees to the following general conditions:

1. All accounting procedures, records, and reports shall be available for inspection by a duly authorized representative of the City of Plano. An independent audit of the Agency's financial records, paid for by Agency, shall be furnished to the City upon request.

2. The Agency agrees to the on-site inspection of its facilities and/or programs by the City.

3. Improper use of funds awarded in the grant may result in the termination of the grant, forfeiture of any outstanding grant award and/or recovery of previous payments.

4. Programs, activities, employment opportunities, etc. funded totally or partially by the City of Plano must be made available to all people regardless of race, color, religion, sex, age, national origin, handicap, or political affiliation.

5. The Agency and any person or organization it contracts with shall comply with all applicable laws, regulations, ordinances, and codes of the United States of America, the State of Texas, and the City of Plano.

6. The Agency shall comply with all Federal, State, and Local conflict of interest laws, statutes, and regulations, and said laws shall apply to all parties and beneficiaries under this Agreement, as well as to all officers, employees, and agents of City.

7. None of the funds, materials, property, or services provided directly or indirectly under this Agreement shall be used for any partisan political activity or to further the election or defeat of any candidate for public office, or for publicity, lobbying and/or propaganda purposes designed to support or defeat legislation pending before the Congress of the United States of America, the Legislature of the State of Texas, the City Council of the City of Plano, or any other political body.

8. The City shall have the right to review any and all contracts to be let by the Agency prior to execution by the Agency, and to require such terms and conditions as it deems necessary to protect the City's interests to be modified, added, or deleted.

9. This Agreement may not be changed or adjusted without the prior approval of City Manager, or his designee.

EXHIBIT "C"

AFFIDAVIT OF NO PROHIBITED INTEREST

I, the undersigned declare and affirm that no person or officer of **AGENCY NAME** (herein "Contractor") is either employed by the City of Plano or is an elected official of the City of Plano and who has a financial interest, direct or indirect, in any contract with the City of Plano or has a financial interest, directly or indirectly, in the sale to the City of Plano of any land, or rights or

interest in any land, materials, supplies or service. As per Section 11.02 of the Plano City Charter, interest represented by ownership of stock by a City of Plano employee or official is permitted if the ownership amounts to less than one (1) per cent of the corporation stock.

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

AGENCY NAME

By:_____
Name
Title

STATE OF TEXAS §
§
COUNTY OF COLLIN §

Subscribed and sworn to before me this ____ day of _____, 2006.

_____
Notary Public, State of Texas

EXHIBIT "D"

INSURANCE REQUIREMENTS

Agency shall procure and maintain for the duration of the grant Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the services performed or to be performed hereunder by the Agency, its agents, representatives, employees, volunteers, officers, director, or subcontractors.

The Agency shall maintain insurance with limits not less than $500,000 per occurrence, $1,000,000 aggregate and will be as broad as ISO Form Number GL 0002 (Ed 1/72) covering Comprehensive General Liability and ISO Form Number GL 0404 covering Broad Form Comprehensive General Liability, or ISO Commercial General Liability coverage ("occurrence") form CG 0001). Coverage will include:

A. Premises - Operations;
B. Broad Form Contractual Liability;
C. Broad Form Property Damage; and
D. Personal Injury

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

City prefers that insurance be placed with insurers with an A.M. Best rating of A:VI or, a Standard & Poors rating of A or better.

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

ATTESTATION

I, **NAME**, am of sound mind and at least eighteen (18) years of age. My position is Title of **AGENCY NAME**. As Title, I am familiar with the activities of **AGENCY NAME**, including its status as a non-profit corporation. I do hereby affirm to the best of my knowledge that **AGENCY NAME** is currently valid as a non-profit corporation, and has not had nor in the reasonably foreseeable future is likely to have its status as a non-profit corporation revoked.

AGENCY NAME

By:_____
Name
Title

STATE OF TEXAS §
§
COUNTY OF COLLIN §

Subscribed and sworn to before me this ____ day of _____, 2006.

_____
Notary Public, State of Texas

A-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:	12/11/06	Reviewed by Legal	☒ Yes	☐ Not Applicable
Department:	Engineering		Initials	Date
Department Head	Alan L. Upchurch	Executive Director		12/4/06
Dept Signature:	Alan L Upchurch	City Manager		12/4/06
Agenda Coordinator (include phone #):	Irene Pegues (7198)			

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

CAPTION

Approving the terms and conditions of a real estate contract by and between the City of Plano, Texas, and Duyet H. and Hien Thi Nguyen for the purchase of 1,371.115 sq. ft. of land for right of way for 15th Street and a Temporary Construction Easement of 810 sq. ft., located at the southwest corner of K Avenue and Parker Road, in the George W. Barnett Survey, Abstract Number 45, being a part of Lot 1, Block A, of Glasgow Addition, an addition in the City of Plano, Collin County, Texas; 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: 2006-07	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	129,786	3,603,214	0	**3,733,000**
Encumbered/Expended Amount	-129,786	-53,659	0	**-183,445**
This Item	0	-28,500	0	**-28,500**
BALANCE	**0**	**3,521,055**	**0**	**3,521,055**

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

COMMENTS: Funds are included in the 2006-07 Street Improvement CIP. This item, in the amount of $28,500, will leave a current year balance of $3,521,055 for the Parker – K Avenue to P Avenue project.

STRATEGIC PLAN GOAL: Land purchases and construction easements relate to the City's Goal of Safe, Efficient Travel.

SUMMARY OF ITEM

This contract is for the needed right of way and Temporary Construction Easement needed to add a right-turn lane on eastbound Parker Road at K Avenue as a part of the Parker Road widening project. The purchase price of $28,500 also includes the property owner relocating an existing air station that is within the property to be acquired.

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

LS\AGENDA2006:1211Nguyen

t-1

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A REAL ESTATE CONTRACT BY AND BETWEEN THE CITY OF PLANO, TEXAS, AND DUYET H. AND HIEN THI NGUYEN FOR THE PURCHASE OF 1,371.115 SQ. FT. OF LAND FOR RIGHT OF WAY FOR 15TH STREET AND A TEMPORARY CONSTRUCTION EASEMENT OF 810 SQ. FT., LOCATED AT THE SOUTHWEST CORNER OF K AVENUE AND PARKER ROAD, IN THE GEORGE W. BARNETT SURVEY, ABSTRACT NUMBER 45, BEING A PART OF LOT 1, BLOCK A, OF GLASGOW ADDITION, AN ADDITION IN THE CITY OF PLANO, COLLIN COUNTY, TEXAS; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR HIS DESIGNEE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council has been presented a proposed Real Estate Contract by and between City of Plano, Texas, and Duyet H. and Hien Thi Nguyen, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Contract"); and

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

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

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

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

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

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

_____
Pat Evans, MAYOR

ATTEST:

_____
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

REAL ESTATE CONTRACT

THIS CONTRACT is entered into as of the effective date as hereinafter defined by and between **DUYET H. NGUYEN and wife HIEN THI NGUYEN** (the "Seller"), and **CITY OF PLANO, TEXAS,** a home rule municipal corporation (the "Purchaser").

WHEREAS, under threat of condemnation, the Purchaser desires to purchase and the Seller desires to sell the following tracts or parcels of real property as follows:

(a) A 1,371.115 square foot tract of land in fee simple for right-of-way purposes as more particularly described in Exhibit "A" attached hereto and made a part hereof by reference and being herein referred to as the "Right-of-Way Property"; and

(b) A 810 square foot easement parcel for temporary construction purposes as more particularly described in Exhibit "B" attached hereto and made a part hereof by reference and being herein referred to as the "Temporary Construction Easement Property,"

both parcels collectively referred to as the "Property."

WHEREAS, Seller and Purchaser have entered into this Contract to provide for the terms and conditions of the sale and purchase of the Property.

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

1. Agreement to Convey

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

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2. Purchase Price

The purchase price ("Purchase Price") to be paid for the Property shall be **TWENTY EIGHT THOUSAND FIVE HUNDRED AND NO/100 DOLLARS ($28,500.00).** The Purchase Price includes the entire cost of relocating the existing air station by Seller on Seller's property. The Purchase Price shall be paid at closing (as hereinafter defined).

3. Title Commitment

Purchaser, at its sole cost and expense, shall obtain a current commitment or commitments for title insurance (the "Title Commitment") covering the Property and issued by a title company (the "Title Company") selected by Purchaser. The items listed on Schedule B shall be deemed "Permitted Exceptions."

4. Representations and Warranties of Seller

(a) At Closing, Seller shall have good and indefeasible fee simple title to the Property, free and clear of all mortgages and liens or judgments or such mortgages, liens and/or judgments will be released from the Property with proceeds of Closing.

(b) To Seller's actual knowledge, without duty of investigation, there are no parties in possession of any portion of the Property as lessees, tenants at sufferance or trespassers, and no prescriptive rights will have been acquired in, or have commenced to run against the Property or any portion thereof.

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

5. Acknowledgments, Covenants and Agreements of Seller

Seller acknowledges, covenants and agrees with Purchaser as follows:

(a) Purchaser and its agents and representatives shall have full access to the Property at all times prior to the Closing.

(b) No new or additional improvements will be constructed, located or placed on the Property.

(c) To the best of Seller's knowledge and belief, the Property does not include any personal property.

(d) During the pendency of this Contract, Seller shall not (without the prior written consent of Purchaser) create, impose or agree to any mortgages, liens,

encumbrances, leases, tenancies, licenses, security interests, covenants, conditions, restrictions, rights-of-way, easements, judgments or other matters affecting title to the Property, except those existing on the date of execution of the Contract.

(e) This closing and consummation of the terms of this Contract shall constitute a full and final settlement for all compensation due Seller for the Property.

(f) The covenants in this Section 5 shall survive Closing.

6. The Closing

The closing of this Contract pertaining to the Property shall be consummated at a closing (the "Closing") to be held at the office of the Title Company on or before thirty (30) days after the effective date of this Contract, or at such other time, date and place that the parties may agree upon. At the Closing, Seller agrees to deliver to Purchaser:

(a) A Special Warranty Deed substantially the same as the form attached hereto as Exhibit "C" duly executed by Seller and properly acknowledged, granting, conveying and warranting unto the Purchaser good and indefeasible title in Right-of-Way Property to Purchaser, subject to no liens, charges, encumbrances, exceptions or reservations of any kind or character other than Permitted Exceptions; and

(b) A Temporary Construction Easement substantially the same as the form attached hereto as Exhibit "D" duly executed by Seller and properly acknowledged granting and conveying an easement interest in the Temporary Construction Easement Property to Purchaser; and

(c) All releases or other documents or instruments (all in recordable form) reasonably required to eliminate any Schedule C items contained in the Title Commitment; and

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

7. Closing Costs and Proration

Costs of title insurance for the Property, escrow fees of the Title Company, costs of recording any documents in connection with the Closing of the Property shall be paid by Purchaser. All other expenses incurred by Seller and Purchaser with respect to the Closing, including, but not limited to, attorneys' fees incurred in connection with this Contract, shall be borne and paid exclusively by the party incurring same. Ad valorem taxes for the year of closing shall be prorated as of the Closing in accordance with Section 26.11 of the Texas Tax Code. All delinquent ad valorem taxes, if any, shall be paid by Seller.

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8. Default

(a) Seller's Default. In the event Seller should fail to consummate this Contract for any reason except Purchaser's default, Purchaser may, at its option, either enforce specific performance of this Contract or terminate this Contract as its sole and exclusive remedy hereunder. If Seller is unable to deliver title as required by this Contract, Purchaser shall have the right to take the Property with whatever title Seller can deliver. Nothing herein shall be construed to limit the Purchaser's right and power of eminent domain.

(b) Purchaser's Default. In the event Purchaser shall fail to consummate this Contract for any reason except Seller's default, Seller may, at its option and as its sole and exclusive remedy, either enforce specific performance of this Contract or terminate this Contract by giving written notice thereof to Purchaser. Seller's remedy set forth in this Paragraph 8(b) is exclusive.

9. Right to Possession

Purchaser shall be entitled to possession at Closing.

10. Nonwaiver

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

11. Miscellaneous Provisions

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

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

(c) This Contract shall be construed under and in accordance with the laws of the State of Texas and is fully performable in Collin County, Texas.

(d) In case any one or more of the provisions contained in this Contract shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity,

illegality or unenforceability shall not affect any other provision hereof, and this Contract shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

(e) Any notice to be given or to be served upon any party hereto in connection with this Contract must be in writing and may be given by Certified or Registered Mail and shall be deemed to have been given and received when a Certified or Registered letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States Mail, and if given otherwise than by Certified or Registered Mail, it shall be deemed to have been given when delivered to and received by the party (or such party's agents or representatives) to whom it is addressed. Such notice shall be given to the parties hereto at the address set forth under their respective signatures below. Any party hereto may, at any time by giving two (2) days' written notice to the other parties hereto, designate any other address in substitution of the foregoing address to which such notice shall be given.

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

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

(h) Purchaser represents and warrants unto Seller that Purchaser has full power and authority to enter into and consummate this Contract.

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

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

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

SELLER:

Date: 11.22.06

Duyet Nguyen
DUYET H. NGUYEN

Hien Nguyen
HIEN THI NGUYEN
3608 WAYNOKA DR
CARROLLTON, TX. 75007

PURCHASER:

CITY OF PLANO, TEXAS, a Home Rule Municipal Corporation

Date:_____

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

ACKNOWLEDGMENTS

STATE OF TEXAS §
COUNTY OF Collin §

This instrument was acknowledged before me on the 22nd day of November, 2006, by **DUYET H. NGUYEN.**

MAURICE E HOLLOWAY
Notary Public
State of Texas
My Commission Expires April 22, 2010

Notary Public, State of Texas

STATE OF TEXAS §
COUNTY OF Collin §

This instrument was acknowledged before me on the 22nd day of November, 2006, by **HIEN THI NGUYEN.**

MAURICE E HOLLOWAY
Notary Public
State of Texas
My Commission Expires April 22, 2010

Notary Public, State of Texas

STATE OF TEXAS §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2006, by **THOMAS H. MUEHLENBECK**, City Manager of the **CITY OF PLANO, TEXAS, a home rule municipal corporation**, on behalf of said corporation.

_____
Notary Public, State of Texas

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EXHIBIT "A"
The Right of Way Property

BEING a tract of land situated in the State of Texas, County of Collin, City of Plano, out of the George W. Barnett Survey, Abstract Number 45, being part of Lot 1, Block A of the Subdivision entitled "Glasgow Addition," of record in Volume B, Page 173, and part of that tract of land conveyed to Duyet H. Nguyen and Hein Thi Nguyen by Deed of record in Document Number 92-0008631, all references being to the records of the Recorder's Office, Collin County, Texas, and more particularly bounded and described as follows:

BEGINNING at a 1/2" iron rod set at the northeasterly corner of Lot 4, Block 1, of the subdivision entitled "Parker Square," of record in Volume C, Page 537, in the southerly right of way line of Parker Road;

THENCE South 88°13'58" East, with said southerly right of way line, a distance of 149.31 feet to an iron rod set in the westerly right of way line of Avenue K;

THENCE South 00°27'57" East, with said westerly right of way line, a distance of 33.44 feet to an iron rod set;

THENCE crossing said Glasgow Addition the following courses and distances:

North 46°09'44" West, a distance of 42.98 feet to an iron rod set;

South 89° 49'20" West, a distance of 114.98 feet to an iron rod set; and

North 88°49'59" West, a distance of 3.56 feet to an iron rod set in the easterly line of said Parker Square;

THENCE North 00°14'20" East, with said easterly line, a distance of 8.56 feet to the POINT OF BEGINNING, containing 0.031 acre (1,371.115 square feet) of land more or less.

EXHIBIT "B"
The Temporary Construction Easement Property

BEING a tract of land situated in the State of Texas, County of Collin, City of Plano, out of the George W. Barnett Survey, Abstract Number 45, being part of Lot 1, Block A, of the Subdivision entitled "Glasgow Addition," of record in Volume B, Page 173, and part of that tract of land conveyed to Duyet H. Nguyen and Hein Thi Nguyen by Deed of Record in Document Number 92-0008631, all references being to the records of the Recorder's Office, Collin County, Texas, and more particularly bounded and described as follows:

COMMENCING at the northeasterly corner of Lot 4, Block 1, of the subdivision entitled "Parker Square," of record in Volume C Page 537, in the southerly right of way line of Parker Road;

THENCE South 00°14'20" West, with the easterly line of said Parker Square, a distance of 8.56 feet to the POINT OF BEGINNING for this description;

THENCE crossing said Glasgow Addition the following courses and distances:

South 88°49'59" East, a distance of 3.56 feet to a point;

North 89°49'20" East, a distance of 114.98 feet to a point; and

South 46°09'44" East, a distance of 42.98 feet to a point in the westerly right of way line of Avenue K;

THENCE South 00°27'57" East, with said westerly right of way line, a distance of 6.99 feet to a point;

THENCE crossing said Glasgow Addition the following courses and distances:

North 46°09'47" West, a distance of 45.84 feet to a point;

South 89°49'17" West, a distance of 112.96 feet to a point; and

North 88°50'03" West, a distance of 3.60 feet to a point in said easterly line of Parker Square;

THENCE North 00°14'20" East, a distance of 5.00 feet to the POINT OF BEGINNING, containing 0.019 acre (810 square feet) of land, more or less.

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EXHIBIT "C"
The Special Warranty Deed

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

SPECIAL WARRANTY DEED

STATE OF TEXAS §
§ **KNOW ALL MEN BY THESE PRESENTS:**
COUNTY OF COLLIN §

THAT, DUYET H. NGUYEN and wife, HIEN THI NGUYEN, whether one or more, hereinafter called "Grantor," for and in consideration of the sum of **TEN DOLLARS ($10.00)** and other good and valuable consideration to Grantor in hand paid by the **CITY OF PLANO, TEXAS,** a home rule municipal corporation, hereinafter called "Grantee," the receipt and sufficiency of which is hereby acknowledged, and for which no lien is retained, express or implied, does by these presents GIVE, GRANT, and CONVEY unto the Grantee all of that certain tract or parcel of land situated in the City of Plano, Collin County, Texas, as more particularly described in Exhibit "A" attached hereto and made a part hereof for all purposes, together with all improvements situated thereon and with all and singular the rights and appurtenances thereto and any and all right, title and interest of Grantor in and to any adjacent streets, alleys or rights-of-way (hereinafter collectively called the "Property").

The Property is conveyed by Grantor and accepted by Grantee subject to all easements, restrictions, conditions, covenants, and other instruments of record.

It is acknowledged and agreed that Grantee is acquiring the Property for the purpose of permitting Grantee or its agents or assigns to construct, maintain, repair, and operate thereon street, highway, right-of-way, drainage improvements, utilities, and other related improvements. This provision shall not be construed as any restraint on the right of Grantee to convey fee simple title to the Property. The consideration paid to Grantor by Grantee for the Property shall be considered full compensation for the property interests conveyed to Grantee, including, without limitation, the right or claim to severance damages or any damages to, or diminution in value of, other lands belonging to Grantor that may be claimed or asserted by virtue of such acquisition of the Property by Grantee. Notwithstanding the area and shape of the Property, this Special Warranty Deed shall be construed as conveying all rights and appurtenances incident to any ordinary conveyance of land.

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereto in any wise belonging unto said Grantee, its successors and assigns, forever. Grantor does hereby bind Grantor and Grantor's administrators, successors and assigns, to warrant and forever defend, all and singular the Property unto the Grantee and Grantee's successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through, or under Grantor, but not otherwise.

The mailing address of the Grantee is:

City of Plano
P.O. Box 860358
Plano, TX 75086-0358
Attention: Elaine Bealke, City Secretary

EXECUTED this 2ND day of NOVEMBER, 2006.

Duyet Nguyen
DUYET H. NGUYEN

Hien Nguyen
HIEN THI NGUYEN

Address:
3608 WAYNOKA DR -
CARROLLTON, TX. 75007

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ACKNOWLEDGMENTS

STATE OF TEXAS §
§
COUNTY OF Collin §

This instrument was acknowledged before me on the 22ND day of November, 2006, by **DUYET H. NGUYEN**.

MAURICE E HOLLOWAY
Notary Public
State of Texas
My Commission Expires April 22, 2010

Maurice E Holloway
Notary Public, State of Texas

STATE OF TEXAS §
§
COUNTY OF Collin §

This instrument was acknowledged before me on the 22ND day of November, 2006, by **HIEN THI NGUYEN**.

MAURICE E HOLLOWAY
Notary Public
State of Texas
My Commission Expires April 22, 2010

Maurice E Holloway
Notary Public, State of Texas

After Recording Please Return To:
City Attorney's Office
City of Plano, Texas
P.O. Box 860358
Plano, TX 75086-0358

EXHIBIT "A"
The Property

BEING a tract of land situated in the State of Texas, County of Collin, City of Plano, out of the George W. Barnett Survey, Abstract Number 45, being part of Lot 1, Block A of the Subdivision entitled "Glasgow Addition," of record in Volume B, Page 173, and part of that tract of land conveyed to Duyet H. Nguyen and Hein Thi Nguyen by Deed of record in Document Number 92-0008631, all references being to the records of the Recorder's Office, Collin County, Texas, and more particularly bounded and described as follows:

BEGINNING at a 1/2" iron rod set at the northeasterly corner of Lot 4, Block 1, of the subdivision entitled "Parker Square," of record in Volume C, Page 537, in the southerly right of way line of Parker Road;

THENCE South 88°13'58" East, with said southerly right of way line, a distance of 149.31 feet to an iron rod set in the westerly right of way line of Avenue K;

THENCE South 00°27'57" East, with said westerly right of way line, a distance of 33.44 feet to an iron rod set;

THENCE crossing said Glasgow Addition the following courses and distances:

North 46°09'44" West, a distance of 42.98 feet to an iron rod set;

South 89° 49'20" West, a distance of 114.98 feet to an iron rod set; and

North 88°49'59" West, a distance of 3.56 feet to an iron rod set in the easterly line of said Parker Square;

THENCE North 00°14'20" East, with said easterly line, a distance of 8.56 feet to the POINT OF BEGINNING, containing 0.031 acre (1,371.115 square feet) of land more or less.

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EXHIBIT "B"
Permitted Exceptions

1. Terms, provisions, conditions, easements and restrictions contained in instrument filed 02/26/1992, cc# 92-0011501, Real Property Records of Collin County, Texas.

EXHIBIT "D"
The Temporary Construction Easement

TEMPORARY CONSTRUCTION EASEMENT

STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF COLLIN §

THAT, DUYET H. NGUYEN and wife, HIEN THI NGUYEN, whether one or more, hereinafter called "Grantor," for and in consideration of the sum of **TEN DOLLARS ($10.00)** and other good and valuable consideration to Grantor in hand paid by the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, hereinafter called "Grantee," the receipt and sufficiency of which is hereby acknowledged, does GIVE, GRANT and CONVEY to Grantee, its successors and assigns, a temporary construction easement for the purpose of constructing street and highway facilities in, on, across and through certain real property in the City of Plano, Collin County, Texas, more particularly described in Exhibit "A", which is attached hereto and made a part hereof by reference as if fully set forth herein (called the "Easement Property").

Grantee will at all times, after doing any work in connection with the construction, operation or repair of the Easement Property, restore the surface of the Easement Property as close to the condition in which it was found before such work was undertaken as is reasonably practicable, except for trees, shrubs and structures within the Easement Property that were removed as a result of such work.

This Temporary Construction Easement will expire at such time that the public improvement project described as Parker Road (Avenue K to Avenue P) Project No. 5513, is completed and accepted by the City of Plano, Texas.

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This Easement may be assigned in whole or in part.

TO HAVE AND TO HOLD unto the Grantee, its successors and assigns, together with the right and privilege at all times to enter the Easement Property or any part thereof, for the purpose of access by Grantee and Grantee's contractors and their employees and for the purposes set forth above.

SIGNED this 2ND day of NOVEMBER, 2006.

Duyet Nguyen
DUYET H. NGUYEN

Hien Nguyen
HIEN THI NGUYEN

Address:
3608 WAYNOK DR.
CARROLLTON, TX. 75007

ACKNOWLEDGMENTS

STATE OF TEXAS §
§
COUNTY OF Collin §

This instrument was acknowledged before me on the 22ND day of NOVEMBER, 2____, by **DUYET H. NGUYEN**.

MAURICE E HOLLOWAY
Notary Public
State of Texas
My Commission Expires April 22, 2010

Maurice E Holloway
Notary Public, State of Texas

STATE OF TEXAS §
§
COUNTY OF Collin §

This instrument was acknowledged before me on the 22ND day of NOVEMBER, 2006, by **HIEN THI NGUYEN**.

MAURICE E HOLLOWAY
Notary Public
State of Texas
My Commission Expires April 22, 2010

Maurice E Holloway
Notary Public, State of Texas

After Recording Return To:
City Attorney's Office
City of Plano, Texas
P. O. Box 860358
Plano, TX 75083-0358

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EXHIBIT "A"
The Easement Property

BEING a tract of land situated in the State of Texas, County of Collin, City of Plano, out of the George W. Barnett Survey, Abstract Number 45, being part of Lot 1, Block A, of the Subdivision entitled "Glasgow Addition," of record in Volume B, Page 173, and part of that tract of land conveyed to Duyet H. Nguyen and Hein Thi Nguyen by Deed of Record in Document Number 92-0008631, all references being to the records of the Recorder's Office, Collin County, Texas, and more particularly bounded and described as follows:

COMMENCING at the northeasterly corner of Lot 4, Block 1, of the subdivision entitled "Parker Square," of record in Volume C Page 537, in the southerly right of way line of Parker Road;

THENCE South 00°14'20" West, with the easterly line of said Parker Square, a distance of 8.56 feet to the POINT OF BEGINNING for this description;

THENCE crossing said Glasgow Addition the following courses and distances:

South 88°49'59" East, a distance of 3.56 feet to a point;

North 89°49'20" East, a distance of 114.98 feet to a point; and

South 46°09'44" East, a distance of 42.98 feet to a point in the westerly right of way line of Avenue K;

THENCE South 00°27'57" East, with said westerly right of way line, a distance of 6.99 feet to a point;

THENCE crossing said Glasgow Addition the following courses and distances:

North 46°09'47" West, a distance of 45.84 feet to a point;

South 89°49'17" West, a distance of 112.96 feet to a point; and

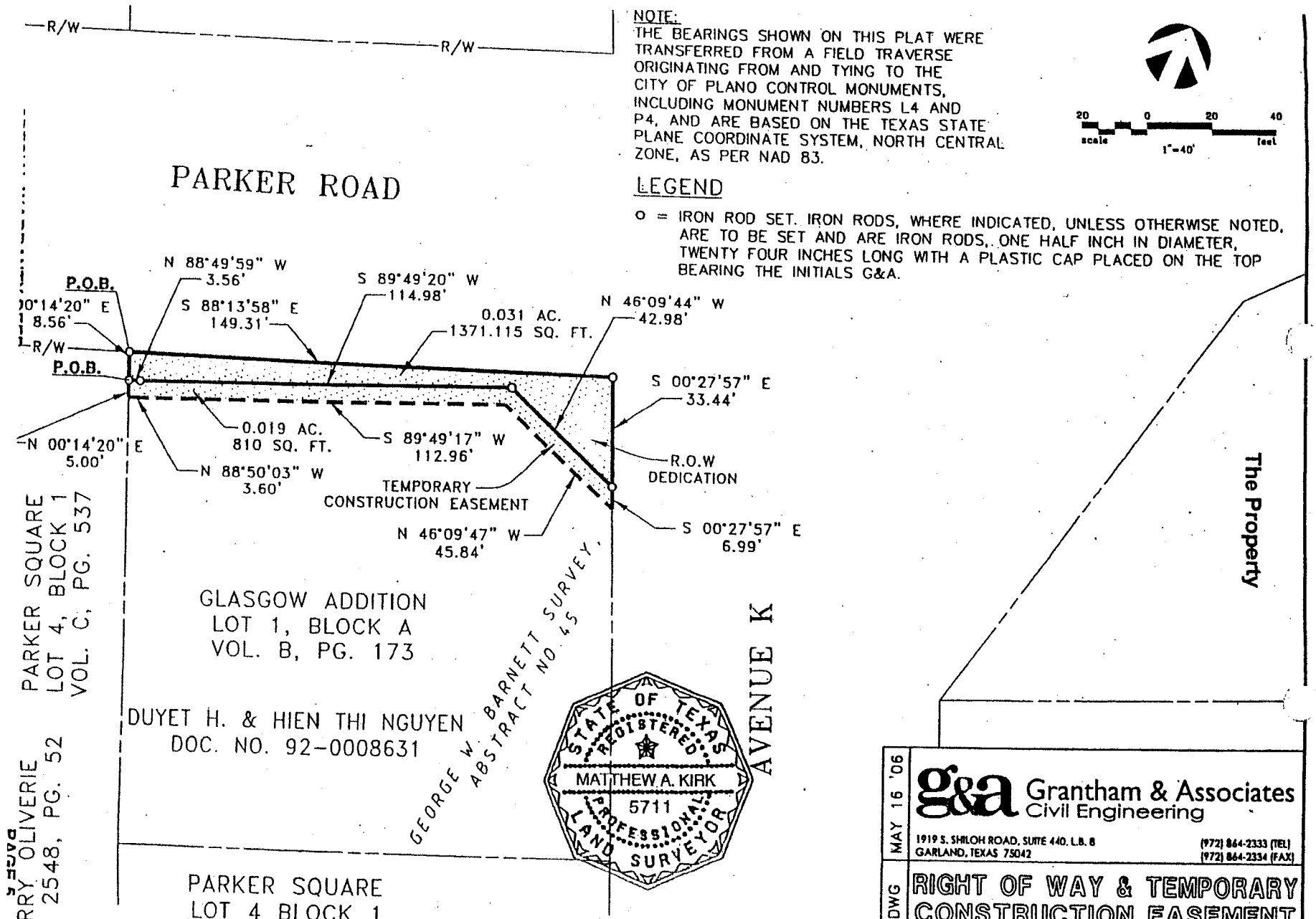
North 88°50'03" West, a distance of 3.60 feet to a point in said easterly line of Parker Square;

THENCE North 00°14'20" East, a distance of 5.00 feet to the POINT OF BEGINNING, containing 0.019 acre (810 square feet) of land, more or less.

NOTE:
THE BEARINGS SHOWN ON THIS PLAT WERE TRANSFERRED FROM A FIELD TRAVERSE ORIGINATING FROM AND TYING TO THE CITY OF PLANO CONTROL MONUMENTS, INCLUDING MONUMENT NUMBERS L4 AND P4, AND ARE BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, NORTH CENTRAL ZONE, AS PER NAD 83.

LEGEND

o = IRON ROD SET. IRON RODS, WHERE INDICATED, UNLESS OTHERWISE NOTED, ARE TO BE SET AND ARE IRON RODS, ONE HALF INCH IN DIAMETER, TWENTY FOUR INCHES LONG WITH A PLASTIC CAP PLACED ON THE TOP BEARING THE INITIALS G&A.



Matthew A. Kirk 16 MAY 06
MATTHEW A. KIRK R.P.L.S. NO. 5711

MAY 16 '06

g&a Grantham & Associates
Civil Engineering

1919 S. SHILOH ROAD, SUITE 440, L.B. 8
GARLAND, TEXAS 75042
(972) 864-2333 (TEL)
(972) 864-2334 (FAX)

ESMT26.DWG

RIGHT OF WAY & TEMPORARY CONSTRUCTION EASEMENT
EXHIBIT "A"

CITY OF PLANO

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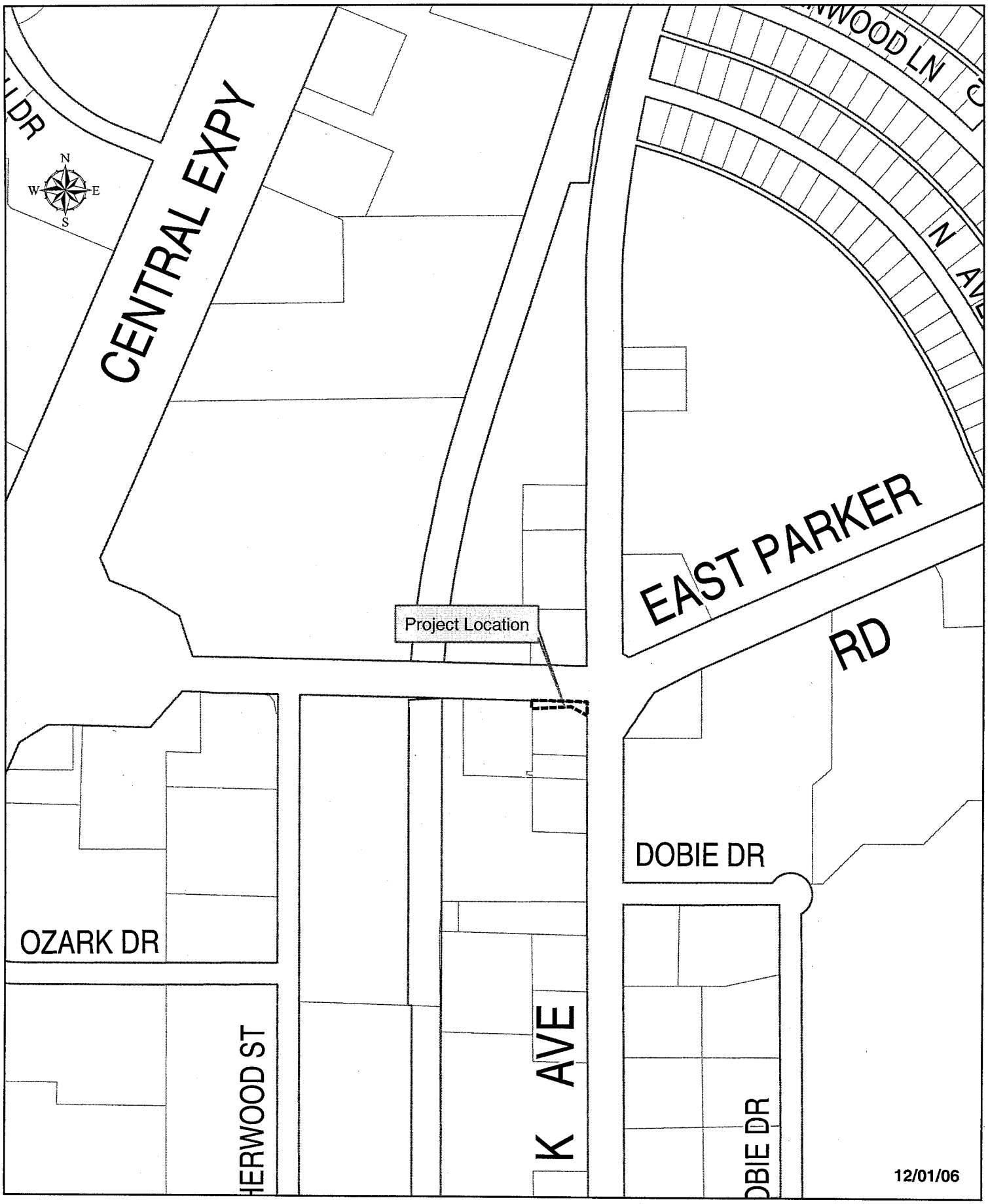
PROPOSED RIGHT TURN LANE



LOCATION MAP

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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:	12/11/06	Reviewed by Legal	☒ Yes	☐ Not Applicable
Department:	Library Administration		Initials	Date
Department Head	Joyce Baumbach	Executive Director		12-1-06
Dept Signature:	Joyce Baumbach	City Manager		12/1/06
Agenda Coordinator (include phone #):	**Mary Ann Dunnavant (Ext. 4208)**			

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

CAPTION

Approving receipt of funds in the amount of $62,773.00 from the Texas State Library and Archives Commission – Loan Star Libraries to fund the following for Plano Public Library System (PPLS): Rosetta Stone database, OCLC World Language Sets, PPLS library cards, genealogy local history and Texana materials, large print materials, and English and Spanish computer class instructors; and authorizing the City Manager or his designee to execute all necessary documents for receipt of the funding.

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☐ OPERATING EXPENSE ☒ REVENUE ☐ CIP

FISCAL YEAR: **2006-2007**	**Prior Year (CIP Only)**	**Current Year**	**Future Years**	**TOTALS**
Budget	0	0	0	**0**
Encumbered/Expended Amount	0	0	0	**0**
This Item	0	62,773	0	**62,773**
BALANCE	**0**	62,773	0	**62,773**

FUND(S): STATE LIBRARY GRANTS FUND

COMMENTS: The grant contract, if approved, provides funding in the amount of $62,773 for Plano Public Library System purchases and programs.

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

SUMMARY OF ITEM

Plano Public Library System recommends Plano City Council approve this grant from the Texas State Library and Archives Commission - Loan Star Libraries Program to fund the following for Plano Public Library System (PPLS): Rosetta Stone database, OCLC World Language Sets, PPLS library cards, genealogy local history and Texana materials, large print materials, and English and Spanish computer class instructors. The costs for the items listed above shall not exceed $62,773.00.

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
1. Letter from Loan Star Libraries dated August 15, 2006	

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REV 08/98

Texas
State Library
and Archives
Commission

Lorenzo de Zavala
State Archives and
Library Building

P.O. Box 12927
Austin, Texas
78711-2927

1201 Brazos St.
Austin, Texas
78701

www.tsl.state.tx.us

Commission Chairman
Sandra J. Pickett

Members
Sharon T. Carr
Diana Rae Hester Cox
Martha Doty Freeman
Cruz G. Hernandez
Sandra G. Holland
Sally Reynolds

Director and Librarian
Peggy D. Rudd

Assistant State Librarian
Edward Seidenberg

Making information work for all Texans

August 15, 2006

To: **Plano Public Library System, Plano**
From: Wendy Clark WC
Manager, Loan Star Libraries Program
Re: Fiscal Year 2007 Loan Star Libraries Grant Award and Further Instructions
CC: Governing Entity for the Library

Congratulations! Your library will receive a Loan Star Libraries grant award from the Texas State Library and Archives Commission in the amount of **$62,773.**

Your library's Federal-State Cooperative System (FSCS) number is **TX0228.** You will use your FSCS number to log in when submitting your library's required Plan of Action. Please keep this number handy; it will be used throughout the grant year for submission of grant reports.

In order to obtain your award, please make certain we receive the following:

1) **all the Loan Star Libraries reports for FY06 from your library. Please review the FY06 contract for information on grant reporting requirements.**
2) **any funds from previous Loan Star Libraries grants for your library that must be returned to the State. Again, please check the contract for information on refunds.**
3) **the Loan Star Libraries Plan of Action 2007 for your library—the submission deadline is October 31, 2006.**
4) **properly signed FY07 LSL contracts and forms.**

The **Loan Star Libraries Plan of Action 2007** form is now available on the Loan Star Libraries section of the Texas State Library and Archives Commission website at http://www.tsl.state.tx.us/ld/funding/loanstar/ (in the menu on the left side of the homepage). The Plan of Action tells us how you would like to spend your FY07 award and is your library's grant application for the Loan Star Libraries program. **The deadline for receipt of the Plan of Action is October 31.**

We must receive all prior Loan Star Libraries Performance and Financial Status Reports before your FY07 contract will be sent. Therefore, please be prompt in completing reporting for FY06 and ensure that all FY06 funds are encumbered or spent by August 31, 2006. Once we receive your Plan of Action and it is approved, we will prepare and send contracts to you for the appropriate signatures. We will contact you if previous reports are delinquent or if we have any questions about your FY07 Plan.

If you need to change your Plan of Action after the contract has been issued, you may do so with prior approval from me. If you need to make changes for payment of grant funds, please contact Sandra Justice, Grants Accountant, at 512-463-5472 or sandra.justice@tsl.state.tx.us.

Loan Star Libraries is the direct State aid grant program for public libraries in Texas. All of us at the State Library are excited to announce your award for the sixth year of the program, and look forward to working with you to make Loan Star Libraries a success.

Again, congratulations on your award! We hope it will be a benefit to the community you serve. If you have any questions my contact information follows:

Phone: 512-463-5475; Fax: 512-463-8800; Email: wendy.clark@tsl.state.tx.us

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Encl: Administrative Rules; Assignment of Costs; Important Dates; TexShare Database Fees

LD/LSL Revised 8/06

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING RECEIPT OF FUNDS IN THE AMOUNT OF $62,773.00 FROM THE TEXAS STATE LIBRARY AND ARCHIVES COMMISSION – LOAN STAR LIBRARIES TO FUND THE FOLLOWING FOR PLANO PUBLIC LIBRARY SYSTEM (PPLS): ROSETTA STONE DATABASE, OCLC WORLD LANGUAGE SETS, PPLS LIBRARY CARDS, GENEALOGY LOCAL HISTORY AND TEXANA MATERIALS, LARGE PRINT MATERIALS, AND ENGLISH AND SPANISH COMPUTER CLASS INSTRUCTORS; AND AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE ALL NECESSARY DOCUMENTS FOR RECEIPT OF THE FUNDING.

WHEREAS, the City of Plano Public Library System has applied for and received funds in the amount of $62,773.00 from the Texas State Library and Archives Commission – Loan Star Libraries to fund the following for Plano Public Library System (PPLS): Rosetta Stone database, OCLC World Language Sets, PPLS library cards, genealogy local history and Texana materials, large print materials, and English and Spanish computer class instructors; and

WHEREAS, the City of Plano Public Library System desires to sign a grant contract between the Texas State Library and Archives Commission and the City of Plano for receipt of grant funds in the amount of $62,773.00 (see Exhibit "A"); and

WHEREAS, the City Council of the City of Plano, Texas, finds that the public's best interest is served by authorizing receipt of the monies from the Texas State Library and Archives Commission – Loan Star Libraries to fund the following for Plano Public Library System (PPLS): Rosetta Stone database, OCLC World Language Sets, PPLS library cards, genealogy local history and Texana materials, large print materials, and English and Spanish computer class instructors.

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

Section I. The Plano Public Library System has approval to accept the $62,773.00 funding grant from the Texas State Library and Archives Commission – Loan Star Libraries. The City Manager or his designee shall execute all necessary documents for receipt of the funding.

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SECTION II. The monies from the grant shall fund the following for Plano Public Library System (PPLS): Rosetta Stone database, OCLC World Language Sets, PPLS library cards, genealogy local history and Texana materials, large print materials, and English and Spanish computer class instructors

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

DULY PASSED AND APPROVED this the _____day of _____ 2006.

_____
Pat Evans, MAYOR

ATTEST:

_____
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane Wetherbee, CITY ATTORNEY

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TEXAS STATE LIBRARY & ARCHIVES COMMISSION
LOAN STAR LIBRARIES GRANT
Grant Type A - $50,000 and Over

Grant Number: 442-07385

I. CONTRACTING PARTIES

Grantor: Texas State Library and Archives Commission (TSLAC)

Grantee: City of Plano, Plano Public Library System
2501 Coit Rd
Plano, Texas 75075

II. TERM OF GRANT

September 1, 2006, to August 31, 2007

III. STATEMENT OF SERVICES TO BE PERFORMED

The Grantee acknowledges that the intent of the grant is to provide funds to maintain, improve, and enhance local library services, and to provide Texans who are not residents of a particular community access to and services from the many participating public libraries in Texas.

The Grantee will comply during the period of this contract and provide services as outlined within the Plan of Action submitted by the Grantee (Loan Star Libraries Grant for State FY07) as approved by the Grantor. The approved Plan of Action becomes part of this contract by this reference.

IV. GRANT AMOUNTS AND DISBURSEMENT REQUIREMENTS

A. The total amount of the grant shall not exceed: $62,773.00

B. Source of funds: General Revenue, State Fiscal Year 2007

C. The Grantee must request payments from Grantor on the TSLAC Form, Request for Funds (RFF). Requests may be submitted to Grantor no more often than once per month, and no less often than once per quarter. Funds will be paid to the Grantee provided Grantor has received a fully executed contract and Grantee has fulfilled all requirements for preceding contracts.

D. The Grantee is restricted to one of two methods for requesting funds from Grantor. The Grantee may request reimbursement of actual expenditures for the Grantee's normal billing cycle, or advance payment for estimated expenditures to be incurred for the upcoming 30 days. Only Grantees that provide documentation to demonstrate a lack of sufficient working capital, and the ability to minimize the time elapsing between transfer of funds from Grantor and disbursement of grant funds will be allowed to request advance payments.

E. Payments of advance funds will be disbursed by the first working day of the advance period provided the RFF Form is received by Grantor no later than the 15th of the previous month. Should excessive cash balances be maintained, Grantee may be required to use the reimbursement process. Grantor must receive final request for advance no later than **July 15, 2007.** Grantor must receive final request for reimbursement no later than **October 15, 2007.**

F. The Grantee may not obligate or encumber grant funds after **August 31, 2007.** All obligations and encumbrances must be liquidated or paid no later than **October 15, 2007.**

G. All unexpended funds in excess of $25.00 must also be returned to Grantor with the Final Financial Status Report (FSR). See Section VII. B. of this contract for FSR due dates.

H. Interest earned in excess of $100 must be returned to Grantor, per requirements in the State of Texas Uniform Grant Management Standards (UGMS).

I. The Grantee will add any program income to the funds committed to the grant, using such program income for the purposes and under the conditions of the grant. The source and amount of the program income must be explained in Section 9 of the TSLAC FSR.

J. Per the approved grant application, funds are authorized according to the following budget:

Personnel	
Fringe Benefit	
Equipment/Property	
Supplies	$48,625.00
Contractual	$14,148.00
Other	
Total Direct Costs	$62,773.00
Indirect Costs	
Total	**$62,773.00**

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V. WRITTEN REQUEST FOR FISCAL AND PROGRAMMATIC CHANGES

The Grantee must request written prior approval for fiscal and/or programmatic changes as outlined in this Section. Grantee must submit request for program and/or fiscal changes on the Loan Star Libraries Grant Program Revision Form. Under no condition may a Grantee request to exceed the total grant amount. Grantor must receive all change requests no later than **July 31, 2007**. Requests received after this date will be considered on a case-by-case basis. **Grantee must receive written approval from Grantor before obligating or expending grant funds under any of the following conditions.**

A. Fiscal changes must have an approved Budget Revision under the following conditions:
   1. Making cumulative transfers among budget cost categories or projects which are expected to exceed ten (10) percent of the total grant; and/or,
   2. Transferring any funds into a budget cost category that currently equals zero ($0).

B. Programmatic changes to Loan Star Libraries Grant Plan of Action for State FY07 must have an approved Program Revision under the following conditions:
   1. Obtaining the services of a third party to perform activities that are central to the purposes of the grant; and/or,
   2. Changing the scope or objectives of the approved program, regardless of whether there is an associated Budget Revision. A change in scope is a substantive difference in the approach or method used to reach program objectives.

VI. EQUIPMENT AND PROPERTY REQUIREMENTS

A. All changes to items listed in the Equipment/Property category specified in Section IV. I. of this contract require written prior approval. This category includes equipment, furniture, library materials, etc., purchased wholly or in part with grant funds. The approved budget amount listed in Section IV.I. in addition, any subsequently approved Budget and/or Program Revisions, will be the total approved equipment expenditure amount. This is defined as the cost of the equipment and/or property, including any cost necessary to put the item into service, such as the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make the item usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation may be included in, or excluded from the expenditure cost in accordance with the Grantee's regular accounting practices and Generally Accepted Accounting Practices (GAAP).

B. The Grantee will comply with UGMS Part III, Subpart C, Sec. 32 (d)(3) that requires certain items of equipment to be maintained on inventory if the item's cost is above $500.

C. The Grantee agrees to submit the TSLAC Equipment/Property Acquired Form with the Final FSR, no later than **October 31, 2007**, for all equipment/property purchased with grant funds during the FY06 grant year. This list must balance with the equipment/property purchased under the approved grant application and all subsequently approved Budget and/or Program Revisions.

D. Grantee must furnish a statement to Grantor certifying the governing entity's capitalization level with the approved grant application or the first RFF submitted. Grantee agrees to maintain records on all equipment/property with an acquisition cost above governing entity's capitalization level.

E. Subject to the obligations and conditions set forth in the UGMS Part III, Subpart C, Sec. 32, title to equipment acquired under a grant will vest in the Grantee upon acquisition. Grantee must include any equipment/property acquired with grant funds in the required bi-annual property inventory, and follow the UGMS Part III, Subpart C, Sec. 32 (d) that requires the Grantee to reconcile the equipment/property records with a physical inventory of the equipment/property every two years. This bi-annual inventory does not need to be submitted to Grantor, but must be maintained by the grantee and will be subject to review by Grantor. When property is vested in the Grantee, Grantee will dispose of equipment/property in accordance with the UGMS Part III, Subpart C, Sec. 32 (e). When the Grantee has been given federally- or state-owned equipment/property, Grantee will follow the UGMS Part III, Subpart C, Sec. 32 (f).

VII. REPORTING REQUIREMENTS

The State Legislature has charged Grantor with submitting performance measurement reports that specify the level of services provided by its programs and services. In accepting the grant funds, the Grantee acknowledges responsibility for performing certain services on behalf of Grantor, as outlined in the approved Plan of Action. Therefore, the Grantee is responsible for submitting periodic reports that reflect the Grantee's level of performance on these services to Grantor. To comply with these requirements, the Grantee agrees to submit reports that are timely, accurate, auditable, and consistent with definitions.

A. The Grantee agrees to submit the Loan Star Libraries Performance Report to Grantor no later than the due dates listed in the following schedule. If library materials ordered with grant funds are received by Grantee after the end of the grant year, a revised final Loan Star Libraries Performance Report may be required covering receipt of those materials. This revised final performance report will be due no later than **November 15, 2007**.

Reporting Period	Due Date
September 1, 2006 - November 30, 2006	December 7, 2006
December 1, 2006 - February 28, 2007	March 7, 2007
March 1, 2007 - May 31, 2007	June 7, 2007
June 1, 2007 - August 31, 2007	September 7, 2007

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B. The Grantee agrees to submit the TSLAC FSR form for the grant funded under this contract no later than the due dates listed in the following schedule, so long as all grant funds have not been expended. Grantee should submit a Final FSR once all grant funds have been expended and all program requirements are accomplished. Grantee should mark the last required FSR as "Final" and not submit any subsequent FSR forms.

Reporting Period	Due Date
September 1, 2006 - November 30, 2006	December 30, 2006
December 1, 2006 - February 28, 2007	March 30, 2007
March 1, 2007 - May 31, 2007	June 30, 2007
June 1, 2007 - August 31, 2007	September 30, 2007

If necessary, a revised Final FSR must be submitted no later than **October 31, 2007.**

C. The Grantee will send the Grantor a copy of all management letters issued by an auditor with the reporting package, UGMS Part IV, Subpart C, Sec. 320 (b), within 30 days of the audit. The audit's *Schedule of Expenditures of Federal and State Awards* must list the amount of TSLAC awards expended for each award year separately.

VIII. GENERAL TERMS AND CONDITIONS

A. The Grantee will comply with the Loan Star Library Grant Program Guidelines for SFY 2007.

B. The Grantee will comply with the Loan Star Libraries Administrative Rules for State Fiscal Year 2006, *Texas Administrative Code*, Chapter 2.160 – 2.165. Loan Star Libraries Administrative Rule 2.165(c) states, "If a library has certified that it provides service to non-residents without charge or it has elected to participate in the TexShare card program, the library must maintain these services for the duration of the contract that it received." This means the library shall provide the same library services and may impose the same restrictions on non-resident customers as it does for those customers who live locally. ***Texas Government Code***, Section 441.138(c), states, "State aid to a free tax-supported public library is a supplement to and not a replacement of local support."

C. The Grantee will comply with the following parts of the Governor's Office of Budget and Planning, UGMS revised June 2004, located at: *http://www.governor.state.tx.us/divisions/stategrants/guidelines/files/UGMS062004.doc.*

Part I. Cost Principles for State and Local Governments and Other Affected Entities (Adapted from OMB Circular A-87)
Part II. State Uniform Administrative Requirements for Grants and Cooperative Agreements (Adapted from OMB Circulars A-102 and A-122)
Part III. State of Texas Single Audit Circular (Adapted from OMB Circular A-133)

D. All publicity relating to the grant award must include acknowledgement of the Texas State Library and Archives Commission whenever possible and practical. Publicity includes, but is not limited to press releases, media events, public events, displays in the benefiting library, announcements on the Grantee's website, and materials distributed through the grant project. The Grantee will provide Grantor with one set of all public relations materials produced under this grant with the Final FSR.

E. Grantee understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Grantee further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing access to any information the state auditor considers relevant to the investigation or audit. Grantee will ensure that this clause concerning the authority to audit funds received indirectly by Sub-grantees through Grantee, and the requirement to cooperate, is included in any sub-grant awarded.

F. The Grantee agrees to maintain all financial and programmatic records, supporting documents, statistical records, and other records relating to this grant award according to Part III, Subpart C, Sec. 42 of UGMS. In general, Grantees must maintain records for a minimum of three years from latter of the date the Grantee submits to Grantor the Final FSR or the last single audit or audit report for the grant period.

IX. ENFORCEMENT

A. Remedies for noncompliance. If a Grantee or Sub-grantee materially fails to comply with any term of an award, whether stated in a state statute or regulation, an assurance, in a state plan or application, a notice of award, or elsewhere, Grantor may take one or more of the following actions, or impose other sanctions, as appropriate in the circumstances:

1. Temporarily withhold cash payments pending correction of the deficiency by the Grantee or Sub-grantee, or more severe enforcement action by Grantor;
2. Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance;
3. Wholly or partly suspend or terminate the current award for the Grantee's or Sub-grantee's program;
4. Withhold further awards for the program; or
5. Take other remedies that may be legally available.

B. Hearings, appeals. In taking an enforcement action, Grantor will provide the Grantee or Sub-grantee an opportunity for such hearing, appeal, or other administrative proceeding to which the Grantee or Sub-grantee is entitled under any statute or regulation applicable to the action involved.

C. Effects of suspension and termination. Costs of Grantee or Sub-grantee resulting from obligations incurred by the Grantee or Sub-grantee during a suspension or after termination of an award are not allowable unless Grantor expressly authorizes them in the notice of suspension or termination, or subsequently. Other Grantee or Sub-grantee costs during suspension or after termination which are necessary, and not reasonably avoidable, are allowable if:

1. The costs resulting from obligations which were properly incurred by the Grantee or Sub-grantee before the effective date of suspension or termination are not in anticipation of it and, in the case of a termination, are non-cancelable; and,
2. The costs would be allowable if the award were not suspended, or expired normally at the end of the funding period in which the termination takes effect.

D. Relationship to Debarment and Suspension. The enforcement remedies identified in this section, including suspension and termination, do not preclude Grantee or Sub-grantee from being subject to "Debarment and Suspension" under Executive Order 12549 (see UGMS Part III, Subpart C, Sec. 35) and state law.

X. CONTACTS AT TSLAC

Questions or concerns about programmatic issues, budget and or program revisions and performance reports should be directed to this grant's Project Manager:

Loan Star Libraries Grant Coordinator
Phone: 512-463-5475
Fax: 512-463-8800
E-mail: wclark@tsl.state.tx.us

Questions or concerns about regulatory or financial issues should be directed to:

Manager, Accounting and Grants Department
Phone: 512-463-6626
Fax: 512-475-0185
E-mail: mmartin@tsl.state.tx.us

Documentation or questions relating to required Requests for Funds, Financial Status Reports, and Equipment/Property Acquired Report should be directed to:

Grants Accountant
Phone: 512-463-5472
Fax: 512-475-0185
E-mail: grants.accounting@tsl.state.tx.us

Payments from Grantee to Grantor, such as those for excess advanced funds or for interest earned on advanced funds, should be mailed with a revised FSR, an explanation of the purpose of the payment, and the grant number. This information shall be directed to:

Grants Accountant
Accounting and Grants Department
Texas State Library and Archives Commission
PO Box 12516
Austin, TX 78711-2516

XI. APPLICABLE AND GOVERNING LAW

A. The laws of the State of Texas shall govern this grant. All duties of either party shall be legally performable in Texas. The applicable law for any legal disputes arising out of this contract shall be the law of (and all actions hereunder shall be brought in) the State of Texas, and the forum and venue for such disputes shall be Travis County, District Court.

B. This grant is subject to availability of funds.

XII. GRANT CERTIFICATIONS

A. Grantor certifies that:

(1.) The services specified in the approved grant application and this contract are necessary and essential for activities that are properly within the statutory functions and programs of the affected organizations.

(2.) The services, supplies or materials contracted for are not required by Section 21 of Article 16 of the Constitution of Texas to be supplied under contract given to the lowest bidder; and,

(3.) The grant complies with Texas Government Code § 441.006, Texas Administrative Code Title XIII, §§1.91 – 1.97, Texas Government Code § 441.135 Grants (Systems Act), P.L. 104-208, the Library Services and Technology Act (LSTA), the State Plan for the LSTA in Texas and UGMS.

B. The Grantee affirms that it has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with this contract. The Grantee further affirms that its employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to any sub-agreements.

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C. The Grantee certifies by this contract that no Federal appropriated funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement. If any funds other than Federal appropriated funds have been paid or will be paid for such purpose, the Grantee shall complete and submit OMB form SF-LLL, Disclosure of Lobbying Activities, in accordance with its instructions. The Grantee shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including sub grants, contracts under grants and cooperative agreements, and subcontracts) and that all sub recipients shall certify and disclose accordingly, as specified in Title 31 U.S. Code, Sec. 1352.

D. The Grantee certifies all applicable activities related to this grant will comply with the Copyright Law of the United States (Title 17, U.S. Code).

E. State law requires a number of assurances from applicants for federal pass-through or other state-appropriated funds. (UGMS Part III, Subpart B, Sec. 14 – State Assurances)

(1.) A sub-grantee must comply with Texas Government Code, Chapter 573, Vernon's 1994, by ensuring that no officer, employee, or member of the applicant's governing body or of the applicant's contractor shall vote or confirm the employment of any person related within the second degree of affinity or the third degree of consanguinity to any member of the governing body or to any other officer or employee authorized to employ or supervise such person. This prohibition shall not prohibit the employment of a person who shall have been continuously employed for a period of two years, or such other period stipulated by local law, prior to the election or appointment of the officer, employee, or governing body member related to such person in the prohibited degree.

(2.) A sub-grantee must insure that all information collected, assembled or maintained by the applicant relative to a project will be available to the public during normal business hours in compliance with Texas Government Code, Chapter 552, Vernon's 1994, unless otherwise expressly prohibited by law.

(3.) A sub-grantee must comply with Texas Government Code, Chapter 551, Vernon's 1994, which requires all regular, special or called meeting of governmental bodies to be open to the public, except as otherwise provided by law or specifically permitted in the Texas Constitution.

(4.) A sub-grantee must comply with the Texas Family Code, Section 261.101 that requires reporting of all suspected cases of child abuse to local law enforcement authorities and to the Texas Department of Child Protective and Regulatory Services. Sub-grantees shall also ensure that all program personnel are properly trained and aware of this requirement.

(5.) Sub-grantees will comply with all federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps and the Americans With Disabilities Act of 1990; (d) the Age Discrimination Act of 1974, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to the nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

(6.) Sub-grantees will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. § § 276a to 276a-7), the Copeland Act (40 U.S.C. § § 276c and 18 U.S.C. § § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. § § 327-333), regarding labor standards for federally assisted construction sub-agreements.

(7.) Sub-grantees will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act and the Intergovernmental Personnel Act of 1970, as applicable.

(8.) Sub-grantees will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

(9.) Sub-grantees will comply with Public Law 103-277, also known as the Pro-Children Act of 1994 (Act), which prohibits smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.

(10.) Sub-grantees will comply with all federal tax laws and are solely responsible for filing all required state and federal tax forms.

(11.) Sub-grantees will comply with all applicable requirements of all other federal and state laws, executive orders, regulations and policies governing this program.

(12.) Sub-grantees must adopt and implement applicable provisions of the model HIV/AIDS work place guidelines of the Texas Department of Health as required by the Texas Health and Safety Code, Ann., Sec. 85.001, et seq.

SIGNATURES

GRANTOR

Texas State Library and Archives Commission

Edward Seidenberg, Assistant State Librarian

Date

Karen Drabek

Karen Drabek, Chief Fiscal Officer

10-23-06

Date

Deborah Littrell

Deborah Littrell, Library Development Director

10/23/06

Date

Wendy Clark

Wendy Clark, Contract Manager

10/23/06

Date

GRANTEE

City of Plano, Plano Public Library System

Signature (Must be an official empowered to enter into contracts.

Typewritten or Printed Name

Title

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CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☐ Yes	☒ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget C.S.	☒ Yes	☐ Not Applicable
Council Meeting Date:	12/11/06	Reviewed by Legal	☒ Yes	☐ Not Applicable
Department:	Police Department		Initials	Date
Department Head	Gregory W. Rushin	Executive Director		
Dept Signature:	Gregory W. Rushin	City Manager		12/1/06
Agenda Coordinator (include phone #):	**Jane Wester, Ext 2410**			

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

CAPTION

A Resolution of the City Council of the City of Plano, Texas, authorizing the City of Plano to participate in and receive funding through the Texas Department of Transportation as part of the state-wide "Drink. Drive. Go To Jail" campaigns scheduled for the holiday waves, Contract No. 587XXF6121, from December 13, 2006 through September 30, 2007, authorizing the City Manager, or in his absence, an Executive Director to execute the grant agreement and any other documents necessary to effectuate the action taken; effective December 13, 2006.

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☐ OPERATING EXPENSE ☒ REVENUE ☐ CIP

FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	**0**
Encumbered/Expended Amount	0	0	0	**0**
This Item	0	20,000	0	**20,000**
BALANCE	0	20,000	0	**20,000**

FUND(S): GRANT FUND (REVENUE)

COMMENTS: The grant contract, if approved, provides $20,000 STEP IDM Grant reimbursement funding from TxDOT, to conduct focused DWI saturation patrols within high risk locations scheduled for the holiday waves from December 22, 2006 through September 3, 2007, as part of the statewide "Drink. Drive. Go to Jail" campaign, and in conjunction with the national Impaired Driving Mobilization campaign.

STRATEGIC PLAN GOAL: The increased enforcement of DWI relates to the city's goal of "Safe, Efficient Travel".

SUMMARY OF ITEM

The State of Texas, acting by and through the Texas Department of Transportation, offers the City of Plano a grant totaling $20,000 for DWI enforcement beginning December 22, 2006, and ending September 3, 2007. The grant provides funding for overtime police officers to enhance enforcement and education efforts.

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

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, AUTHORIZING THE CITY OF PLANO TO PARTICIPATE IN AND RECEIVE FUNDING THROUGH THE TEXAS HIGHWAY TRAFFIC SAFETY PROGRAM FOR A "DRINK. DRIVE. GO TO JAIL" PROJECT, PIN 17560006409000 TO BE CONDUCTED DURING FOUR HOLIDAY PERIODS; AUTHORIZING THE CITY MANAGER OR, IN HIS ABSENCE, AN EXECUTIVE DIRECTOR TO EXECUTE THE GRANT AGREEMENT AND ANY OTHER DOCUMENTS NECESSARY TO EFFECTUATE THE ACTION TAKEN; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Plano has applied for and been awarded a grant through the State of Texas and the Texas Highway Traffic Safety Program that provides funding to conduct DWI enforcement Waves during holiday periods to increase DWI arrests and earned media activity as part of the statewide "Drink. Drive. Go To Jail" campaign and in conjunction with the national Impaired Driving Mobilization (IDM) campaign.

WHEREAS, the City Council of the City of Plano has been presented a proposed Grant Agreement by and Between the City of Plano and the State of Texas, acting by and through the Texas Department of Transportation, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Grant Agreement"; and

WHEREAS, upon full consideration of all matters attendant and related thereto, the City Council of the City of Plano is of the opinion that participation in and receipt of funding through the Texas Highway Safety Program, PIN 17560006409000, for the purpose of conducting an Impaired Driving Mobilization (IDM) campaign is in the best interest of the City and its citizens, and that the City Manager or, in his absence, an Executive Director should be authorized to execute the Grant Agreement and any other documents necessary for such participation in and receipt of funding through the Texas Highway Traffic Safety Program.

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

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Section I. Participation in and receipt of funding through the Texas Highway Traffic Safety Program by the City of Plano and the terms and conditions of the Grant Agreement, having been reviewed by the City Council and found to be acceptable and in the best interest of the City of Plano, is hereby in all things approved.

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

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

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

_____
Pat Evans, MAYOR

ATTEST:

_____
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

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— For TxDOT Use Only —	
☒ Federal Pass Through	Misc. Contract Number: 587XXF6121
Grant Funds CFDA #20.601	Charge Number: 07-02-02-B1-AX
☐ State Grant Funds	Project Year: N/A

PIN (14 characters only): 17560006409000

TEXAS TRAFFIC SAFETY PROGRAM GRANT AGREEMENT

THE STATE OF TEXAS

THE COUNTY OF TRAVIS

THIS AGREEMENT IS MADE BY and between the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called the Department, and City of Plano, hereinafter called the Subgrantee, and becomes effective when fully executed by both parties. For the purpose of this agreement, the Subgrantee is designated as a(n):

☐ State Agency
☒ Unit of Local Government
☐ Other (describe): _____.
☐ Non-Profit Organization
☐ Educational Institution

AUTHORITY: Texas Transportation Code, Chapter 723, the Traffic Safety Act of 1967, and the Highway Safety Plan for the following Fiscal Year(s) **2007**.

Project Title: **STEP - IDM**

Brief Project Description: To conduct DWI enforcement Waves during holiday periods to increase DWI arrests and earned media activity as part of the statewide "Drink. Drive. Go To Jail" campaign and in conjunction with the national Impaired Driving Mobilization campaign.

Grant Period: The Grant becomes effective on **December 13, 2006**, or on the date of final signature of both parties, whichever is later, and ends on **September 30, 2007** unless terminated or otherwise modified.

Maximum Amount Eligible for Reimbursement: $20,000.

The following attachments are incorporated as indicated as a part of the Grant Agreement:

- Attachment A, Mailing Addresses
- Attachment B, General Terms and Conditions (TxDOT Form 1854)
- Attachment C, Project Description (TxDOT Form 2076)
- Attachment D, Action Plan (TxDOT Form 1852)
- Attachment E, Project Budget (TxDOT Form 2077 or 2077-LE)
- ☒ Attachment F, Operational Plan (TxDOT Form 2109) (for Selective Traffic Enforcement Program grants only)

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Project Title: STEP - IDM

TEXAS TRAFFIC SAFETY PROGRAM GRANT AGREEMENT

The signatory for the Subgrantee hereby represents and warrants that she/he is an officer of the organization for which she/he has executed this agreement and that she/he has full and complete authority to enter into this agreement on behalf of the organization. At the time the signatory for the Subgrantee signs the Grant Agreement, she/he will sign and submit to the Department a letter designating signature authority by position title for grant-related documents other than the Grant Agreement or Grant Agreement amendments. These other grant-related documents will include, but not be limited to, the following: performance reports, final performance report and administrative evaluation report, Requests For Reimbursement (RFRs), and routine correspondence.

THE SUBGRANTEE

City of Plano
[Legal Name of Agency]

By _____
[Authorized Signature]

_____
[Name]

_____
[Title]

Date: _____

Under authority of Ordinance or Resolution Number (for local governments):

_____

THE STATE OF TEXAS

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out orders, established policies or work programs approved and authorized by the Texas Transportation Commission.

By_____
District Engineer
Texas Department of Transportation

William L. Hale, P.E.
[Name]

District Engineer
[Title]

Date: _____

By_____
Director, Traffic Operations Division
Texas Department of Transportation
(Not required for local project grants under $100,000.)

Date: _____

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Attachment A

Project Title: STEP - IDM

Mailing Addresses

For the purpose of this agreement, the **following addresses shall be used to mail all required notices, reports, claims, and correspondence**. (NOTE: For warrants (checks), the address indicated by the electronic mail code, which is the last three digits of the PIN on page 1 of this Grant Agreement, shall be used for disbursing payments. If that address is not where the Subgrantee wants warrants or checks to be sent, the Subgrantee needs to notify the Department of any appropriate changes.

For Subgrantee (Project Director):

Name: Chris Curd

Title: Sergeant

Organization: City of Plano

Address: PO Box 860358

Plano, TX 75086-0358

Phone: 972-208-8055

Fax: 972-208-8052

E-mail: christopherc@plano.gov

Note: Any change in the Subgrantee information in this Attachment A, Mailing Addresses, does not require an amendment to the Grant Agreement. However, the Subgrantee must submit a letter with the corrected information to the Department address below within 15 days of the change.

For Texas Department of Transportation:

Name: Pat Hickman

Title: TSS

Organization: Texas Department of Transportation

Address: 4777 E. Hwy 80

Mesquite, TX 75150

Phone: 214-320-6235

Fax: 214-319-6568

E-mail: phickma@dot.state.tx.us

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with the Department under this Agreement. The only exceptions allowed are ordinary business lunches and items that have received the advanced written approval of the Department's Executive Director.

Any person doing business with or who reasonably speaking may do business with the Department under this Agreement may not make any offer of benefits, gifts, or favors to Department employees, except as mentioned here above. Failure on the part of the Subgrantee to adhere to this policy may result in termination of this Agreement.

ARTICLE 16. NONCOLLUSION

The Subgrantee warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Subgrantee, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. If the Subgrantee breaches or violates this warranty, the Department shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, brokerage fee, contingent fee, or gift.

ARTICLE 17. CONFLICT OF INTEREST

The Subgrantee represents that it or its employees have no conflict of interest that would in any way interfere with its or its employees' performance or which in any way conflicts with the interests of the Department. The Subgrantee shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the Department's interests.

ARTICLE 18. SUBGRANTEE'S RESOURCES

The Subgrantee certifies that it presently has adequate qualified personnel in its employment to perform the work required under this Agreement, or will be able to obtain such personnel from sources other than the Department.

All employees of the Subgrantee shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of the Subgrantee who, in the opinion of the Department, is incompetent or whose conduct becomes detrimental to the work, shall immediately be removed from association with the project.

Unless otherwise specified, the Subgrantee shall furnish all equipment, materials, supplies, and other resources required to perform the work.

ARTICLE 19. PROCUREMENT AND PROPERTY MANAGEMENT

The Subgrantee shall establish and administer a system to procure, control, protect, preserve, use, maintain, and dispose of any property furnished to it by the Department or purchased pursuant to this Agreement in accordance with its own property management procedures, provided that the procedures are not in conflict with the Department's property management procedures or property management standards and federal standards, as appropriate, in:

- 49 CFR, Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," or
- 49 CFR, Part 19 (OMB Circular A-110), "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations."

ARTICLE 20. OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

Upon completion or termination of this Grant Agreement, whether for cause or at the convenience of the parties hereto, all finished or unfinished documents, data, studies, surveys, reports, maps, drawings, models, photographs, etc. prepared by the Subgrantee, and equipment and supplies purchased with grant funds shall, at the option of the Department, become the property of the Department. All sketches, photographs, calculations, and other data prepared under this Agreement shall be made available, upon request, to the Department without restriction or limitation of their further use.

A. Intellectual property consists of copyrights, patents, and any other form of intellectual property rights covering any data bases, software, inventions, training manuals, systems design, or other proprietary information in any form or medium.

B. *All rights to Department.* The Department shall own all of the rights (including copyrights, copyright applications, copyright renewals, and copyright extensions), title and interests in and to all data, and other information developed under this contract and versions thereof unless otherwise agreed to in writing that there will be joint ownership.

C. *All rights to Subgrantee.* Classes and materials initially developed by the Subgrantee without any type of funding or resource assistance from the Department remain the Subgrantee's intellectual property. For these classes and materials, the Department payment is limited to payment for attendance at classes.

ARTICLE 21. SUCCESSORS AND ASSIGNS

The Department and the Subgrantee each binds itself, its successors, executors, assigns, and administrators to the other party to this Agreement and to the successors, executors, assigns, and administrators of such other party in respect to all covenants of this Agreement. The Subgrantee shall not assign, sublet, or transfer interest and obligations in this Agreement without written consent of the Department.

ARTICLE 22. CIVIL RIGHTS COMPLIANCE

A. Compliance with regulations: The Subgrantee shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the USDOT: 49 CFR, Part 21; 23 CFR, Subchapter C; and 41 CFR, Parts 60-74, as they may be amended periodically (hereinafter referred to as the Regulations). The Subgrantee agrees to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 and as supplemented by the U.S. Department of Labor regulations (41 CFR, Part 60).

B. Nondiscrimination: The Subgrantee, with regard to the work performed during the period of this Agreement, shall not discriminate on the grounds of race, color, sex, national origin, age, religion, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment.

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C. Solicitations for subcontracts, including procurement of materials and equipment: In all solicitations either by competitive bidding or negotiation made by the Subgrantee for work to be performed under a subcontract, including procurements of materials and leases of equipment, each potential subcontractor or supplier shall be notified by the Subgrantee of the Subgrantee's obligations under this Agreement and the regulations relative to nondiscrimination on the grounds of race, color, sex, national origin, age, religion, or disability.

D. Information and reports: The Subgrantee shall provide all information and reports required by the regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Department or the USDOT to be pertinent to ascertain compliance with such regulations or directives. Where any information required of the Subgrantee is in the exclusive possession of another who fails or refuses to furnish this information, the Subgrantee shall so certify to the Department or the US DOT, whichever is appropriate, and shall set forth what efforts the Subgrantee has made to obtain the requested information.

E. Sanctions for noncompliance: In the event of the Subgrantee's noncompliance with the nondiscrimination provision of this Agreement, the Department shall impose such sanctions as it or the US DOT may determine to be appropriate.

F. Incorporation of provisions: The Subgrantee shall include the provisions of paragraphs A. through E. in every subcontract, including procurements of materials and leases of equipment, unless exempt by the regulations or directives. The Subgrantee shall take such action with respect to any subcontract or procurement as the Department may direct as a means of enforcing such provisions, including sanctions for noncompliance. However, in the event a Subgrantee becomes involved in, or is threatened with litigation with a subcontractor or supplier as a result of such direction, the Subgrantee may request the Department to enter into litigation to protect the interests of the state; and in addition, the Subgrantee may request the United States to enter into such litigation to protect the interests of the United States.

ARTICLE 23. DISADVANTAGED BUSINESS ENTERPRISE

It is the policy of the Department and the USDOT that Disadvantaged Business Enterprises, as defined in 49 CFR Part 26, shall have the opportunity to participate in the performance of agreements financed in whole or in part with federal funds. Consequently, the Disadvantaged Business Enterprise requirements of 49 CFR Part 26, apply to this Agreement as follows:

- The Subgrantee agrees to insure that Disadvantaged Business Enterprises, as defined in 49 CFR Part 26, have the opportunity to participate in the performance of agreements and subcontracts financed in whole or in part with federal funds. In this regard, the Subgrantee shall make good faith efforts in accordance with 49 CFR Part 26, to insure that Disadvantaged Business Enterprises have the opportunity to compete for and perform agreements and subcontracts.
- The Subgrantee and any subcontractor shall not discriminate on the basis of race, color, sex, national origin, or disability in the award and performance of agreements funded in whole or in part with federal funds.

These requirements shall be included in any subcontract.

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Project Title: STEP IDM
Subgrantee: City of Plano

Failure to carry out the requirements set forth above shall constitute a breach of this Agreement and, after the notification of the Department, may result in termination of this Agreement by the Department, or other such remedy as the Department deems appropriate.

ARTICLE 24. DEBARMENT/SUSPENSION

A. The Subgrantee certifies, to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency;

2. Have not within a three (3) year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state, or local public transaction or contract under a public transaction; violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

3. Are not presently indicted or otherwise criminally or civilly charged by a federal, state, or local governmental entity with commission of any of the offenses enumerated in paragraph A. 2. of this Article; and

4. Have not, within a three (3) year period preceding this Agreement, had one or more federal, state, or local public transactions terminated for cause or default.

B. Where the Subgrantee is unable to certify to any of the statements in this Article, such Subgrantee shall attach an explanation to this Agreement.

C. The Subgrantee is prohibited from making any award or permitting any award at any tier to any party which is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, Debarment and Suspension.

D. The Subgrantee shall require any party to a subcontract or purchase order awarded under this Grant Agreement to certify its eligibility to receive federal grant funds, and, when requested by the Department, to furnish a copy of the certification.

ARTICLE 25. LOBBYING CERTIFICATION

The Subgrantee certifies to the best of his or her knowledge and belief that:

A. No federally appropriated funds have been paid or will be paid by or on behalf of the Subgrantee to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the party to this Agreement shall

complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

C. The Subgrantee shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

ARTICLE 26. CHILD SUPPORT STATEMENT

Unless the Subgrantee is a governmental or non-profit entity, the Subgrantee certifies that it either will go to the Department's website noted below and complete the Child Support Statement or already has a Child Support Statement on file with the Department . The Subgrantee is responsible for keeping the Child Support Statement current and on file with that office for the duration of this Agreement period. The Subgrantee further certifies that the Child Support Statement on file contains the child support information for the individuals or business entities named in this grant. Under Section 231.006, Family Code, the Subgrantee certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified grant or payment and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

The form for the Child Support Statement is available on the Internet at:
http://www.dot.state.tx.us/cso/default.htm.

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Project Title: STEP IDM
Subgrantee: City of Plano

ARTICLE 11. TERMINATION

This Agreement shall remain in effect until the Subgrantee has satisfactorily completed all services and obligations described herein and these have been accepted by the Department, unless:

- This Agreement is terminated in writing with the mutual consent of both parties; or
- There is a written thirty (30) day notice by either party; or
- The Department determines that the performance of the project is not in the best interest of the Department and informs the Subgrantee that the project is terminated immediately.

The Department shall compensate the Subgrantee for only those eligible expenses incurred during the Grant Period specified on page 1 of this Grant Agreement which are directly attributable to the completed portion of the work covered by this Agreement, provided that the work has been completed in a manner satisfactory and acceptable to the Department. The Subgrantee shall not incur nor be reimbursed for any new obligations after the effective date of termination.

ARTICLE 12. INSPECTION OF WORK

The Department and, when federal funds are involved, the US DOT, or any authorized representative thereof, have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder and the premises in which it is being performed.

If any inspection or evaluation is made on the premises of the Subgrantee or its subcontractor, the Subgrantee shall provide and require its subcontractor to provide all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

ARTICLE 13. AUDIT

The Subgrantee shall comply with the requirements of the Single Audit Act of 1984, Public Law (PL) 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular A-133, "Audits of States, Local Governments, and Other Non-Profit Organizations."

The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under this Agreement or indirectly through a subcontract under this Agreement. Acceptance of funds directly under this Agreement or indirectly through a subcontract under this Agreement acts as acceptance of the authority of the State Auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds.

ARTICLE 14. SUBCONTRACTS

The Subgrantee shall not enter into any subcontract with individuals or organizations not a part of the Subgrantee's organization without prior written concurrence with the subcontract by the Department. Subcontracts shall contain all required provisions of this Agreement. No subcontract will relieve the Subgrantee of its responsibility under this Agreement.

ARTICLE 15. GRATUITIES

Texas Transportation Commission policy mandates that employees of the Department shall not accept any benefit, gift, or favor from any person doing business with or who, reasonably speaking, may do business

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Project Title: STEP IDM
Subgrantee: City of Plano

ARTICLE 8. RECORDS

The Subgrantee agrees to maintain all reports, documents, papers, accounting records, books, and other evidence pertaining to costs incurred and work performed hereunder, (hereinafter called the records), and shall make such records available at its office for the time period authorized within the Grant Period, as specified on page 1 of this Grant Agreement. The Subgrantee further agrees to retain said records for four (4) years from the date of final payment under this Agreement, until completion of all audits, or until pending litigation has been completely and fully resolved, whichever occurs last.

Duly authorized representatives of the Department, the USDOT, the Office of the Inspector General, Texas State Auditor, and the Comptroller General shall have access to the records. This right of access is not limited to the four (4) year period but shall last as long as the records are retained.

ARTICLE 9. INDEMNIFICATION

To the extent permitted by law, the Subgrantee, if other than a government entity, shall indemnify, hold, and save harmless the Department and its officers and employees from all claims and liability due to the acts or omissions of the Subgrantee, its agents, or employees. The Subgrantee also agrees, to the extent permitted by law, to indemnify, hold, and save harmless the Department from any and all expenses, including but not limited to attorney fees, all court costs and awards for damages incurred by the Department in litigation or otherwise resisting such claims or liabilities as a result of any activities of the Subgrantee, its agents, or employees.

Further, to the extent permitted by law, the Subgrantee, if other than a government entity, agrees to protect, indemnify, and save harmless the Department from and against all claims, demands, and causes of action of every kind and character brought by any employee of the Subgrantee against the Department due to personal injuries or death to such employee resulting from any alleged negligent act, by either commission or omission on the part of the Subgrantee.

If the Subgrantee is a government entity, both parties to this Agreement agree that no party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds, as well as the acts and deeds of its contractors, employees, representatives, and agents.

ARTICLE 10. DISPUTES AND REMEDIES

This Agreement supercedes any prior oral or written agreements. If a conflict arises between this Agreement and the Traffic Safety Program Manual, this Agreement shall govern.

The Subgrantee shall be responsible for the settlement of all contractual and administrative issues arising out of procurement made by the Subgrantee in support of Agreement work.

Disputes concerning performance or payment shall be submitted to the Department for settlement, with the Executive Director or his or her designee acting as final referee.

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Project Title: STEP IDM
Subgrantee: City of Plano

If the Subgrantee submits work that does not comply with the terms of this Agreement, the Department shall instruct the Subgrantee to make such revisions as are necessary to bring the work into compliance with this Agreement. No additional compensation shall be paid for this work.

The Subgrantee shall make revisions to the work authorized in this Agreement, which are necessary to correct errors or omissions appearing therein, when required to do so by the Department. No additional compensation shall be paid for this work.

The Department shall not be responsible for actions by the Subgrantee or any costs incurred by the Subgrantee relating to additional work not directly associated with or prior to the execution of an amendment.

ARTICLE 7. REPORTING AND MONITORING

Not later than thirty (30) days after the end of each reporting period, as designated in Attachment D, Action Plan, the Subgrantee shall submit a performance report using forms provided or approved by the Department. For short-term projects, only one report submitted by the Subgrantee at the end of the project may be required. For longer projects, the Subgrantee will submit reports at least quarterly and preferably monthly. The frequency of the performance reports is established through negotiation between the Subgrantee and the program or project manager.

For Selective Traffic Enforcement Programs (STEPs), performance reports must be submitted monthly.

The performance report will include, as a minimum: (1) a comparison of actual accomplishments to the objectives established for the period, (2) reasons why established objectives and performance measures were not met, if appropriate, and (3) other pertinent information, including, when appropriate, an analysis and explanation of cost underruns, overruns, or high unit costs.

The Subgrantee shall submit the Final Performance and Administrative Evaluation Report electronically within thirty (30) days after completion of the grant.

The Subgrantee shall promptly advise the Department in writing of events that will have a significant impact upon this Agreement, including:

A. Problems, delays, or adverse conditions, including a change of project director or other changes in Subgrantee personnel, that will materially affect the ability to attain objectives and performance measures, prevent the meeting of time schedules and objectives, or preclude the attainment of project objectives or performance measures by the established time periods. This disclosure shall be accompanied by a statement of the action taken or contemplated and any Department or federal assistance needed to resolve the situation.

B. Favorable developments or events that enable meeting time schedules and objectives sooner than anticipated or achieving greater performance measure output than originally projected.

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will use billing forms acceptable to the Department. The original Request for Reimbursement, with the appropriate backup documentation, must be submitted to the Department address shown on Attachment A, Mailing Addresses, of this Agreement. In addition, a copy of the Request for Reimbursement and appropriate backup documentation, plus three (3) copies of the Request for Reimbursement without backup documentation, must be submitted to this same address.

G. The Subgrantee agrees to submit the final Request for Reimbursement under this Agreement within forty-five (45) days of the end of the grant period.

H. The Department will exercise good faith to make payments within thirty (30) days of receipt of properly prepared and documented Requests for Reimbursement. Payments, however, are contingent upon the availability of appropriated funds.

I. Project agreements supported with federal or TxDOT funds are limited to the length of this Grant Period, which is specified on page 1 of this Grant Agreement. If the Department determines that the project has demonstrated merit or has potential long-range benefits, the Subgrantee may apply for funding assistance beyond the initial Agreement period. Preference for funding will be given to those projects for which the Subgrantee has assumed some cost sharing, those which propose to assume the largest percentage of subsequent project costs, and those which have demonstrated performance that is acceptable to the Department.

ARTICLE 4. LIMITATION OF LIABILITY

Payment of costs incurred hereunder is contingent upon the availability of funds. If at any time during this Grant Period, the Department determines that there is insufficient funding to continue the project, the Department shall so notify the Subgrantee, giving notice of intent to terminate this Agreement, as specified in Article 11 of this Agreement. If at the end of a federal fiscal year, the Department determines that there is sufficient funding and performance to continue the project, the Department may so notify the Subgrantee to continue this agreement.

ARTICLE 5. AMENDMENTS

This Agreement may be amended prior to its expiration by mutual written consent of both parties, utilizing the Grant Agreement Amendment designated by the Department. Any amendment must be executed by the parties within the Grant Period, as specified on page 1 of this Grant Agreement.

ARTICLE 6. ADDITIONAL WORK AND CHANGES IN WORK

If the Subgrantee is of the opinion that any assigned work is beyond the scope of this Agreement and constitutes additional work, the Subgrantee shall promptly notify the Department in writing. If the Department finds that such work does constitute additional work, the Department shall so advise the Subgrantee and a written amendment to this Agreement will be executed according to Article 5, Amendments, to provide compensation for doing this work on the same basis as the original work. If performance of the additional work will cause the maximum amount payable to be exceeded, the work will not be performed before a written grant amendment is executed.

If the Subgrantee has submitted work in accordance with the terms of this Agreement but the Department requests changes to the completed work or parts thereof which involve changes to the original scope of services or character of work under this Agreement, the Subgrantee shall make such revisions as requested and directed by the Department. This will be considered as additional work and will be paid for as specified in this Article.

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specifies that costs are based on a specific rate, per-unit cost, or other method of payment, reimbursement will be based on the specified method.

B. All payments will be made in accordance with Attachment E, Traffic Safety Project Budget.

The Subgrantee's expenditures may overrun a budget category (I, II, or III) in the approved Project Budget without a grant (budget) amendment, as long as the overrun does not exceed a total of five (5) percent per year of the maximum amount eligible for reimbursement (TxDOT) in the attached Project Budget for the current fiscal year. This overrun must be off-set by an equivalent underrun elsewhere in the Project Budget.

If the overrun is five (5) percent or less, the Subgrantee must provide written notification to the Department prior to the Request for Reimbursement being approved. This notification must be in the form of an attachment to the Request for Reimbursement that covers the period of the overrun. This attachment must indicate the amount, the percent over, and the specific reason(s) for the overrun.

Any overrun of more than five (5) percent of the amount eligible for reimbursement (TxDOT) in the attached Project Budget requires an amendment of this Grant Agreement.

The maximum amount eligible for reimbursement shall not be increased above the Grand Total TxDOT Amount in the approved Project Budget, unless this Grant Agreement is amended, as described in Article 5 of this Agreement.

For Selective Traffic Enforcement Program (STEP) grants *only*: In Attachment E of the Grant Agreement, Traffic Safety Project Budget (Form 2077-LE), Subgrantees are not allowed to use underrun funds from the TxDOT amount of (100) Salaries, Subcategories A, "Enforcement," or B, "PI&E Activities," to exceed the TxDOT amount listed in Subcategory C, "Other." Also, Subgrantees are not allowed to use underrun funds from the TxDOT amount of (100) Salaries, Subcategories A, "Enforcement," or C, "Other," to exceed the TxDOT amount listed in Subcategory B, "PI&E Activities." The TxDOT amount for Subcategory B, "PI&E Activities," or C, "Other," can only be exceeded within the 5 percent flexibility, with underrun funds from Budget Categories II or III.

C. To be eligible for reimbursement under this Agreement, a cost must be incurred in accordance with Attachment E, Traffic Safety Project Budget, within the time frame specified in the Grant Period on page 1 of this Grant Agreement, attributable to work covered by this Agreement, and which has been completed in a manner satisfactory and acceptable to the Department.

D. Federal or TxDOT funds cannot supplant (replace) funds from any other sources. The term "supplanting," refers to the use of federal or TxDOT funds to support personnel or an activity already supported by local or state funds.

E. Payment of costs incurred under this Agreement is further governed by one of the following cost principles, as appropriate, outlined in the Federal Office of Management and Budget (OMB) Circulars:

- A-21, Cost Principles for Institutions of Higher Education;
- A-87, Cost Principles for State, Local, and Indian Tribal Governments; or,
- A-122, Cost Principles for Nonprofit Organizations.

F. The Subgrantee agrees to submit monthly or quarterly Requests for Reimbursement, as designated in Attachment D, Action Plan, within thirty (30) days after the end of the billing period. The Subgrantee

Project Title: STEP IDM
Subgrantee: City of Plano

H. It will comply with all requirements imposed by the Department concerning special requirements of law, program requirements, and other administrative requirements.

I. It recognizes that many federal and state laws imposing environmental and resource conservation requirements may apply to this Grant Agreement. Some, but not all, of the major federal laws that may affect the project include: the National Environmental Policy Act of 1969, as amended, 42 USC §§4321 et seq.; the Clean Air Act, as amended, 42 USC §§7401 et seq. and sections of 29 USC; the Federal Water Pollution Control Act, as amended, 33 USC §§1251 et seq.; the Resource Conservation and Recovery Act, as amended, 42 USC §§6901 et seq.; and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 USC §§9601 et seq. The Subgrantee also recognizes that the U.S. Environmental Protection Agency, USDOT, and other federal agencies have issued, and in the future are expected to issue, regulation, guidelines, standards, orders, directives, or other requirements that may affect this Project. Thus, it agrees to comply, and assures the compliance of each contractor and each subcontractor, with any such federal requirements as the federal government may now or in the future promulgate.

J. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, 42 USC §4012a(a). Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards. The phrase "federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any form of direct or indirect federal assistance.

K. It will assist the Department in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 USC 470 et seq.), Executive Order 11593, and the Antiquities Code of Texas (National Resources Code, Chapter 191).

L. It will comply with Chapter 573 of the Texas Government Code by ensuring that no officer, employee, or member of the Subgrantee's governing board or the Subgrantee's subcontractors shall vote or confirm the employment of any person related within the second degree of affinity or third degree by consanguinity to any member of the governing body or to any other officer or employee authorized to employ or supervise such person. This prohibition shall not prohibit the employment of a person described in Section 573.062 of the Texas Government Code.

M. It will ensure that all information collected, assembled, or maintained by the applicant relative to this project shall be available to the public during normal business hours in compliance with Chapter 552 of the Texas Government Code, unless otherwise expressly provided by law.

N. If applicable, it will comply with Chapter 551 of the Texas Government Code, which requires all regular, special, or called meetings of governmental bodies to be open to the public, except as otherwise provided by law or specifically permitted in the Texas Constitution.

ARTICLE 3. COMPENSATION

A. The method of payment for this Agreement will be based on actual costs incurred up to and not to exceed the limits specified in Attachment E, Traffic Safety Project Budget. The amount included in the Project Budget will be deemed to be an estimate only and a higher amount can be reimbursed, subject to the conditions specified in paragraph B hereunder. If Attachment E, Traffic Safety Project Budget,

Attachment B

Project Title: STEP IDM
Subgrantee: City of Plano

Texas Traffic Safety Program
GRANT AGREEMENT GENERAL TERMS AND CONDITIONS

ARTICLE 1. COMPLIANCE WITH LAWS

The Subgrantee shall comply with all federal, state, and local laws, statutes, codes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, nondiscrimination laws and regulations, and licensing laws and regulations. When required, the Subgrantee shall furnish the Department with satisfactory proof of its compliance therewith.

ARTICLE 2. STANDARD ASSURANCES

The Subgrantee hereby assures and certifies that it will comply with the regulations, policies, guidelines, and requirements, including 49 CFR (Code of Federal Regulations), Part 18; 49 CFR, Part 19 (OMB [Office of Management and Budget] Circular A-110); OMB Circular A-87; OMB Circular A-102; OMB Circular A-21; OMB Circular A-122; OMB Circular A-133; and the Traffic Safety Program Manual, as they relate to the application, acceptance, and use of federal or state funds for this project. Also, the Subgrantee assures and certifies that:

A. It possesses legal authority to apply for the grant; and that a resolution, motion, or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

B. It and its subcontractors will comply with Title VI of the Civil Rights Act of 1964 (Public Law 88-352), as amended, and in accordance with that Act, no person shall discriminate, on the grounds of race, color, sex, national origin, age, religion, or disability.

C. It will comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970, as amended; 42 USC (United States Code) §§4601 et seq.; and United States Department of Transportation (USDOT) regulations, "Uniform Relocation and Real Property Acquisition for Federal and Federally Assisted Programs," 49 CFR, Part 24, which provide for fair and equitable treatment of persons displaced as a result of federal and federally assisted programs.

D. It will comply with the provisions of the Hatch Political Activity Act, which limits the political activity of employees. (See also Article 25, Lobbying Certification.)

E. It will comply with the federal Fair Labor Standards Act's minimum wage and overtime requirements for employees performing project work.

F. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

G. It will give the Department the access to and the right to examine all records, books, papers, or documents related to this Grant Agreement.

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T. The Subgrantee is encouraged to use the DWI On-line Reporting System available through the Buckle Up Texas Web site at www.buckleuptexas.com.

II. RESPONSIBILITIES OF THE DEPARTMENT:

A. Monitor the Subgrantee's compliance with the performance obligations and fiscal requirements of this Grant Agreement using appropriate and necessary monitoring and inspections, including but not limited to:

1. review of periodic reports
2. physical inspection of project records
3. telephone conversations
4. e-mails and letters
5. meetings.

B. Provide program management and technical assistance.

C. Attend appropriate meetings.

D. Reimburse the Subgrantee for all eligible costs as defined in the Traffic Safety Project Budget, Attachment E. Requests for Reimbursement will be processed up to the maximum amount payable as indicated on the cover page of the Grant Agreement.

E. Perform an administrative review of the project at the close of the grant period to include a review of adherence to the Action Plan, Attachment D and the Traffic Safety Project Budget, Attachment E, and attainment of project objectives.

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H. Maintain verification that all expenses, including wages or salaries, for which reimbursement is requested is for work exclusively related to this project.

I. Ensure that this grant will in no way supplant (replace) funds from other sources. Supplanting refers to the use of federal funds to support personnel or any activity already supported by local or state funds.

J. The Subgrantee should have a safety belt use policy. If the Subgrantee does not have a safety belt use policy in place, a policy should be implemented during the grant year.

K. Carry out the objectives of this grant by implementing the Operational Plan, Attachment F of this Grant Agreement.

L. Ensure that each officer working on the STEP project will complete an officer's daily report form. The form should include: name, date, badge or identification number, type of grant worked, grant site number, mileage (if applicable) (including starting and ending mileage), hours worked, type of citation issued or arrest made, officer and supervisor signatures.

M. Ensure that no officer above the rank of Lieutenant (or equivalent title) will be reimbursed for enforcement duty, unless the Subgrantee received specific written authorization from the Department (TxDOT) prior to incurring costs.

N. Support grant enforcement efforts with public information and education (PI&E). Salaries being claimed for PI&E activities must be included in the budget.

O. Subgrantees with a traffic unit will utilize traffic personnel for this grant, unless such personnel are unavailable for assignment.

P. Subgrantee may work additional STEP enforcement hours on holidays or special events not covered under the Operational Plan. However, additional work must be approved in writing by the Department prior to enforcement. Additional hours must be reported in the Performance Report for the time period for which the additional hours were worked.

Q. If an officer makes a STEP-related arrest during the shift, but does not complete the arrest before the shift is scheduled to end, the officer can continue working under the grant to complete that arrest.

R. At the time the signatory for the Subgrantee signs the Grant Agreement, provide a letter to the Department from the enforcement agency head, training officer, or authorized individual certifying that the officers working DWI enforcement are, or will be, trained in the National Highway Traffic Safety Administration/International Association of Chiefs of Police Standardized Field Sobriety Testing (SFST). In the case of a first year subgrantee, the officers must be trained, or scheduled to be SFST trained, by the end of the grant year. For second or subsequent year grants, all officers working DWI enforcement must be SFST trained.

S. The Subgrantee should have a procedure in place for contacting and using drug recognition experts (DREs) when necessary.

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Project Title: STEP – IDM
Name of Subgrantee: City of Plano

Traffic Safety Project Description

OBJECTIVES:

The Objectives of this grant are to accomplish the following by September 30, 2007:

Objectives/Performance Measures	Target Number
A. Number and type citations/arrests to be **issued under STEP**	
Christmas/New Year's (December 22, 2006 – Jan. 2, 2007)	
1. Number of DWI arrests to be made during the Christmas/New Year's DWI Operation	15
Spring Break (March 9 – 19, 2007)	
2. Number of DWI arrests to be made during the Spring Break DWI Operation	15
Independence Day (June 29 – July 5, 2007)	
3. Number of DWI arrests to be made during the Independence Day DWI Operation	15
Labor Day (August 17 – September 3, 2007)	
4. Number of DWI arrests to be made during the Labor Day DWI Operation	15
B. Total Number of Enforcement Hours for Entire Grant Period	345
C. Complete administrative and general grant requirements as defined in the Action Plan, Attachment D.	
1. Submit the following number of Performance Reports, including the Final Performance Report and Administrative Evaluation Report.	4
2. Submit the following number of Requests for Reimbursement	3
D. Support grant enforcement efforts with public information and education (PI&E) as defined in the Action Plan, Attachment D.	
1. Conduct a minimum of one (1) presentation for each DWI operation period.	4
2. Conduct a minimum of two (2) media exposures (e.g., news conferences, news releases, and interviews) for each DWI Operation period.	8
3. Conduct a minimum of one (1) community event (e.g., health fair, traffic safety booth) during the grant period	1
4. Produce the following number of public information and education materials if applicable.	n/a
5. Distribute the following number of public information and education materials if applicable.	500

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Project Title: STEP – IDM
Subgrantee: **City of Plano**

NOTE:

Nothing in this agreement shall be interpreted as a requirement, formal or informal, that a peace officer issue a specified or predetermined number of citations in pursuance of the Subgrantee's obligations hereunder.

In addition to the STEP enforcement activities, the subgrantee must maintain baseline non-STEP funded citation and arrest activity due to the prohibition of supplanting.

I. RESPONSIBILITIES OF THE SUBGRANTEE:

A. Carry out the objectives and performance measures of this grant by implementing all activities in the Action Plan, Attachment D.

B. The Objectives/Performance Measures shall be included in each Performance Report and summarized in the Final Performance and Administrative Evaluation Report.

C. Submit all required reports to the Department fully completed with the most current information, and within the required times, as defined in Article 3 and Article 7 of the General Terms and Conditions, Attachment B of this Grant Agreement. This includes reporting to the Department on progress, achievements, and problems in periodic performance reports. All required documents must be accurate. Inaccurate documents will delay any related Requests for Reimbursement. The Subgrantee must complete and submit all Performance and Annex Report data on the Buckle Up Texas Website (www.buckleuptexas.com) no later than **twenty (20) days** after each reporting period.

D. A Final Performance and Administrative Evaluation Report summarizing all activities and accomplishments will be submitted to the Department electronically via the Buckle Up Texas Website no later than thirty (30) days after the grant ending date.

E. Attend meetings according to the following:

1. The Subgrantee will arrange for meetings with the Department, as indicated in the Action Plan, to present status of activities and to discuss problems and the schedule for the following quarter's work.

2. The project director or other appropriate, qualified persons will be available to represent the Subgrantee at meetings requested by the Department.

F. When applicable, all newly developed public information and education (PI&E) materials must be submitted to the Department for written approval prior to final production. Refer to the Traffic Safety Program Manual regarding PI&E procedures. The manual is located at http://manuals.dot.state.tx.us/docs/coltraff/forms/tfc.pdf.

G. For out of state travel expenses to be reimbursable, the Subgrantee must have obtained the written approval of the Department prior to the beginning of the trip. Grant approval does not satisfy this requirement. For Department district-managed grants, the Subgrantee must have written Department district approval for travel and related expenses if outside of the district boundaries.

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Texas Department of Transportation

Form 1852-LE (rev. 10/17/2006)

Attachment D

ACTION PLAN
FY 2007

PROJECT TITLE: STEP - IDM

SUBGRANTEE: City of Plano

OBJECTIVE: To support grant efforts with a public information and education (PI&E) program by September 30, 2007 as defined below:

KEY:
p = planned activity
c = completed activity
r = revised

Modify these activities as appropriate:		PROJECT MONTH													
ACTIVITY	**RESPONSIBLE**	**OC**	**NO**	**DE**	**JA**	**FE**	**MR**	**AP**	**MY**	**JN**	**JL**	**AU**	**SE**	**OC**	**NO**
1. Determine types of materials needed.	Subgrantee														
2. Develop proposed materials.	Subgrantee														
3. Submit proposed materials and the PI&E plan to the Department for approval.	Subgrantee														
4. Approve materials and plan.	Department														
5. Produce/distribute materials.	Subgrantee														
6. Maintain records of all PI & E material received/distributed.	Subgrantee			P	P	P	P	P	P	P	P	P	P		
7. Conduct presentations.	Subgrantee			p			p				p		p		
8. Conduct media exposures (e.g., news conferences, news releases, and interviews)	Subgrantee			P	P		P			P	P	P	P		
9. Conduct community events (e.g., health fairs, booths).	Subgrantee											p			

To add another row to table, press TAB at end of row.

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Texas Department of Transportation

Form 1852-LE (rev. 10/17/2006)

Attachment D

ACTION PLAN

FY 2007

PROJECT TITLE: STEP - IDM

SUBGRANTEE: City of Plano

OBJECTIVE: To complete administrative and general grant requirements by September 30, 2007, as defined below:

KEY:
p = planned activity
c = completed activity
r = revised

ACTIVITY	RESPONSIBLE	PROJECT MONTH													
		OC	NO	DE	JA	FE	MR	AP	MY	JN	JL	AU	SE	OC	NO
1. Submit letter regarding signature authority.	Subgrantee			P											
2. Submit operational cost per vehicle mile (If applicable).	Subgrantee			P											
3. Hold Grant delivery meeting.	Department			P											
4. Attend TxDOT Project Management Course	Subgrantee	N	O	T		A	P	P	L	I	C	A	B	L	E
5. Submit Performance Reports.	Subgrantee				P			P			P				
6. Submit Requests for Reimbursement.	Subgrantee				p			p						p	
7. Submit Final Performance Report and Administrative Evaluation Report.	Subgrantee													P	
8. Hold Grant progress review meeting.	Subgrantee & Dept.									P					
9. Conduct on-site monitoring visit.	Department			P						P					
10. Submit documentation of any grant-required training (if applicable).	Subgrantee			P											
11. Conduct enforcement.	Subgrantee			P	P		P			P	P	P	P		

TRAFFIC SAFETY OPERATIONAL PLAN

FY 07 STEP – IDM

Name of Subgrantee: City of Plano

Site Description	Enforcement Period
Jurisdiction Wide Conduct focused DWI saturation patrols within high risk locations during times when alcohol-related crashes are most frequent	**Christmas/New Year's Wave** December 22, 2006 – Jan. 2, 2007 **Spring Break Wave** March 9 – 19, 2007 **Independence Day Wave** June 29 – July 5, 2007 **Labor Day Crackdown** August 17 – September 3, 2007 • Conduct a minimum of 4 nights of DWI enforcement during each holiday period • Conduct pre and post earned media activities for each holiday period

FY 07 STEP IDM CALENDAR

The enforcement periods must remain as scheduled. Use this schedule as a guide for planning media activities

Pre-Media (News conference, news release, news interview)	Enforcement Effort	Post-Media (News conference, news release, news interview)

CHRISTMAS / NEW YEARS

December																			January									
13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	1	2	3	4	5	6	7	8	9	10	11

SPRING BREAK

Feb.		March																											
27	28	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28

INDEPENDENCE DAY

June													July															
18	19	20	21	22	23	24	25	26	27	28	29	30	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17

LABOR DAY

August																				September								
12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	1	2	3	4	5	6	7	8	9	10

Pre-Media Efforts Before Enforcement Periods:
Conduct local media events immediately before the enforcement effort to maximize the visibility of enforcement to the public. The media events tell the public when, where, how and why impaired driving laws are being enforced.

Enforcement Periods:
Intensify enforcement through coordinated saturation patrols in an overtime STEP placing primary emphasis on increasing DWI arrests and reducing the number of alcohol related traffic crashes during peak holiday traffic.

Post-Media Efforts After Enforcement Periods:
Conduct local media events to tell the public why impaired driving laws are important and the results of the mobilization.

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Attachment E

Texas Department of Transportation

Form 2077-LE (rev. 8/12/2004)

Traffic Safety Project Budget

(for Law Enforcement Projects)

Project Title: STEP - IDM

Name of Subgrantee: City of Plano

Fiscal Year: 2007

☐ Check here if this is a revised budget.
Date Revised: _____

(Round figures to nearest dollar)

	TxDOT	Other/ State/Local	TOTAL
Budget Category I – Labor Costs			
(100) Salaries			
☒ Overtime or ☐ Regular Time			
Salary rates are estimated for budget purposes only. Reimbursements will be based on actual costs per employee in accordance with Subgrantee's payroll policy and salary rate.			
List details:			
A. Enforcement (overtime)			
1. Officers/Deputies: 150.00 hrs. @ $47.00 per hr.	7,050		7,050
2. Sergeants: 145.00 hrs. @ $56.00 per hr.	8,120		8,120
3. Lieutenants: 50.00 hrs. @ $63.00 per hr.	3,150		3,150
B. PI&E Activities (overtime)			
See Grant Instructions.			
_____ hrs. @ $_____ per hr.			0
C. Other (i.e., overtime staff, supervisory support, conducting surveys)			
See Grant Instructions.			
Specify: supervisory support			
30.00 hrs. @ $56.00 per hr.	1,680		1,680
Total Salaries	20,000	0	20,000
(200) Fringe Benefits*			
Specify fringe rates:			
A. Overtime: _____%			0
B. Part-Time: _____%			0
C. Regular Time: _____%			0
Total Fringe Benefits	0	0	0
I. Total Labor Costs (100 + 200)	20,000	0	20,000

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*** Budget Detail Required:** As an attachment to the budget, a justification and a detailed cost breakdown is required for all costs included for Fringe Benefits (200), Travel and Per Diem (300), Equipment (400), Supplies (500), Contractual Services (600), Other Miscellaneous (700), and Indirect Cost Rate (800)

Project Title: STEP - IDM
Subgrantee: City of Plano

Fiscal Year: 2007

☐ Check here if this is a revised budget.
Date Revised: _____

(Round figures to nearest dollar)

	TxDOT	Other/ State/Local	TOTAL
Budget Category II – Other Direct Costs			
(300) Travel* Reimbursements will be in accordance with Subgrantee's travel policy. Subgrantee must bill for actual travel expenses — not to exceed the limits reimbursable under state law.			
A. Travel and Per Diem (includes conferences, training workshops, and other non-enforcement travel)			0
B. Subgrantee Enforcement Vehicle Mileage: Rates used only for budget estimate. Reimbursement will be made according to the approved subgrantee's average cost per mile to operate patrol vehicles, not to exceed the applicable state mileage reimbursement rate as established by the Legislature in the travel provisions of the General Appropriations Act. Documentation of cost per mile is required prior to reimbursement. _____ miles @ $_____ per mile			0
Total Travel	0	0	0
(400) Equipment*			0
(500) Supplies*			0
(600) Contractual Services*			0
(700) Other Miscellaneous*			
A. Registration fees (training, workshops, conferences, etc.)			0
B. Public information & education (PI&E) materials			0
1. Educational items = $_____ (eg.: brochures, bumper stickers, posters, fliers, etc.)			
2. Promotional items = $_____ (eg.: key chains, magnets, pencils, pens, mugs, etc.)			
C. Other			0
Total Other Miscellaneous	0	0	0
II. Total Other Direct Costs (300 + 400 + 500 + 600 + 700)	0	0	0
Budget Category III – Indirect Costs			
(800) Indirect Cost Rate* (at _____%)			0
Summary:			
Total Labor Costs	20,000	0	20,000
Total Other Direct Costs	0	0	0
Total Indirect Costs	0	0	0
Grand Total (I+II+III)	20,000	0	20,000
Fund Sources (Percent Share)	100.00%	0.00%	

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*** Budget Detail Required:** As an attachment to the budget, a justification and a detailed cost breakdown is required for all costs included for Fringe Benefits (200), Travel and Per Diem (300), Equipment (400), Supplies (500), Contractual Services (600), Other Miscellaneous (700), and Indirect Cost Rate (800)

city of plano police department

Gregory W. Rushin
Chief of Police

909 14th Street
P.O. Box 860358
Plano, Texas 75086-0358
972-424-5678

November 17th, 2006

Ms. Pat Hickman
Traffic Safety Specialist
Texas Department of Transportation
4777 E. Hwy. 80
Mesquite, Texas 75150

RE: FY 07 STEP Grant

Dear Ms. Hickman:

This letter is to certify that all Officers working DWI on the grant are trained in Standardized Field Sobriety Testing (SFST).

Sincerely,

Sergeant Chris Curd
Plano Police Department
Traffic Unit

CC: Capt. Mike Tower
Lt. Jack Justice
Sgt. Stan Roady

V-29

P.O. Box 860358
Plano, Texas 75086-0358
972-941-7000
Fax. No. 972-941-0099
http://www.ci.plano.tx.us

MEMORANDUM

DATE: ***November 30, 2006***

TO: ***Bruce D. Glasscock, Executive Director***

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

SUBJECT: ***DWI Grant***

I am submitting a one year State of Texas DWI Grant for consideration at the December 11, 2006 City Council meeting. This is a $20,000 enforcement grant, with no match, that pays for Officers to work DWI enforcement during the following four Holiday seasons:

Christmas / New Year	December 22, 2006 – January 2, 2007
Spring Break	March 9, 2007 – March 19, 2007
Independence Day	June 29, 2007 – July 5, 2007
Labor Day	August 17, 2007 – September 3, 2007

It should be noted though the effective day of the grant is December 13, 2006; however, the enforcement period does not begin until December 22, 2006. The grant requires pre and post media activities. There are no restrictions on enforcement locations. Please advise if you have any questions. Thanks.

V-30

recycled paper

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:	12/11/06	Reviewed by Legal	☒ Yes	☐ Not Applicable
Department:	Parks and Recreation		Initials	Date
Department Head	Don Wendell	Executive Director		12-1-06
Dept Signature:	Don Wendell	City Manager		12/1/06
Agenda Coordinator (include phone #):	Linda Benoit (7255)			

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

CAPTION

Approving the terms and conditions of a Local Transportation Project Advance Funding Agreement between the State of Texas and the City of Plano for bicycle route enhancements throughout the City of Plano; authorizing its execution by the City Manager or, in his absence, an Executive Director; and providing an effective date.

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☒ CIP

FISCAL YEAR: 2006-07	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	100,000	700,000	**800,000**
Encumbered/Expended Amount	0	0	0	**0**
This Item	0	-17,348	-321,711	**-339,059**
BALANCE	0	82,652	378,289	**460,941**

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

COMMENTS: This item, in the amount of $339,059 allows the City to enter into a funding agreement with the State of Texas for the Bicycle System project. If this request is approved, the City's 2006-07 commitment will be $17,348 for administrative expenses and the 2007-08 commitment will be 20% of the project cost, $321,711.

STRATEGIC PLAN GOAL: Bicycle route enhancements relates to the City's Goal of "Premier City for Families."

SUMMARY OF ITEM

City Council approved a Master Agreement Governing Local Transportation Projects Advance Funding Agreements with TxDOT on May 29, 2001 (Resolution No. 2001-5-2000), which provides state funding for local transportation projects. This agreement requires that a Local Project Advance Funding Agreement (LPAFA) be prepared for each individual project. The attached LPAFA is for bicycle route enhancements throughout the City in accordance with the City of Plano Bicycle Transportation Plan. Enhancements will include bike route signs, improved thoroughfare crossings, and other related improvements.

CITY OF PLANO
COUNCIL AGENDA ITEM

The City's share of the project cost will be $321,711 which is 20% of the estimated total project cost of $1,608,556. In addition, the City will pay for TxDOT administrative expenses on this project, estimated to be $17,348. Federal funding will pay for the remainder of the project cost. The City's portion of the funds will come from bikeway systems CIP funding.

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
Location Map Local Transportation Project Advance Funding Agreement	

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RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A LOCAL TRANSPORTATION PROJECT ADVANCE FUNDING AGREEMENT BETWEEN THE STATE OF TEXAS AND THE CITY OF PLANO FOR BICYCLE ROUTE ENHANCEMENTS THROUGHOUT THE CITY OF PLANO; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR, IN HIS ABSENCE, AN EXECUTIVE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council has been presented a proposed Local Transportation Project Advance Funding Agreement for Project CSJ: 0918-24-935, development and construction of citywide bicycle improvements in the City of Plano, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and,

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

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

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

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

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

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

_____
Pat Evans, MAYOR

ATTEST:

_____
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

M:\AGENDA\12-11-06 Res-approval-LPAFA Bike Lane Markings.doc (2/25/05-KM)

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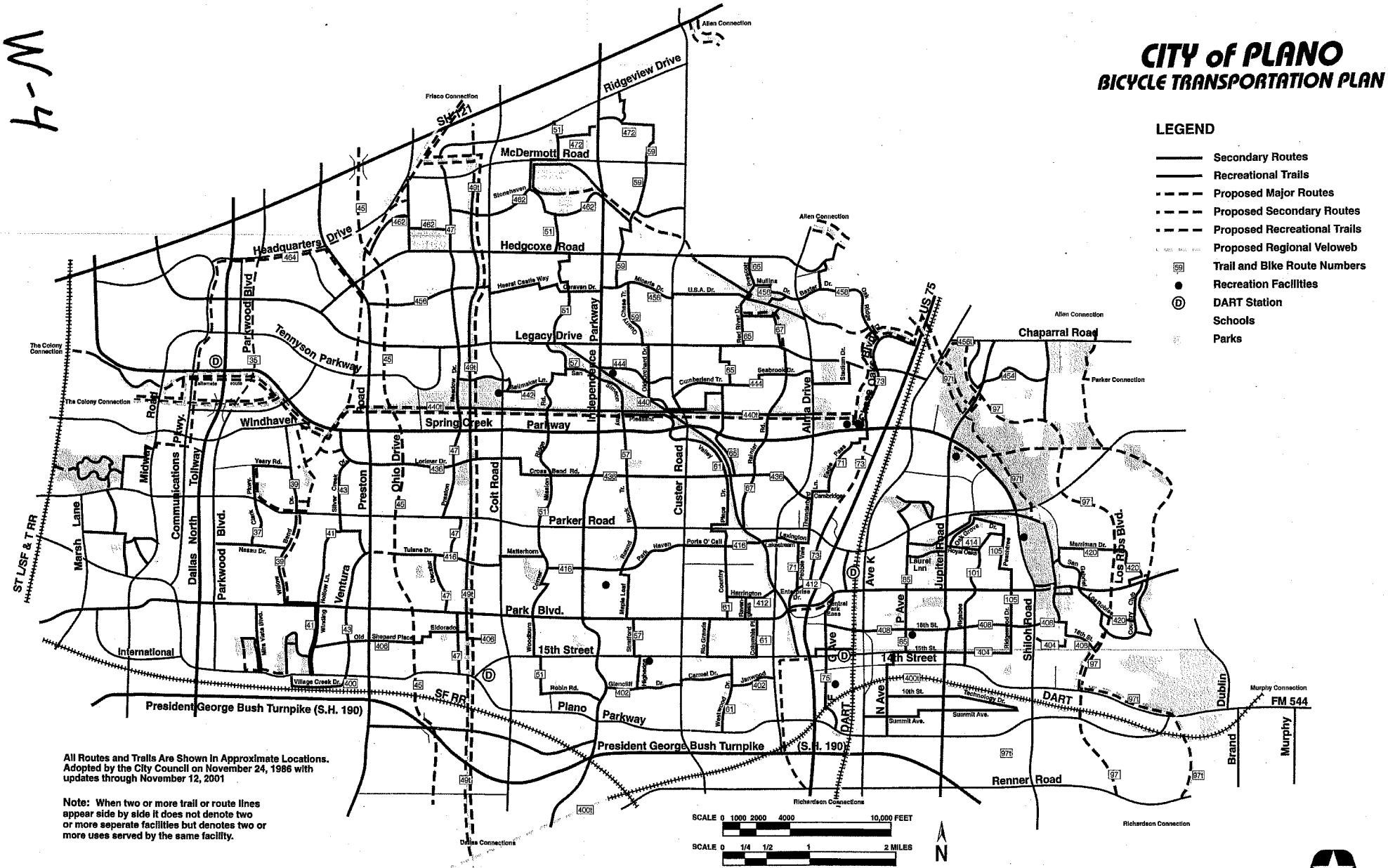
CITY of PLANO
BICYCLE TRANSPORTATION PLAN



All Routes and Trails Are Shown In Approximate Locations. Adopted by the City Council on November 24, 1986 with updates through November 12, 2001

Note: When two or more trail or route lines appear side by side it does not denote two or more seperate facilities but denotes two or more uses served by the same facility.

CSJ: 0918-24-935
District #18
Code Chart 64#33100
Citywide Bicycle Improvements
Collin County
Funding Cat: CMAQ

EXHIBIT "A"

STATE OF TEXAS §

COUNTY OF TRAVIS §

LOCAL TRANSPORTATION PROJECT ADVANCE FUNDING AGREEMENT For a CMAQ Project (Off State System)

THIS Local Project Advance Funding Agreement (LPAFA) is made by and between the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called the "State", and the City of Plano, acting by and through its duly authorized officials, hereinafter called the "Local Government."

WITNESSETH

WHEREAS, a Master Agreement between the Local Government and the State has been adopted and states the general terms and conditions for transportation projects developed through this LPAFA; and,

WHEREAS, the Texas Transportation Commission passed Minute Order _____ that provides for the development of, and funding for, the project describe herein; and,

WHEREAS, the Governing Body of the Local Government has approved entering into this LPAFA by resolution or ordinance dated _____, which is attached hereto and made a part hereof as Attachment A for development of the specific project which is identified in the location map shown as Attachment B.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, to be by them respectively kept and performed as hereinafter set forth, it is agreed as follows:

AGREEMENT

1. The period of this LPAFA is as stated in the Master Agreement, without exception.
2. Termination of this LPAFA shall be under the conditions as stated in the Master Agreement, without exception.
3. Amendments to this LPAFA shall be made as described in the Master Agreement, without exception.
4. Scope of Work.
   The scope of work for this LPAFA is described as development and construction of bicycle lane and route markings throughout the City of Plano.
5. Right of Way and Real Property shall be the responsibility of the Local Government, as stated in the Master Agreement, without exception.
6. Adjustment of utilities will be provided by the Local Government as required and as stated in the Master Agreement without exception.

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7. Environmental Assessment and Mitigation will be carried out as stated in the Master Agreement, without exception.

8. Compliance with Texas Accessibility Standards and ADA will be as stated in the Master Agreement, without exception.

9. Architectural and Engineering Services will be provided by the Local Government. The Local Government is responsible for performance of any required architectural or preliminary engineering work. The design shall conform to AASHTO standards and State specifications will be used. The State shall review and comment on the work as required to accomplish the public purposes of the State. The Local Government will cooperate fully with the State in accomplishing these local public purposes to the degree permitted by State and Federal law.

10. Construction Responsibilities will be carried out by the Local Government.

11. Project Maintenance will be undertaken as provided for in the Master Agreement, without exception.

12. Local Project Sources and Uses of Funds
    a. Project Cost Estimate: A Project Cost Estimate is provided in Attachment C. Any work done prior to federal authorization will not be eligible for reimbursement. It is the Local Government's responsibility to verify with the State that the Federal Letter of Authority has been issued for the work covered by this Agreement.
    b. A Source of Funds estimate is also provided in Attachment C. Attachment C shows the percentage and absolute dollar amount to be contributed to the project by federal, state, and local sources.
    c. The Local Government is responsible for all non-federal and non-state funding, including all project cost overruns, unless provided for through amendment of this agreement.
    d. After execution of this LPAFA, but prior to the performance of any work by the State, the Local Government will remit a check or warrant made payable to the "Texas Department of Transportation "in the amount specified in Attachment C as the local contribution for State review of Preliminary Engineering and Environment Assessment. The Local Government will pay at a minimum its funding share for this estimated cost of preliminary engineering and environmental assessment as stated in the Local Project Sources and Uses of Funds provision of the Master Agreement.
    e. Sixty (60) days prior to the date set for receipt of the construction bids, the Local Government shall remit its remaining financial share for the State's estimated construction oversight cost and any others costs owing.
    f. In the event the State determines that additional funding is required by the Local Government at any time during the development of the Project, the State will notify the Local Government in writing. The Local Government will make payment to the State within thirty (30) days from receipt of the State's written notification.
    g. Whenever funds are paid by the Local Government to the State under this Agreement, the Local Government shall remit a check or warrant made payable to the "Texas Department of Transportation Trust Fund." The check or warrant shall be deposited by the State in an escrow account to be managed by the State. Funds in the escrow account may only be applied by the State to the Project. If, after final Project accounting, excess funds remain in the escrow account, those funds may be applied by the State to the Local Government's contractual obligations to the State under another advance funding agreement.

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h. If any existing or future local ordinances, commissioners court orders, rules, policies, or other directives, including but not limited to outdoor advertising billboards and storm water drainage facility requirements, are more restrictive than State or Federal Regulations, or if any other locally proposed changes, including but not limited to plats or replats, result in increased costs, then any increased costs associated with the ordinances or changes will be paid by the local government. The cost of providing right of way acquired by the State shall mean the total expenses in acquiring the property interests either through negotiations or eminent domain proceedings, including but not limited to expenses related to relocation, removal, and adjustment of eligible utilities.

i. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

13. Document and Information Exchange. The Local Government agrees to electronically deliver to the State all general notes, specifications, contract provision requirements and related documentation in a Microsoft® Word or similar document. If requested by the State, the Local Government will use the State's document template. The Local Government shall also provide a detailed construction time estimate including types of activities and month in the format required by the State. This requirement applies whether the Local Government creates the documents with its own forces or by hiring a consultant or professional provider.

14. Incorporation of Master Agreement Provisions. This LPAFA incorporates all of the governing provisions of the Master Advance Funding Agreement (MAFA) in effect on the date of final execution of this LPAFA, unless such MAFA provision is specifically excepted herein.

15. Insurance. If this agreement authorizes the Local Government or its contractor to perform any work on State right of way, before beginning work the entity performing the work shall provide the State with a fully executed copy of the State's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on the State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and the State may recover damages and all costs of completing the work.

16. Signatory Warranty. The signatories to this agreement warrant that each has the authority to enter into this agreement on behalf of the party represented.

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CSJ: 0918-24-935
District #18
Code Chart 64#33100
Citywide Bicycle Improvements
Collin County

IN TESTIMONY HEREOF, the parties hereto have caused these presents to be executed in duplicate counterparts.

THE LOCAL GOVERNMENT

By: _____
Thomas H. Muellenbeck

Title: City Manager

Date: _____

THE STATE OF TEXAS
Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By: _____
Janice Mullenix
Director of Contract Services Section
Office of General Counsel
Texas Department of Transportation

Date: _____

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CSJ: 0918-24-935
District #18
Code Chart 64#33100
Citywide Bicycle Improvements
Collin County

ATTACHMENT A

RESOLUTION OF LOCAL GOVERNMENT APPROVING THIS LPAFA

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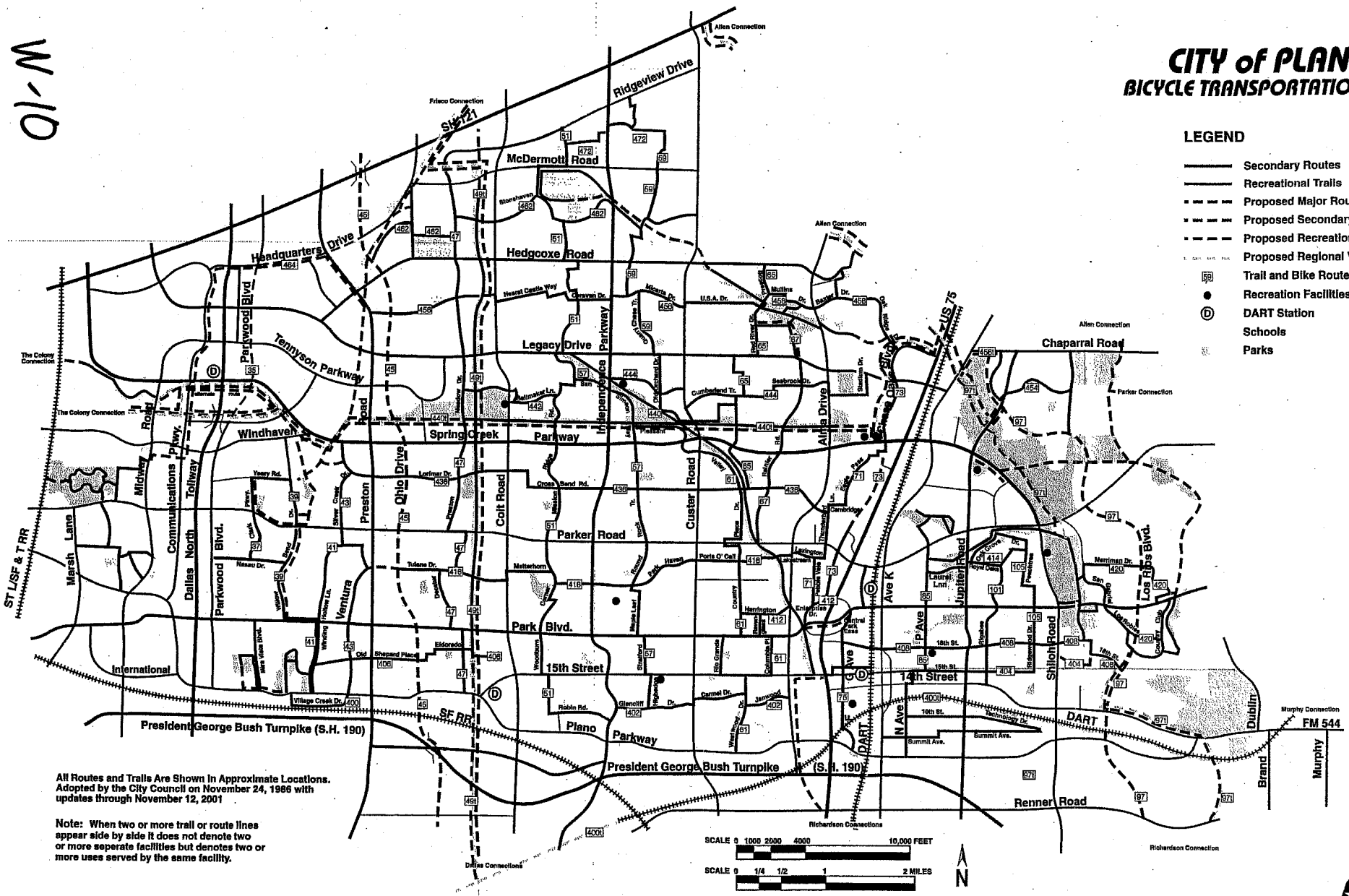
W-10

CITY of PLANO
BICYCLE TRANSPORTATION PLAN

Exhibit "A" to Resolution No. _____



All Routes and Trails Are Shown In Approximate Locations. Adopted by the City Council on November 24, 1986 with updates through November 12, 2001

Note: When two or more trail or route lines appear side by side it does not denote two or more seperate facilities but denotes two or more uses served by the same facility.

Exhibit "A" to Resolution No. _____

CSJ: 0918-24-935
District #18
Code Chart 64#33100
Citywide Bicycle Improvements
Collin County

ATTACHMENT C

PROJECT BUDGET ESTIMATE AND SOURCE OF FUNDS

					CSJ: 0918-24-965
Project Budget					
Description	**Total Estimated Cost**	**Federal Participation**	**State Participation**	**Local Participation**	
	100%	80.0%	0.0%	20.0%	Actual Participation
Land (no cash contribution)	$0.00	$0.00	$0.00	$0.00	$0.00
Utilities (no cash contribution)	$0.00	$0.00	$0.00	$0.00	$0.00
Environmental Cost	$2,500.00	$2,000.00	$0.00	$500.00	$500.00
Preliminary Engineering - State Review	$20,000.00	$16,000.00	$0.00	$4,000.00	$4,000.00
Plans, Specs & Estimate (PS&E)	$160,605.60	$128,484.48	$0.00	$32,121.12	$32,121.12
Construction	$1,361,208.16	$1,088,966.53	$0.00	$272,241.63	$272,241.63
Engineering & Contingency (State oversight)	$64,242.24	$51,393.79	$0.00	$12,848.45	$12,848.45
Total	$1,608,556.00	$1,286,844.80	$0.00	$321,711.20	$321,711.20
1st payment due prior to PS&E review by state					$4,500.00
2nd payment due 60 days prior to project letting					$12,848.45

Total Participation required from the local government = $321,711.20

W-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:	12/11/06	Reviewed by Legal	☒ Yes	☐ Not Applicable
Department:	Public Works/Mike Rapplean		Initials	Date
Department Head	Jimmy Foster	Executive Director		12-5-06
Dept Signature:	M Rapplean for	City Manager		12-5-06
Agenda Coordinator (include phone #):	Margie Stephens (4104)			

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

CAPTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, AUTHORIZING AN EXPENDITURE OF FUNDS NOT TO EXCEED TWENTY FIVE THOUSAND FIFTY AND 52/100 DOLLARS ($25,050.52) TO THE STATE OF TEXAS – TEXAS COMMISSION ON ENVIRONMENTAL QUALITY FOR THE FISCAL YEAR 2007 WATER SYSTEM FEE; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO TAKE SUCH ACTION AND EXECUTE SUCH DOCUMENTS AS NECESSARY TO EFFECTUATE THIS EXPENDITURE; AND PROVIDING AN EFFECTIVE DATE.

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☒ OPERATING EXPENSE ☐ REVENUE ☐ CIP

FISCAL YEAR: 2006-07	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	26,000	0	**26,000**
Encumbered/Expended Amount	0	0	0	**0**
This Item	0	-25,050	0	**-25,050**
BALANCE	0	950	0	**950**

FUND(S): WATER & SEWER FUND

COMMENTS: Funds are included in the 2006-07 approved Budget for drinking water samples and testing as required by State mandate.

STRATEGIC PLAN GOAL: Water quality testing is related to the City's Goal of "Service Excellence".

SUMMARY OF ITEM

Public Works staff recommends the approval of this expenditure. The City of Plano is required by Texas Administrative Code Title 30 – Part 1 – Chapter 290, Rule §290.51 to pay an annual fee for the collection and analysis of drinking water samples, system inspection review and inspection, and technical assistance as needed. This fee is based on the number of water connections in Plano.

Failure to make payments as required under this section will subject the violator to the penalty provisions of the Texas Health and Safety Code, Chapter 341, Subchapter C.

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

X-1

REV 08/98

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, AUTHORIZING AN EXPENDITURE OF FUNDS NOT TO EXCEED TWENTY FIVE THOUSAND FIFTY AND 52/100 DOLLARS ($25,050.52) TO THE STATE OF TEXAS – TEXAS COMMISSION ON ENVIRONMENTAL QUALITY FOR THE FISCAL YEAR 2007 WATER SYSTEM FEE; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO TAKE SUCH ACTION AND EXECUTE SUCH DOCUMENTS AS NECESSARY TO EFFECTUATE THIS EXPENDITURE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Plano, Texas, is required by Texas Administrative Code Title 30 – Part 1 – Chapter 290, Rule §290.51 to pay an annual fee for the collection and analysis of drinking water samples, system inspection review and inspection, and technical assistance as needed;

WHEREAS, The State of Texas – Commission on Environmental Quality will charge for services provided to community and nontransient noncommunity water systems with greater than or equal to 100 connections, the fee = $c^{0.70}$ X $7.40, where "c" is the number of connections;

WHEREAS, Failure to make payments as required under this section will subject the violator to the penalty provisions of the Texas Health and Safety Code, Chapter 341, Subchapter C.

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

Section I. The City Council hereby finds and determines that the State of Texas – Texas Commission on Environmental Quality will continue to provide services set forth and provided by law and mandated in Texas Administrative Code Title 30 - Part 1 – Chapter 290, Rule §290.51.

Section II. The City Manager or his designee is hereby authorized to take such action and execute such documents the Texas Commission on Environmental Quality as necessary to pay the fiscal year 2007 Water System Fee, in an amount not to exceed the sum of **TWENTY FIVE THOUSAND FIFTY AND 52/100 DOLLARS ($25,050.52).**

X-2

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

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

_____
Pat Evans, MAYOR

ATTEST:

_____
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

X-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:	12/11/06	Reviewed by Legal	☒ Yes	☐ Not Applicable
Department:	City Secretary		Initials	Date
Department Head	Elaine Bealke	Executive Director		
Dept Signature:	Elaine Bealke	City Manager	RH	12-5-06
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 76 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

Y-1

REV 08/98

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS ADOPTING AND ENACTING SUPPLEMENT NUMBER 76 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 76;

WHEREAS, The City Council wishes to adopt the ordinance codification version appearing in Supplement 76 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 76 as prepared by the codifier.

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

DULY PASSED AND APPROVED this the 11th day of December, 2006.

_____
Pat Evans, MAYOR

ATTEST:

_____
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

Y-2

M:ord-supplement76

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:	12/11/06	Reviewed by Legal	☒ Yes	☐ Not Applicable
Department:	Finance		Initials	Date
Department Head	John McGrane	Executive Director		
Dept Signature:		City Manager		12/4/06
Agenda Coordinator (include phone #):	Brianna Alvarado X7479			

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

CAPTION

PUBLIC HEARING AND CONSIDERATION OF AN ORDINANCE OF THE CITY OF PLANO, TEXAS, DESIGNATING A CERTAIN AREA WITHIN THE CITY OF PLANO AS REINVESTMENT ZONE NO. 102 FOR A TAX ABATEMENT CONSISTING OF A 6.2622 ACRE TRACT OF LAND LOCATED APPROXIMATELY AT THE NORTHEAST CORNER OF SUMMIT AVENUE AND KLEIN ROAD, IN THE CITY OF PLANO, TEXAS ESTABLISHING THE BOUNDARIES OF SUCH ZONE; ORDAINING OTHER MATTERS RELATING THERETO; AND PROVIDING AN EFFECTIVE DATE.

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☐ CIP

FISCAL YEAR: 2007-2008	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	**0**
Encumbered/Expended Amount	0	0	0	**0**
This Item	0	0	0	**0**
BALANCE	0	0	0	**0**

FUND(S): GENERAL

COMMENTS: The fiscal impact is contingent upon the value of improvements made to the property. Currently, the Real Property is estimated to have an approximate taxable value of not less than $400,000. The Business Personal Property is estimated to have an approximate taxable value of not less than $1,000,000. The Proposed Real Property and Business Property tax abatement on the improvements will begin January 1, 2007 and continue to December 31, 2016, and will be equal to 50% for ten (10) years.

SUMMARY OF ITEM

This is related to the RREEF America REIT II Portfolio, L.P., a Maryland limited partnership and Luminator Holding, L.P., a Delaware limited partnership, request for tax abatement. This Ordinance creates the geographical zone in which Council will hold a Public Hearing earlier on the same Agenda date. Notice of Public Hearing to be published on December 3, 2006.

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
Ordinance and Public Hearing Notice	Joint Committee on Tax Abatement, CCCD, Collin

CITY OF PLANO
COUNCIL AGENDA ITEM

	County Community College

1-2

REV 08/98

ORDINANCE NO._____

AN ORDINANCE OF THE CITY OF PLANO, TEXAS, DESIGNATING A CERTAIN AREA WITHIN THE CITY OF PLANO AS REINVESTMENT ZONE NO. 102 FOR A TAX ABATEMENT CONSISTING OF A 6.2622 ACRE TRACT OF LAND LOCATED APPROXIMATELY AT THE NORTHEAST CORNER OF SUMMIT AVENUE AND KLEIN ROAD, IN THE CITY OF PLANO, TEXAS ESTABLISHING THE BOUNDARIES OF SUCH ZONE; ORDAINING OTHER MATTERS RELATING THERETO; AND PROVIDING AN EFFECTIVE DATE.

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

WHEREAS, a public hearing before the City Council was set for 7:00 p.m. on the 11th day of December, 2006, such date being at least seven (7) days after the date of publication of the notice of such public hearing; and

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

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

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

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

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

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

a) Improvements - Improvements shall include, for the purpose of establishing eligibility under the Act, any activity at the location, including, but not limited to, new construction.

b) Taxable Real Property - Taxable real property shall be as defined in the Texas Property Tax Code and shall not include personal property as defined in said code, nor shall it include land.

c) Taxable Tangible Personal Property - Shall be defined, for purposes of this Ordinance, as tangible personal property, such as office machines and office furnishings, but shall specifically exclude inventory or supplies.

d) Base Year - The base year for determining increased value shall be the taxable real property value assessed the year in which the agreement is executed.

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

a) That a public hearing on the adoption of the reinvestment zone has been properly called, held and conducted and that notices of such hearings have been published as required by law and mailed to all taxing units overlapping the territory inside the proposed reinvestment zone; and

b) That the boundaries of the reinvestment zone should be the area as described in the metes and bounds description attached hereto as Exhibit "A"; and

c) That creation of the reinvestment zone for commercial/industrial tax abatement with boundaries as described in Exhibit "A" will result in benefits to the City and

to the land included in the zone and the improvements sought are feasible and practical; and

d) That the reinvestment zone as defined in Exhibit "A" meets the criteria for the creation of a reinvestment zone as set forth in Section 312.202 of the Act in that it is "reasonably likely as a result of the designation to contribute to the retention or expansion of primary employment or to attract major investment in the zone that would be a benefit to the property and that would contribute to the economic development of the City"; and

e) That the reinvestment zone as defined in Exhibit "A" meets the criteria for the creation of a reinvestment zone as set forth in the City of Plano Revised Policy Statement for Tax Abatement.

Section IV. Pursuant to Section 312.201 of the Act, the City hereby creates a reinvestment zone for commercial/industrial tax abatement encompassing only the area described by metes and bounds in Exhibit "A" attached hereto and such reinvestment zone is hereby designated and shall hereafter be designated as Reinvestment Zone No. 102, City of Plano, Texas.

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

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

a) Be located wholly within the zone as established herein.

b) Have a minimum expenditure on personal property improvements equal to or greater than **One Million and No/100 Dollars ($1,000,000.00)** and have a minimum expenditure on real property improvements equal to or greater than **Four Hundred Thousand and No/100 Dollars ($400,000.00).**

c) Not include property that is owned or leased by a member of the City Council of the City of Plano or by a member of the Planning and Zoning Commission.

d) Conform to the requirements of the City's Zoning Ordinance and all other applicable laws and regulations.

e) Have and maintain all land located within the designated zone, appraised at market value for tax purposes.

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

a) Duration of Exemption - ten (10) consecutive tax years beginning with and including the January 1, 2007 assessment date.

b) Share of taxes abated - percentage of taxes on total value of appraised Personal Property and Improvements at the rate of: 50% for the years 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016.

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

a) Listing the kind, number and location of all proposed improvements of the property;

b) Access to and inspection of property by municipal employees to ensure that the improvements or repairs are made according to the specification and conditions of the agreements;

c) Limiting the use of the property consistent with the general purpose of encouraging development or redevelopment of the zone during the period that property tax exemptions are in effect; and

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

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

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

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DULY PASSED AND APPROVED this 11th day of December, 2006.

_____
Pat Evans, MAYOR

ATTEST:

_____
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

EXHIBIT "A"
LEGAL DESCRIPTION
REINVESTMENT ZONE NO. 102
Real Property
Metes and Bounds

Being a tract of land situated in the D. Yeamans Survey, Abstract No. 1043, the J.B. Roundtree Survey, Abstract No. 759, and the J.T. McCullough Survey, Abstract No. 633, all in Collin County, Texas, and being a part of a tract of land described by instrument to Argent Plano Realty, L.P. as recorded in File #99-0011425, Deed Records, Collin County, Texas (D.R.C.C.T.), and being all of Lot 5, Block 1 of the final plat of Plano Tech Center, an addition to the City of Plano, Texas as recorded in Volume M, Page 49, Plat Records, Collin County, Texas (P.R.C.C.T.), and being more particularly described as follows;

BEGINNING at a set PK nail for the most westerly southwest corner of said Lot 5, Block 1, said point also being the most westerly northwest corner of Lot 4, Block 1 of said addition, and also being on the east right-of-way line of Klein Road (60 feet wide);

THENCE North 00 degrees 12 minutes 30 seconds East, along said east line, a distance of 390.75 feet to an aluminum disc with a punchmark found for the northwest corner of said Lot 5, Block 1, said point also being the southwest corner of Lot 6, Block 1 of said addition;

THENCE South 89 degrees 47 minutes 30 seconds East, departing said east line and along the south line of said Lot 6, Block 1, a distance of 753.00 feet to a ½-inch iron rod with a plastic cap stamped "HALFF ASSOC. INC." (hereafter referred to as "with cap") set for the northeast corner of said Lot 5, Block 1, said point also being the southeast corner of said Lot 6, Block 1, said point also being on the west line of Lot 8, Block 1 of said addition;

THENCE South 00 degrees 12 minutes 30 seconds West, along said west line, at a distance of 219.57 feet passing the southwest corner of said Lot 8, Block 1, said point also being the most northwesterly corner of Lot 3, Block 1 of said addition, and continuing along the west line of said Lot 3, Block 1 for a total distance of 290.33 feet to an "X" cut set for the point of curvature of a circular curve to the right having a radius of 72.00 feet and a chord which bears South 31 degrees 19 minutes 59 seconds West, a distance of 74.43 feet;
THENCE southwesterly, continuing along said west line and said curve to the right, through a central angle of 62 degrees 14 minutes 45 seconds, an arc distance of 78.22 feet to an "X" cut set for the point of reverse curvature of a circular curve to the left having a radius of 1,118.28 feet and a chord which bears South 59 degrees 23 minutes 45 seconds West, a distance of 119.47 feet;

THENCE southwesterly, continuing along said west line and said curve to the left, through a central angle of 06 degrees 07 minutes 27 seconds an arc distance of 119.53 feet to an "X" cut set for the most southerly southeast corner of the aforementioned Lot 5, Block 1, said point also being the most northerly corner of Lot 2, Block 1 of said addition, said point also being the most westerly corner of the aforementioned Lot 3, Block 1;

THENCE North 33 degrees 40 minutes 27 seconds West, departing said west line and along the north line of said Lot 5, Block 1, a distance of 71.66 feet to a ½-inch iron rod with cap set for corner;

THENCE North 89 degrees 47 minutes 30 seconds West, continuing along said north line, a distance of 524.97 feet to a PK nail set for corner;

THENCE South 00 degrees 12 minutes 30 seconds West, continuing along said north line, a distance of 33.00 feet to a PK nail set for corner;

THENCE North 89 degrees 47 minutes 30 seconds West, continuing along said north line, a distance of 47.00 feet to the POINT OF BEGINNING AND CONTAINING 272,781 square feet or 6.262 acres of land, more or less.

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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:	12/11/06	Reviewed by Legal	☒ Yes	☐ Not Applicable
Department:	FINANCE		Initials	Date
Department Head	John McGrane	Executive Director		
Dept Signature:	John T. McGrane	City Manager		11/4/06
Agenda Coordinator (include phone #):	Brianna Alvarado x7479			

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

CAPTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS, THE COUNTY OF COLLIN, TEXAS, THE COLLIN COUNTY COMMUNITY COLLEGE DISTRICT, RREEF AMERICA REIT II PORTFOLIO, L.P., A MARYLAND LIMITED PARTNERSHIP AND LUMINATOR HOLDING L.P., A DELAWARE LIMITED PARTNERSHIP, AND PROVIDING FOR A BUSINESS PERSONAL PROPERTY AND REAL PROPERTY TAX ABATEMENT, AND AUTHORIZING ITS EXECUTION BY THE CITY MANAGER, OR IN HIS ABSENCE AN EXECUTIVE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE.

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☐ CIP

FISCAL YEAR: 2007-2008	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0

FUND(S): GENERAL

COMMENTS: The fiscal impact of this item is contingent upon the value of improvements made to the property. Currently, the Real Property is estimated to have an approximate taxable value of not less than $400,000. The Business Personal Property is estimated to have an approximate taxable value of not less than $1,000,000. The proposed Real Property and Business Personal Property tax abatement on the improvements will begin January 1, 2007 and continue through the year 2016, and will be equal to 50% for ten (10) years.

SUMMARY OF ITEM

A request by RREEF America REIT II Portfolio, L.P., a Maryland limited partnership and Luminator Holding L.P., a Delaware limited partnership for a Tax Abatement. Reinvestment Zone No. 102

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
Resolution and Tax Abatement Agreement	Joint Committee on Tax Abatement, CCCCD, Collin County Community College

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REV 08/98

INTEROFFICE MEMORANDUM

TO:	Thomas H. Muehlenbeck City Manager	**DATE:**	November 29, 2006
FROM:	John F. McGrane Director of Finance	**CC:**	Cindy Pierce Exec. Admin. Asst.

SUBJECT: Tax Abatement for RREEF America REIT II Portfolio, L.P., and Luminator Holding L.P., – Reinvestment Zone 102

RREEF America REIT II Portfolio, L.P., and Luminator Holding L.P, is relocating to a 104,104 square foot building located at Northeast corner of Summit Avenue. and Klein Road. As part of the relocation process, Luminator L.P. is relocating 190 employees from its other Plano location and creating an additional 20 new jobs during the abatement process. The building is expected to be occupied in December, 2006.

The tax abatement will be based on the following values; the estimated amount of $1,000,000 Business Personal Property, and $400,000 Real Property. This tax abatement will be for a period of ten years, from January 1, 2007 through December 31, 2016, and shall be based on amounts equal to 50% for Real Property and 50% for Business Personal Property.

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RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN AGREEMENT BY AND BETWEEN THE CITY OF PLANO, TEXAS, THE COUNTY OF COLLIN, TEXAS, THE COLLIN COUNTY COMMUNITY COLLEGE DISTRICT, RREEF AMERICA REIT II PORTFOLIO, L.P., A MARYLAND LIMITED PARTNERSHIP AND LUMINATOR HOLDING L.P., A DELAWARE LIMITED PARTNERSHIP, AND PROVIDING FOR A BUSINESS PERSONAL PROPERTY AND REAL PROPERTY TAX ABATEMENT, AND AUTHORIZING ITS EXECUTION BY THE CITY MANAGER, OR IN HIS ABSENCE AN EXECUTIVE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council has been presented a proposed Tax Abatement Agreement by and between the City of Plano, Texas, the County of Collin, the Collin County Community College District, RREEF America REIT II Portfolio, L.P., a Maryland limited partnership, along with Luminator Holding L.P., a Delaware limited partnership, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and

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

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

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

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

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

DULY PASSED AND APPROVED this the 11th day of December, 2006.

_____
Pat Evans, MAYOR

ATTEST:

_____
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

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THE STATE OF TEXAS §
§
COUNTY OF COLLIN §

TAX ABATEMENT AGREEMENT

This Agreement is entered into by and between the City of Plano, Texas, a home rule municipal corporation of Collin and Denton Counties, Texas, duly acting herein by and through its City Manager, hereinafter referred to as "City"; the County of Collin, Texas, duly acting herein by and through its County Judge, and the Collin County Community College District, duly acting herein by and through its President of the Board of Trustees, hereinafter collectively referred to as "Taxing Units," and **RREEF America REIT II Portfolio, L.P.**, a Maryland limited partnership, duly acting by and through its general partner, hereinafter referred to as "**Owner**," and **Luminator Holding, L.P.**, a Delaware limited partnership, duly acting by and through its general partners, hereinafter referred to as "**Lessee**."

W I T N E S S E T H:

WHEREAS, on the 11th day of December , 2006, the City Council of the City of Plano, Texas, passed Ordinance No. _____establishing Reinvestment Zone No. 102, for commercial/industrial tax abatement, hereinafter referred to as the "Ordinance," as authorized by V.T.C.A. Tax Code, Chapter 312.001, et seq., cited as the Property Redevelopment and Tax Abatement Act, hereinafter referred to as "Act"; and

WHEREAS, the **City** has adopted a revised policy statement for Tax Abatement by Resolution No. 2006-9-22(R) stating that it elects to be eligible to participate in tax abatement (the "Policy Statement"); and

WHEREAS, the Policy Statement sets forth appropriate guidelines and criteria governing tax abatement agreements to be entered into by the City as contemplated by the Act; and

WHEREAS, the tax abatement will maintain and enhance the commercial/industrial economic and employment base of the Plano area thereby benefiting both the City and the Taxing Units in accordance with the said Ordinance and Act; and

WHEREAS, the contemplated use of the Real Property, as hereinafter defined, the contemplated improvements to the Real Property in the amount as set forth in this Agreement and the other terms hereof are consistent with encouraging development of said Reinvestment Zone No. 102 in accordance with the purposes for its creation and are in compliance with the intent of the Policy Statement and the Ordinance and similar guidelines and criteria adopted by the City and all applicable law.

NOW THEREFORE, the parties hereto do mutually agree as follows:

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1. The real property subject to this Agreement is described by metes and bounds in **EXHIBIT "A"** (the "Real Property") attached hereto and made a part hereof. At the time of this Agreement, **RREEF America REIT II Portfolio, L.P.** is the Owner of the Real Property. This Agreement shall be terminated should the Real Property not be leased by Lessee, its successors or affiliates, or should such lease be terminated during the term of this Agreement.

2. The tangible personal property subject to this Agreement shall be personal property, excluding inventory and supplies, used within Reinvestment Zone No. 102, which shall be hereinafter referred to as the "Personalty." The Personalty is presently estimated to have an approximate taxable value of **One Million Dollars ($1,000,000)** and is or will be owned by Lessee or its affiliates. Lessee shall timely render its personal property value each year to the Central Appraisal District

3. Lessee, as owner of the Personalty, may not relocate, for purposes of maintaining taxable situs of tangible personal property, the Personalty on the Real Property in other Reinvestment Zones in the City.

JOBS

4. Lessee estimates the proposed development of the Real Property as shown in **EXHIBIT "B"** (the "Development") will result in the relocation of approximately 190 employees when the new office building is completed and an additional 20 employees during the abatement term at the Development in Plano.

IMPROVEMENTS

5. The Owner shall complete construction of improvements and/or repairs to the Real Property (hereinafter referred to as "Improvements") consisting primarily of a new building consisting of not less than 104,000 gross square feet of office space with an initial expenditure of not less than **Four Hundred Thousand Dollars ($400,000)** on or before December 31, 2006, provided that Owner shall have such additional time to complete the Improvements as may be required in the event of "force majeure" if Owner is diligently and faithfully pursuing the completion of the Improvements or, if in the reasonable opinion of the City, the Owner has made substantial progress toward completion of the initial phase of the Improvements. For this purpose, "force majeure" shall mean any contingency or cause beyond the reasonable control of Owner including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, governmental or de facto governmental action (unless caused by acts or omissions of Owner), fire, shortages of material and/or labor, explosion or flood, and labor disturbances. The date of completion of the Improvements shall be defined as the date a Certificate of Occupancy is issued by the City of Plano.

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6. The Owner agrees and covenants that it will diligently and faithfully in a good and workmanlike manner pursue the substantial completion of the Improvements as a good and valuable consideration of this Agreement. Owner further covenants and agrees that all construction of the Improvements will be in accordance with all applicable federal, state and local laws and regulations or valid waiver thereof. In further consideration, Owner shall from the date a Certificate of Occupancy is issued until the expiration or termination of this Agreement, operate and maintain the Real Property (or cause the same to be operated and maintained) for the following described purposes: production/manufacturing/office space where Lessee or its affiliates will initially relocate approximately 190 employees with an additional 20 employees during the abatement term, referred to herein as the "Purposes."

DEFAULT

7. Any of the following events shall be deemed a breach of this agreement resulting in default:

(a) The Improvements are not completed in accordance with this Agreement;

(b) Owner or Lessee allows its real or personal property taxes owed the City or Taxing Units on the Real Property, Improvements, or Personalty to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of any such ad valorem taxes;

(c) Lessee fails to occupy the Improvements for the Purposes set forth in paragraph 6 above on or before December 31, 2006; or

(d) The value of the Improvements to Real Property and the value of Personalty placed on the improved Real Property on December 31, 2006, and maintained on the Real Property during the term of this Agreement is less than the minimum amounts set forth in paragraphs 2 and 5 above; or

(e) Lessee fails to employ at least 75% of its employee commitment as provided in paragraph 4 above; or

(f) Owner or Lessee fails to provide annual certification as required in paragraph 10 below.

8. In the event that the Owner or Lessee defaults under this Agreement then the City or Taxing Units shall give the Owner and Lessee written notice of such default and if the Owner or Lessee has not cured such default, or obtained a waiver thereof from the appropriate authority, within thirty (30) days of said written notice, this Agreement may be terminated by the City and Taxing Units. Notice shall be in writing as provided below. Upon the occurrence of an event of default other than under Paragraph 7(b) above and after Owner or Lessee fails to cure same in

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accordance herewith, this Agreement shall immediately terminate and all taxes due after the event of default shall be paid in full without the benefit of any abatement. The parties acknowledge that actual damages in the event of default and termination would be speculative and difficult to determine.

9. Upon the occurrence of an event of default under Paragraph 7(b) above and after Owner or Lessee fails to cure same in accordance herewith, this Agreement shall immediately terminate and all taxes, including previously abated taxes which would have been paid to the City and Taxing Units without the benefit of this Agreement, shall become due and owing to the City and Taxing Units, together with interest charged from the date of this Agreement at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 33.01, but without the addition of penalty other than that mandated by V.T.C.A., § 33.01 or 33.07.

ANNUAL CERTIFICATION

10. On or before the 1st day of November of each calendar year during the term of this Agreement, the Owner, or its successors or assigns, and Lessee must provide annual certification (substantially in the form attached as **EXHIBIT "C"** hereto) to the Governing Body of the City certifying compliance with each applicable term of the Agreement.

ASSIGNMENT

11. The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto. This Agreement cannot be assigned by Owner unless written permission is first granted by the City and Taxing Units, which permission shall be at the reasonable discretion of the City and Taxing Units, except under the following conditions:

(a) Assignment to an affiliate of Lessee is permissible;

(b) A transfer or assignment of the Real Property and Improvements, or an assignment of this Agreement, by Owner to successors or assigns is permissible wherein the successors or assigns agree to be bound by the terms of this Agreement and Lessee shall continue to conduct business on the subject premises, and shall remain the primary tenant.

However, Owner and Lessee agree to give written notice to the City and Taxing Units of any assignment or transfer of interest allowed pursuant to subparagraphs (a) and (b) hereof.

ABATEMENT PROVISIONS

12. Subject to the terms and conditions of this Agreement, and subject to the rights of holders of any outstanding bonds of the City and Taxing Units, a portion of ad valorem real and personal property taxes from the Real Property, Improvements, and Personalty otherwise owed to the City and taxing Units shall be abated as follows:

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(a) The tax abatements as to the Real Property, Improvements, and Personalty, as provided for herein, shall be for a period of ten (10) tax years, from January 1, 2007 through December 31, 2016.

(b) In accordance with all applicable federal, state, and local laws and regulations, the abatement shall be based on amounts equal to 50% of the value of the improved value of the Real Property and Improvements and 50% of the Personalty for each tax year from January 1, 2007 through December 31, 2016.

(c) The Owner and Lessee shall have the right to protest and/or contest any assessment of the Real Property, Improvements or Personalty, and the abatement shall be applied to the amount of taxes finally determined to be due as a result of any such protest and/or contest.

NOTICE

13. Notices required to be given to any party to this Agreement shall be given personally or by registered or certified mail, return receipt requested, postage prepaid, addressed to the party at its address as set forth below, and, if given by mail, shall be deemed delivered as of the date deposited in the United States mail:

For City by notice to:

City of Plano, Texas
Attention: Mr. Thomas H. Muehlenbeck
City Manager
P.O. Box 860358
Plano, Texas 75086-0358

With copy to:

City of Plano, Texas
Attention: Ms. Diane C. Wetherbee
City Attorney
P.O. Box 860358
Plano, Texas 75086-0358

For Taxing Units by notice to:

County of Collin, Texas
Attention: The Honorable Ron Harris
County Judge
Collin County Commissioners' Court
210 S. McDonald, Ste. 626
McKinney, Texas 75069

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Collin County Community College District
Attention: Dr. Cary A. Israel
President of Board of Trustees
4800 Preston Park Boulevard
Plano, Texas 75093

For Owner by notice to:

RREEF America REIT II Portfolio, L.P.
Attention: Mrs. Rhonda Thompson
Senior Leasing Property Manager
1406 Halsey Way, Suite 110
Carrollton, Texas 75007

For Lessee by notice to:

Luminator Holding, L.P.
Attention: Mr. Michael L. Woods
General Manager
1200 East Plano Parkway
Plano, Texas 75074

Any party may change the address to which notices are to be sent by giving the other parties written notice in the manner provided in this paragraph.

MISCELLANEOUS PROVISIONS

14. The Owner and Lessee further agree that the City and Taxing Units, their agents and employees, shall have reasonable right (upon reasonable prior notice to Owner and Lessee) to access the Real Property to inspect the Improvements and Personalty in order to insure that the construction of the Improvements and locations of the Personalty are in accordance with this Agreement and all applicable federal, state, and local laws and regulations. After completion of the Improvements, and City and Taxing Units shall have the continuing right (upon reasonable prior notice to Owner and Lessee) to inspect the Real Property and Personalty to insure that the Real Property and Personalty is thereafter maintained, operated and occupied in accordance with this Agreement.

15. It is understood and agreed between the parties that the Owner and Lessee, in performing their obligations hereunder, are acting independently, and the City and Taxing Units assume no responsibilities or liabilities in connection therewith to third parties and Owner and Lessee agree to indemnify and hold harmless City and Taxing Units from any and all claims, suits, and causes of actions, including attorneys' fees, of any nature whatsoever arising out of Owner's or Lessee's default of their obligations hereunder.

2-10

16. The City and the Taxing Units each represent and warrant that the Real Property, Improvements and Personalty do not include any property that is owned by a member of their respective councils or boards, agencies, commissions, or other governmental bodies approving, or having responsibility for the approval of this Agreement.

17. This Agreement was authorized by Resolution of the City Council at its Council meeting on the 11th day of December, 2006, authorizing the City Manager to execute the Agreement on behalf of the City.

18. This Agreement was authorized by the minutes of the Commissioners' Court of Collin County, Texas, at its meeting on the _____day of _____, 2006, whereupon it was duly determined that the County Judge would execute the Agreement on behalf of Collin County.

19. This Agreement was authorized by the Board Minutes of the Board of Trustees of Collin County Community College District at its Board Meeting on the _____ day of _____, 2006, whereupon it was duly determined that the Chairman would execute the Agreement on behalf of Collin County Community College District.

20. This Agreement was entered into by Owner pursuant to authority granted by its general partner, whereby the general partner of the limited partnership was authorized to execute this Agreement on behalf of Owner.

21. This Agreement was entered into by Lessee pursuant to authority granted by its general partners, whereby the general partners of the limited partnership were authorized to execute this Agreement on behalf of Lessee.

22. This instrument shall constitute a valid and binding agreement between the City, Owner, and Lessee when executed in accordance herewith, regardless of whether any other **TAXING UNIT** executes this Agreement. This shall constitute a valid and binding Agreement between such **TAXING UNITS**, Owner and Lessee when executed on behalf of said parties, for the abatement of such **TAXING UNIT's** taxes in accordance therewith.

23. Severability. If any term or provision of this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement (or the application of such term or provision, to persons or circumstances other than those in respect of which it is invalid or unenforceable) except those terms or provisions, which are made subject to or conditioned upon such invalid or unenforceable term or provision, shall not be affected thereby, and each other term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

2-11

This Agreement is performable in Collin County, Texas. Signed this 11th day of December, 2006.

ATTEST:

CITY OF PLANO, TEXAS, a home-rule municipal corporation

_____

Elaine Bealke, CITY SECRETARY

_____

Thomas H. Muehlenbeck, CITY MANAGER

APPROVED AS TO FORM:

_____

Diane C. Wetherbee, CITY ATTORNEY

ATTEST:

COMMISSIONERS' COURT OF COLLIN COUNTY

_____

_____

COUNTY JUDGE

ATTEST:

COLLIN COUNTY COMMUNITY COLLEGE DISTRICT

_____

_____

CHAIRMAN

2-12

ATTEST:

_____

REEF AMERICA REIT II PORTFOLIO, L.P., a Maryland limited partnership

BY: RREEF America REIT II Corp. U, a Maryland corporation, Its General Partner

By: _____
Charles V. George
Vice President

ATTEST:

_____

LUMINATOR HOLDING L.P., a Delaware limited partnership

BY: Mark IV IVHS, Inc., a Delaware corporation, a General Partner

By: _____
Edward R. Steele
Secretary

BY: F-P Displays, Inc., a Massachusetts corporation, a General Partner

By: _____
Edward Steele
Secretary

2-13

EXHIBIT "A"
LEGAL DESCRIPTION
REINVESTMENT ZONE NO. 102
Real Property
Metes and Bounds

Lot 5

Being a tract of land situated in the D. Yeamans Survey, Abstract No. 1043, the J.B. Roundtree Survey, Abstract No. 759, and the J.T. McCullough Survey, Abstract No. 633, all in Collin County, Texas, and being a part of a tract of land described by instrument to Argent Plano Realty, L.P. as recorded in File #99-0011425, Deed Records, Collin County, Texas (D.R.C.C.T.), and being all of Lot 5, Block 1 of the final plat of Plano Tech Center, an addition to the City of Plano, Texas as recorded in Volume M, Page 49, Plat Records, Collin County, Texas (P.R.C.C.T.), and being more particularly described as follows;

BEGINNING at a set PK nail for the most westerly southwest corner of said Lot 5, Block 1, said point also being the most westerly northwest corner of Lot 4, Block 1 of said addition, and also being on the east right-of-way line of Klein Road (60 feet wide);

THENCE North 00 degrees 12 minutes 30 seconds East, along said east line, a distance of 390.75 feet to an aluminum disc with a punchmark found for the northwest corner of said Lot 5, Block 1, said point also being the southwest corner of Lot 6, Block 1 of said addition;

THENCE South 89 degrees 47 minutes 30 seconds East, departing said east line and along the south line of said Lot 6, Block 1, a distance of 753.00 feet to a ½-inch iron rod with a plastic cap stamped "HALFF ASSOC. INC." (hereafter referred to as "with cap") set for the northeast corner of said Lot 5, Block 1, said point also being the southeast corner of said Lot 6, Block 1, said point also being on the west line of Lot 8, Block 1 of said addition;

THENCE South 00 degrees 12 minutes 30 seconds West, along said west line, at a distance of 219.57 feet passing the southwest corner of said Lot 8, Block 1, said point also being the most northwesterly corner of Lot 3, Block 1 of said addition, and continuing along the west line of said Lot 3, Block 1 for a total distance of 290.33 feet to an "X" cut set for the point of curvature of a circular curve to the right having a radius of 72.00 feet and a chord which bears South 31 degrees 19 minutes 59 seconds West, a distance of 74.43 feet;
THENCE southwesterly, continuing along said west line and said curve to the right, through a central angle of 62 degrees 14 minutes 45 seconds, an arc distance of 78.22 feet to an "X" cut set for the point of reverse curvature of a circular curve to the left having a radius of 1,118.28 feet and a chord which bears South 59 degrees 23 minutes 45 seconds West, a distance of 119.47 feet;

THENCE southwesterly, continuing along said west line and said curve to the left, through a central angle of 06 degrees 07 minutes 27 seconds an arc distance of 119.53 feet to an "X" cut set for the most southerly southeast corner of the aforementioned Lot 5, Block 1, said point also being the most northerly corner of Lot 2, Block 1 of said addition, said point also being the most westerly corner of the aforementioned Lot 3, Block 1;

2-14

THENCE North 33 degrees 40 minutes 27 seconds West, departing said west line and along the north line of said Lot 5, Block 1, a distance of 71.66 feet to a ½-inch iron rod with cap set for corner;

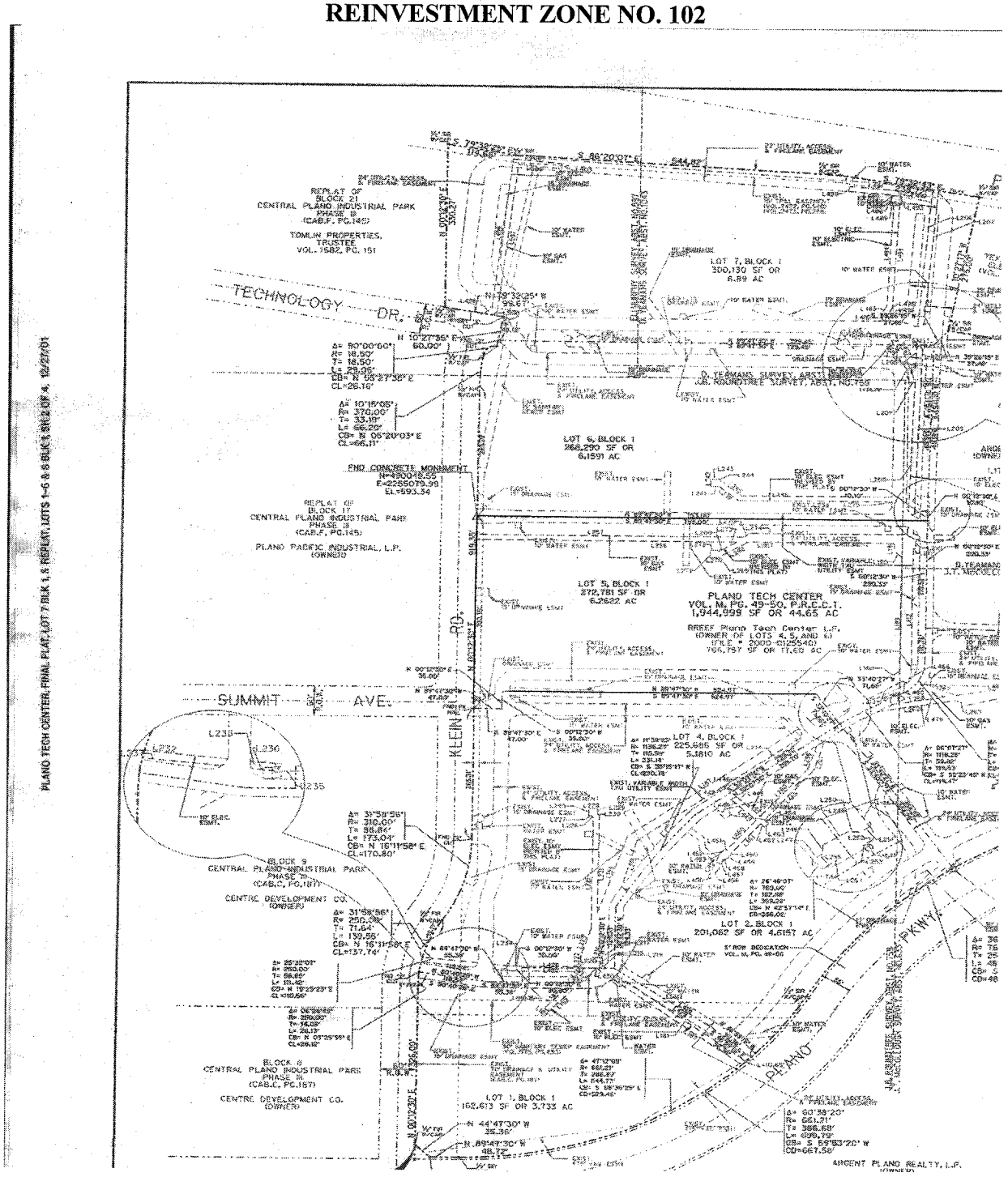
THENCE North 89 degrees 47 minutes 30 seconds West, continuing along said north line, a distance of 524.97 feet to a PK nail set for corner;

THENCE South 00 degrees 12 minutes 30 seconds West, continuing along said north line, a distance of 35.00 feet to a PK nail set for corner;

THENCE North 89 degrees 47 minutes 30 seconds West, continuing along said north line, a distance of 47.00 feet to the POINT OF BEGINNING AND CONTAINING 272,781 square feet or 6.262 acres of land, more or less.

2-15

EXHIBIT "A-2"
THE MAP OF METES AND BOUNDS
REINVESTMENT ZONE NO. 102



2-16

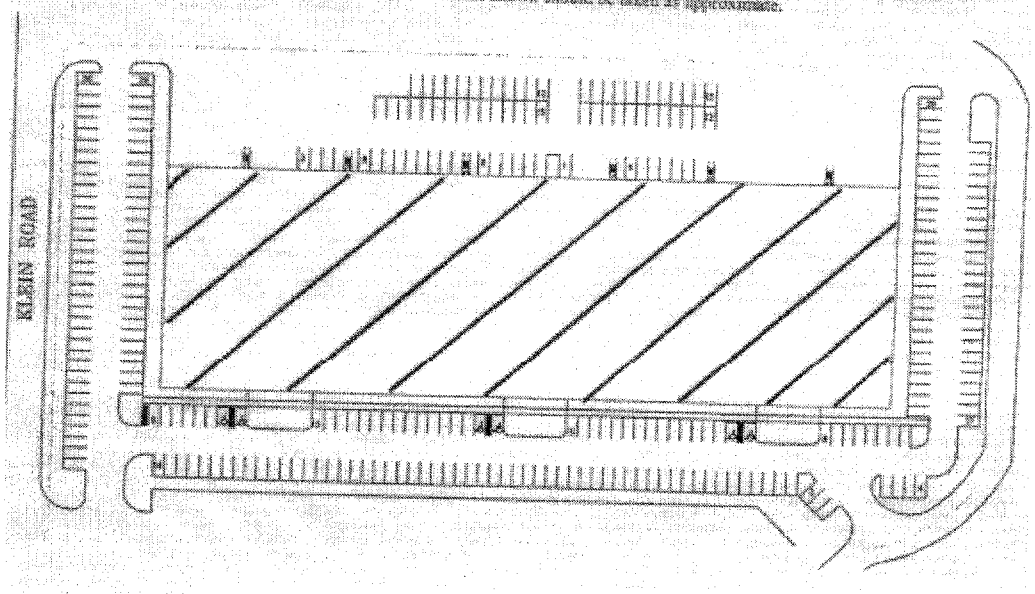
EXHIBIT "B"
THE DEVELOPMENT
REINVESTMENT ZONE NO. 102

EXHIBIT – SITE PLAN

attached to and made a part of Lease bearing the
Lease Reference Date of July 26, 2006 between
RREEF America REIT II Portfolio, L.P., a Maryland limited partnership, as Landlord and
Luminator Holding L.P., a Delaware limited partnership, as Tenant

900 Klein Road, Plano, Texas

Exhibit A-1 is intended only to show the general layout of the Building as of the beginning of the Term of this Lease. It does not in any way supersede any of Landlord's rights set forth in Article 17 with respect to arrangements and/or locations of public parts of the Building and changes in such arrangements and/or locations. It is not to be scaled; any measurements or distances shown should be taken as approximate.



2-17

EXHIBIT "C"
CERTIFICATION FORM
REINVESTMENT ZONE NO. 102

This letter certifies that RREEF AMERICA REIT II PORTFOLIO, L.P., A Maryland limited partnership, and LUMINATOR HOLDING L.P., a Delaware limited partnership, are in compliance with each applicable term as set forth in the Agreement to Resolution No. _____(R) as of December 11, 2006. The term of this agreement is January 1, 2007 through December 31, 2016. This form is due on November 1 of each year this tax abatement is in force.

ATTEST:

_____

REEF AMERICA REIT II PORTFOLIO, L.P., a Maryland limited partnership

BY: RREEF America REIT II Corp. U, a Maryland corporation, Its General Partner

By: _____
Charles V. George
Vice President

ATTEST:

_____

LUMINATOR HOLDING L.P., a Delaware limited partnership

BY: Mark IV IVHS, Inc., a Delaware corporation, a General Partner

By: _____
Edward R. Steele
Secretary

BY: F-P Displays, Inc., a Massachusetts corporation, a General Partner

By: _____
Edward R. Steele
Secretary

Date: _____

NOTE: This certification form should be mailed to: **City of Plano**
Finance Department
P.O. Box 860358
Plano, Texas 75086-0358

2-18

DATE: November 21, 2006

TO: Honorable Mayor & City Council

FROM: Carolyn Kalchthaler, Chairman, Planning & Zoning Commission

SUBJECT: Results of Planning & Zoning Commission Meeting of November 20, 2006

PUBLIC HEARING
ZONING CASE 2006-29
APPLICANT: WELWOOD-HAWKINS HOMES

DESCRIPTION:

Request to rezone 75.5± acres located at the northwest corner of Spring Creek Parkway and Tennyson Parkway **from** Commercial Employment **to** Single-Family Residence Attached, Patio Home, and Single-Family Residence-9.

APPROVED: 5-1 **DENIED:** _____ **TABLED:** _____

LETTERS RECEIVED WITHIN 200 FOOT NOTICE AREA: **SUPPORT:** 5 **OPPOSE:** 2

LETTERS RECEIVED OUTSIDE 200 FOOT NOTICE AREA: **SUPPORT:** 0 **OPPOSE:** 0

PETITION(s) RECEIVED: 1 **# OF SIGNATURES:** 25 in support

STIPULATIONS:

Recommended for approval.

The Commissioner voting in opposition had concerns about piecemeal rezoning within the Legacy Business Park.

FOR CITY COUNCIL MEETING OF: December 11, 2006 (To view the agenda for this meeting, see www.planotx.org)

PUBLIC HEARING - ORDINANCE

CDD/dw

xc: Collin RRE LP
Curt Welwood, Hawkins-Welwood Homes
Lynn Woodall, Administrative Support Supervisor

Z:PAC\12-11-CC

MEMO

December 4, 2006

TO: Tom Muehlenbeck, City Manager
Frank Turner, Executive Director

FROM: Tom Elgin, Development Review Manager TE

RE: Tabling of Zoning Case 2006-29

Per the attached letter, the applicant is requesting to table City Council consideration of Zoning Case 2006-29 from the December 11, 2006, City Council meeting to the January 27, 2007, City Council meeting.

The letter references changes to a concept plan for the area of rezoning. In conjunction with the zoning request, the Planning & Zoning Commission considered a concept plan for the development. The plan had some residential lots that spanned the Collin County/Denton County line. The Commission, at the request of staff, approved the concept plan subject to City Council approval of Zoning Case 2006-29 and subject to revising the layout so that the residential lots did not straddle the county limits line.

3-2

ZONE SYSTEMS, INC.

Phyllis Jarrell
Planning Director
City of Plano
1520 Ave K
Plano, TX 75074

November 28, 2006

RE: Zoning Case 2006-29

Dear Phyllis:

We would like to request that this item be delayed until the January 22, 2007 City Council meeting. Mr. Welwood needs to meet the engineers regarding the needed changes on the concept plan. Unfortunately, due to the holidays, their schedules are conflicting until after the first of the year. This delay will allow us enough time to make sure the requested changes to the concept plan can be made prior to the City Council hearing.

Sincerely,

Cheryl D. Williams

Cheryl D. Williams

3-3

Recommendation of the
Planning & Zoning Commission
November 20, 2006 Meeting
2nd Vice Chair Report

Agenda No. 7A Public Hearing & 7B Concept Plan

Public Hearing: Zoning Case 2006-29

Applicant: Welwood-Hawkins Homes

Description: Request to rezone 75.5 +- acres located at the northwest corner of Sp[ring Creek Parkway and Tennyson Parkway from Commercial Employment to Single-Family Residence Attached, Patio Home, and Single-Family Residence-9.

Staff Recommendation: Denial

Commission Action: Approved 7A by a vote of 5-1
Approved 7B by a vote of 6-0

STAFF REPORT

The applicant is requesting to rezone the property to create a residential subdivision. The requested zoning is for 44.0± acres of Single-Family Residence-9 (SF-9), 13.3± acres of Patio Home (PH), and 18.2± acres of Single-Family Residence Attached (SF-A). The SF-9 district is intended to provide areas for large-lot, urban, single-family development protected from excessive noise, illumination, odors, visual clutter, and other objectionable influences to family living. The PH district is intended to provide for areas of detached, zero-lot-line, single-family development in a clustered lot pattern with a common usable open space system that is an integral part of the development. The SF-A district is intended to provide for a variety of residential housing types and densities in the medium density range (five-ten units/acre) on individually-platted lots or multiples units on a single lot.

Current Zoning

The current zoning is Commercial Employment (CE). The CE district is intended to provide the flexibility for an integrated development that may include retail, office, commercial, light manufacturing, and multifamily residences. The major focus of the CE district is to be corporate headquarters and research facilities arranged in a campus-like setting.

Surrounding Land Use and Zoning

The area of the request is undeveloped. To the north, there is floodplain stretching from Spring Creek Parkway on the west to Tennyson Parkway and Corporate Drive on the east. North beyond the floodplain, there are corporate campuses, zoned CE, that are not

fully developed. The property to the west and south of Spring Creek Parkway is developed with single-family residences and zoned Planned Development-481-Multifamily Residence-2, Single-Family Residence-7, SF-9, and PH, with the exception of the southeast corner of Tennyson Parkway and Spring Creek Parkway. That corner is undeveloped and is zoned CE. East of Tennyson Parkway and north of Spring Creek Parkway, there is property zoned CE that is undeveloped and currently used for agriculture.

Conformance to the Comprehensive Plan

Future Land Use Plan - The Future Land Use Plan designates this property as Low Intensity Office (LIO). The office categories include a variety of employment uses, including office towers, medical centers, corporate campuses, and small neighborhood offices. There are three categories of office development designated on the Land Use Plan: High Intensity Office, Medium Intensity Office, and Low Intensity Office. LIO development serves local needs, and heights are typically less than four stories with floor area ratios less than 0.4:1. This request is not in conformance with the Future Land Use Plan.

STAFF SUMMARY:

The Comprehensive Plan does not support this request. The property is shown as LIO on the Future Land Use Plan and is part of the Legacy Business Park. Since the Land Use Element update is underway, it is inadvisable to rezone property out of compliance with the current standards prior to conclusions of the update. Therefore, staff recommends denial of the proposed zoning request.

APPLICANT

Cheryl Williams represented the applicant, Curt Welwood, and addressed numerous concerns raised by the Planning Department. In addition, Ms. Williams stated that in addition to having all public services available and in a capacity adequate to serve the site that the school districts in the area were also able to accommodate any additional enrollment that may result from the new homes. She also stated that the three major business developments in the Legacy Business Park directly to the north were in support of the proposed development. Mr. Welwood and several residents representing the homeowners to the south also spoke in favor of the development. No one spoke in opposition to the development.

COMMISSION DISCUSSION

There was much discussion among the commissioners who overall favored the development. Those who spoke in favor gave the following reasons:

- The proposed development is a natural extension of the residential development directly to the south.

- The property is somewhat unique in its configuration and would be a natural buffer between the office developments to the north and the residential to the south.

- Due to the topography it would be difficult to develop as office and retain the natural beauty of the site.

- The zoning would allow retail to be built on the site which many commissioners felt would not be a preferred use for the residents to the south.

- It seemed unlikely for the site to be developed as office in the near future.

- Delaying the re-zoning until the Comprehensive Plan could be reviewed further may result in the loss of a development favored by both the residents and businesses in the immediate area.

- If the commission waited to review the overall Land Use Element of the Comprehensive Plan the result would most likely be the same.

Those in opposition state the following reasons:

- The item should be denied and addressed at the time the Comprehensive Plan is reviewed.

PLANNING AND ZONING SUMMARY

With the exception of one commissioner who preferred to wait for an overall review of the Land Use Element of the Comprehensive Plan all of the remaining commissioners felt the re-zoning was appropriate and would be an overall benefit to the area. The re-zoning request was approved 5-1 and the concept plan was approved 6-0.

Respectfully submitted,

James F. Duggan
Second Vice Chairman

CITY OF PLANO

PLANNING & ZONING COMMISSION

November 20, 2006

Agenda Item No. 7A

Public Hearing: Zoning Case 2006-29

Applicant: Welwood-Hawkins Homes

DESCRIPTION:

Request to rezone 75.5± acres located at the northwest corner of Spring Creek Parkway and Tennyson Parkway **from** Commercial Employment **to** Single-Family Residence Attached, Patio Home, and Single-Family Residence-9.

REMARKS:

The applicant is requesting to rezone the property to create a residential subdivision. The requested zoning is for 44.0± acres of Single-Family Residence-9 (SF-9), 13.3± acres of Patio Home (PH), and 18.2± acres of Single-Family Residence Attached (SF-A). The SF-9 district is intended to provide areas for large-lot, urban, single-family development protected from excessive noise, illumination, odors, visual clutter, and other objectionable influences to family living. The PH district is intended to provide for areas of detached, zero-lot-line, single-family development in a clustered lot pattern with a common usable open space system that is an integral part of the development. The SF-A district is intended to provide for a variety of residential housing types and densities in the medium density range (five-ten units/acre) on individually-platted lots or multiples units on a single lot.

Current Zoning

The current zoning is Commercial Employment (CE). The CE district is intended to provide the flexibility for an integrated development that may include retail, office, commercial, light manufacturing, and multifamily residences. The major focus of the CE district is to be corporate headquarters and research facilities arranged in a campus-like setting.

Surrounding Land Use and Zoning

The area of the request is undeveloped. To the north, there is floodplain stretching from Spring Creek Parkway on the west to Tennyson Parkway and Corporate Drive on the east. North beyond the floodplain, there are corporate campuses, zoned CE, that are not fully developed. The property to the west and south of Spring Creek Parkway is developed with single-family residences and zoned Planned Development-481-Multifamily Residence-2, Single-Family Residence-7, SF-9, and PH, with the exception of the southeast corner of Tennyson Parkway and Spring Creek Parkway. That corner is undeveloped and is zoned CE. East of Tennyson Parkway and north of Spring Creek Parkway, there is property zoned CE that is undeveloped and currently used for agriculture.

Conformance to the Comprehensive Plan

Future Land Use Plan - The Future Land Use Plan designates this property as Low Intensity Office (LIO). The office categories include a variety of employment uses, including office towers, medical centers, corporate campuses, and small neighborhood offices. There are three categories of office development designated on the Land Use Plan: High Intensity Office, Medium Intensity Office, and Low Intensity Office. LIO development serves local needs, and heights are typically less than four stories with floor area ratios less than 0.4:1. This request is not 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 since the requested change use is to add residential development in place of commercial development.

Infill Housing Policy Statement 4.0 - The policy statement offers guidelines for infill housing, which is defined as development that occurs on a vacant tract or redevelopment of an existing site surrounded by other improved properties. Due to the size of the property and the amount of undeveloped land to the north and east, staff does not consider this site to be an infill request.

Rezoning to Meet Demand Policy Statement 2.0 - The policy statement recommends evaluating rezoning nonresidential properties for residential uses based on the following:

1. A property must be physically appropriate (in terms of size, dimensions, and shape) for residential use. - Yes. The property is appropriate for residential use.

2. The area to be rezoned is an extension of a residential neighborhood and is not separated from the neighborhood by a thoroughfare of Type C or larger. - No. The area is not part of a residential neighborhood and is separated from the neighborhoods to the south by Spring Creek Parkway, a Type B+ thoroughfare.

3. The area is not affected by adverse environmental conditions such as noise, light fumes, or related nuisances. - The area is immediately adjacent to CE zoned property to the north that could develop with intense uses near this area, but currently, there are no adverse environmental conditions.

4. The proposed rezoning or text amendment conforms to the objectives and strategies of the Land Use and Housing Elements of the Comprehensive Plan. - The rezoning conforms to some strategies but conflicts with others.

5. The rezoning would not result in a shortage of land required for neighborhood retail or service uses. - Yes. As currently zoned, retail uses are allowed, but the rezoning would leave ample opportunities for neighborhood retail development.

6. The rezoning or text amendments would not jeopardize the land area considered prime for future economic expansion. - No. As part of the Legacy Business Park, this area is considered prime for future economic expansion.

7. The rezoning or or text amendments would not result in residual tracts that are inconsistent with the Comprehensive Plan. - The rezoning would leave three remaining lots as CE. The 6.6± acre tract to the west is primarily in the floodplain. The 2.3± acre property at the northwest corner of Spring Creek Parkway and Tennyson Parkway creates an effective pad site on the corner. The 5.5± acre parcel at the corner of Corporate Drive and Tennyson Parkway can be partially developed but also includes a significant portion of floodplain area.

8. The resulting conversion to residential use would provide for an appropriate transition between residential and nonresidential uses. - Possibly. Future development to the north is undetermined; however, the floodplain area will be difficult to develop.

9. The rezoning is clearly consistent with the intent of reducing the overall impact of zoning imbalance on the city's Land Use System. - Yes.

10. The rezoning considers the impact that the proposed rezoning would have on existing public facilites (schools, parks, streets, etc.). - No. There is no park service fee within the Legacy Business Park since residential uses are limited to multifamily, which has an open space requirement in the CE district.

ISSUE:

<u>Location of Housing in the Legacy Business Park Area</u>

The CE and Central-Business-1 zoning districts, while primarily designed to accommodate corporate campus offices and other commercial development, did anticipate limited multifamily development in two concentrations along White Rock Creek and in Legacy Town Center.

Multifamily residential development in other locations requires an approval of a specific use permit (SUP). The two zoning districts do not allow single-family development either by right or by SUP. (The townhouses in Legacy Town Center were allowed as part of the planned development zoning for that area.) Consequently, no neighborhood parks or schools, as found in the typical neighborhood setting in Plano, were planned or built in the Legacy area.

With the present market conditions, developers are interested in building a variety of housing types in the Legacy area. The city should be cautious in allowing housing to be built in scattered areas in isolation from other residential development and without the supporting infrastructure and services typically associated with residential neighborhoods. This is an issue that will be studied as part of the next Land Use Element update over the next year. Staff does not recommend approving any residential rezoning in Legacy Business Park until the Planning & Zoning Commission and City Council are able to address the issue and develop a consistent policy.

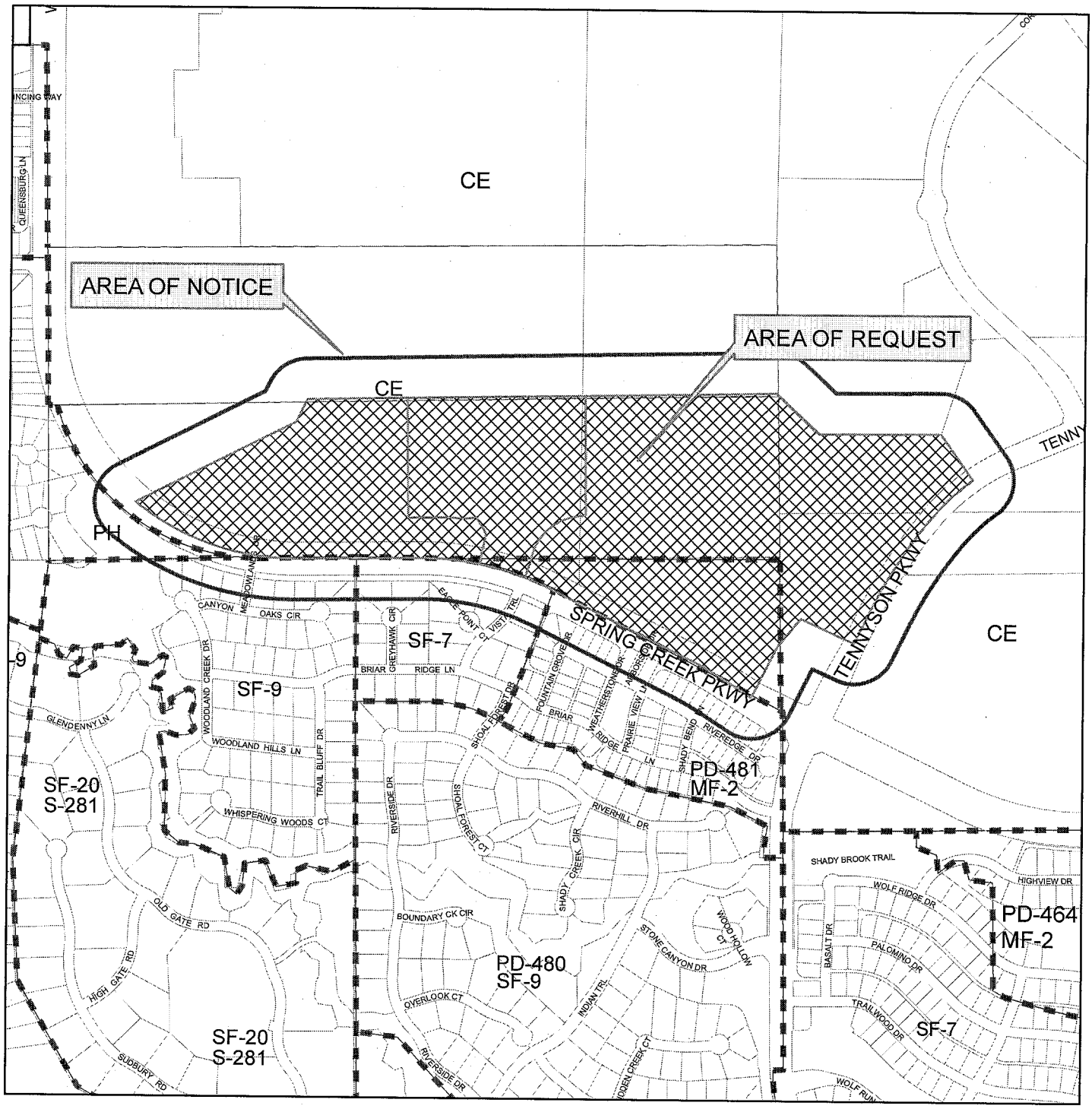
SUMMARY:

The Comprehensive Plan does not support this request. The property is shown as LIO on the Future Land Use Plan and is part of the Legacy Business Park. Since the Land Use Element update is underway, it is inadvisable to rezone property out of compliance with the current standards prior to conclusions of the update. Therefore, staff recommends denial of the proposed zoning request.

RECOMMENDATIONS:

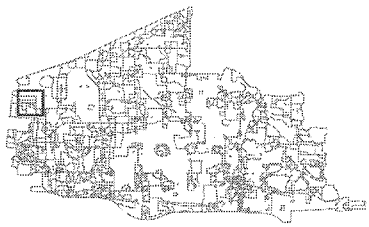
Recommended for denial.

3-10



Zoning Case #: 2006-29

Existing Zoning: COMMERCIAL EMPLOYMENT



○ 200' Notification Buffer

3-11

3-12

NOTES:
"APPROVAL OF THIS ZONING CASE, ASSOCIATED WITH THIS EXHIBIT SHALL NOT IMPLY APPROVAL OF ANY ASSOCIATED SITE PLAT, OR PLAN. APPROVAL OF DEVELOPMENT STANDARDS SHOWN HEREON, ON THE INITIATION OF THE DEVELOPMENT PROCESS. PLANNING & ZONING COMMISSION AND/OR CITY COUNCIL ACTION ON STUDIES, PLATS OR PLANS RELATING TO DEVELOPMENT OF THIS PROPERTY SHALL BE CONSIDERED AN ACTION SEPARATE FROM ACTION TAKEN ON THIS ZONING CASE."

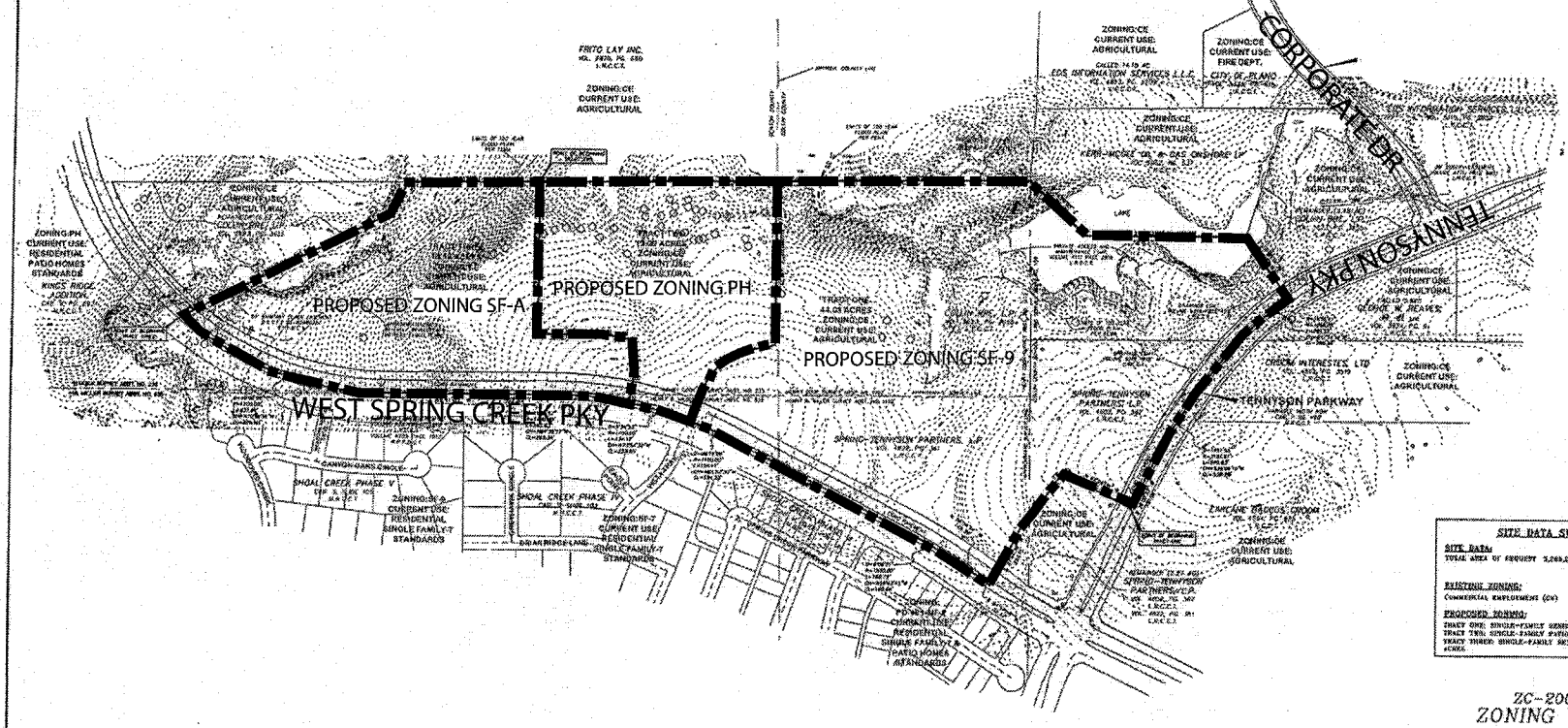
THIS DOCUMENT WAS PREPARED UNDER 22 TAC §663.21, DOES NOT REFLECT THE RESULTS OF AN ON THE GROUND SURVEY, AND IS NOT TO BE USED TO CONVEY OR ESTABLISH INTERESTS IN REAL PROPERTY EXCEPT THOSE RIGHTS AND INTERESTS IMPLIED OR ESTABLISHED BY THE CREATION OR RECONFIGURATION OF THE BOUNDARY OF THE POLITICAL SUBDIVISION FOR WHICH IT WAS PREPARED.

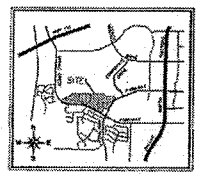
LINE TABLE

LINE	LENGTH	BEARING
L1	131.81'	N00°10'19"E
L2	55.97'	N17°18'03"E
L3	115.92'	S00°08'00"E
L4	58.23'	S03°11'40"E
L5	116.86'	S20°14'20"W

CURVE TABLE

CURVE	DELTA	RADIUS	LENGTH	CH BEARING	CH LENGTH
C1	14°41'42"	250.00'	64.11'	N82°38'09"W	63.93'
C2	14°03'16"	250.00'	61.33'	S82°38'02"E	61.17'
C3	10°08'13"	250.00'	47.80'	N83°41'40"E	47.73'
C4	12°47'19"	275.00'	61.38'	N77°12'28"E	61.25'
C5	63°36'42"	200.00'	225.38'	S55°07'43"W	201.07'
C6	75°41'05"	1350.00'	185.17'	N38°16'52"E	186.02'
C7	02°07'12"	1350.00'	50.08'	N33°14'14"E	50.08'
C8	02°13'43"	275.00'	6.69'	S61°22'47"E	6.69'





LOCATION MAP
NOT-TO-SCALE

N
W E
S

GRAPHIC SCALE
(IN FEET)
1 inch = 200 ft.

SITE DATA SUMMARY TABLE

SITE DATA:
TOTAL AREA OF REQUEST [illegible] SF (55.08 ACRES)

EXISTING ZONING:
COMMERCIAL EMPLOYMENT (CE)

PROPOSED ZONING:
TRACT ONE: SINGLE-FAMILY RESIDENCE DISTRICT # (SF-9) ON 16.03 ACRES
TRACT TWO: SINGLE-FAMILY PATIO HOME (PH) ON 10.29 ACRES
TRACT THREE: SINGLE-FAMILY RESIDENCE DISTRICT ATTACHED (SF-A) ON 18.76 ACRES

ZC-2006-29
ZONING EXHIBIT
COLLIN RRE &
SPRING-TENNYSON TRACT

REZONE FROM (CE) COMMERCIAL EMPLOYMENT TO
SINGLE FAMILY RESIDENCE 9 (SF-9), PATIO HOME (PH),
AND SINGLE FAMILY RESIDENCE ATTACHED (SF-A)
55.07 ACRES AND 18.51 ACRES
SITUATED IN THE
HENRY B. MILLER SURVEY, ABSTRACT NO. 1150
COLLIN COUNTY SCHOOL LAND SURVEY, ABSTRACT NO. 150
HENRY COOK SURVEY, ABSTRACT NO. 1102
CITY OF PLANO, COLLIN COUNTY, TEXAS
HENRY B. MILLER SURVEY, ABSTRACT NO. 635
HENRY COOK SURVEY, ABSTRACT NO. 235
CITY OF PLANO, DENTON COUNTY, TEXAS.

OWNER:
Spring-Tennyson Partners, L.P.
6344 Sherry Lane
Dallas, Texas 75225
Tel. No.: (972) 583-3030
Fax No.: (972) 583-3030

OWNER:
Collin RRE, L.P.
6344 Sherry Lane
Dallas, Texas 75225
Tel. No.: (972) 549-1526
Fax No.: (972) 566-3035

APPLICANT:
Curt Richwood
Hawkins-Wallwood Homes
17450 N. Dallas Parkway, Suite 217
Dallas, Texas 75287
Tel. No.: (972) 931-1008
Fax. No.: (972) 931-0336

SURVEYOR:
Kimley-Horn and Associates, Inc.
12900 Park Central Drive, Suite 1800
Dallas, Texas 75251
Tel. No.: (972) 770-1300
Fax No.: (972) 239-3399

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Tel. No. (972) 770-1300
Fax No. (972) 239-3399
12900 Park Central Drive, Suite 1800
Dallas, Texas 75251

COLLIN RRE &
SPRING-TENNYSON TRACT
PLANO, TEXAS

ZONING EXHIBIT

Scale: 1" = 200'
Designed by: KHA
Drawn by: CV
Checked by: AJF
Date: NOVEMBER 2006
Project No. 063697002

SHEET 1 of 2

ORDINANCE NO. _____
(Zoning Case 2006-29)

AN ORDINANCE OF THE CITY OF PLANO AMENDING THE COMPREHENSIVE ZONING ORDINANCE OF THE CITY, ORDINANCE NO. 2006-4-24, AS HERETOFORE AMENDED, SO AS TO REZONE 75.5± ACRES OUT OF THE HENRY COOK SURVEY, ABSTRACT NO. 235 AND THE HENRY B. MILLER SURVEY, ABSTRACT NO. 835 LOCATED IN DENTON COUNTY AND THE HENRY COOK SURVEY, ABSTRACT NO. 1102, THE HENRY B. MILLER SURVEY, ABSTRACT NO. 1110 AND THE COLLIN COUNTY LAND SCHOOL SURVEY, ABSTRACT NO. 150, LOCATED IN COLLIN COUNTY, LOCATED AT THE NORTHWEST CORNER OF SPRING CREEK PARKWAY AND TENNYSON PARKWAY IN THE CITY OF PLANO, DENTON AND COLLIN COUNTIES, TEXAS, FROM COMMERCIAL EMPLOYMENT TO SINGLE-FAMILY RESIDENCE ATTACHED, PATIO HOME, AND SINGLE-FAMILY RESIDENCE-9; 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 11th day of December, 2006, for the purpose of considering rezoning 75.5± acres out of the Henry Cook Survey, Abstract No. 235 and the Henry B. Miller Survey, Abstract No. 835 located in Denton County and the Henry Cook Survey, Abstract No. 1102, the Henry B. Miller Survey, Abstract No. 1110 and the Collin County Land School Survey, Abstract No. 150, located in Collin County, located at the northwest corner of Spring Creek Parkway and Tennyson Parkway in the City of Plano, Denton and Collin Counties, Texas, from Commercial Employment to Single-Family Residence Attached, Patio Home, and Single-Family Residence-9; and

WHEREAS, the City Secretary of the said City accordingly caused to be issued and published the notices required by its Zoning Ordinance and laws of the State of Texas applicable thereto, the same having been published in a paper of general circulation in the City of Plano, Texas, at least fifteen (15) days prior to the time set for such hearing; and

WHEREAS, the City Council of said City, pursuant to such notice, held its public hearing and heard all persons wishing to be heard both for and against the aforesaid change in the Zoning Ordinance, on the 11th day of December, 2006; 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. 2006-4-24, as the same has been heretofore amended, is hereby further amended so as to rezone 75.5± acres out of the Henry Cook Survey, Abstract No. 235 and the Henry B. Miller Survey, Abstract No. 835 located in Denton County and the Henry Cook Survey, Abstract No. 1102, the Henry B. Miller Survey, Abstract No. 1110 and the Collin County Land School Survey, Abstract No. 150, located in Collin County, located at the northwest corner of Spring Creek Parkway and Tennyson Parkway in the City of Plano, Denton and Collin Counties, Texas, from Commercial Employment to Single-Family Residence Attached (Tract Three: 18.2± acres), Patio Home (Tract Two: 13.3± acres), and Single-Family Residence-9 (Tract One: 44.0± acres), said property being described in the legal description on 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.

Section VII. This Ordinance shall become effective immediately upon its passage and publication as required by law.

PASSED AND APPROVED THIS THE 11TH DAY OF DECEMBER, 2006.

_____
Pat Evans, MAYOR

ATTEST:

_____
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

EXHIBIT "A"
LEGAL DESCRIPTION

BEING a tract of land situated in the Henry Cook Survey, Abstract No. 235 and the Henry B. Miller Survey, Abstract No. 835, City of Plano, Denton County and Henry Cook Survey, Abstract No. 1102, Henry B. Miller Survey, Abstract No. 1110 and Collin County School Land Survey, Abstract No. 150, City of Plano, Collin County, Texas, and being part of a called 82.078 acre tract of land described in the General Warranty Deed from RRE Joint Venture to Collin RRE, L.P., recorded in Volume 5623, Page 3655 of the Land Records of Collin County, Texas, (hereinafter referred to as LRCCT), being part of a called 8.482 acre tract of land described in the Special Warranty Deed from William S. Hooton to Spring – Tennyson Partners, L. P., recorded in Volume 4802, Page 562 – LRCCT and being part of a called 9.202 acre tract of land described in the Special Warranty Deed from Franklin F. Wasko Limited Partnership to Spring – Tennyson Partners L. P., recorded in Volume 4822, Page 361 – LRCCT, with the herein described tract of land being further described as held on the ground by metes and bounds as follows:

TRACT ONE

BEGINNING at a point for corner in the approximate centerline of Tennyson Parkway (variable width public right-of-way);

THENCE departing the centerline of Tennyson Parkway, crossing the northwest right-of-way line of Tennyson Parkway and the southeast property line of said Spring – Tennyson tract the following courses and distances:

North 62°29'08" West, a distance of 273.77 feet to a point for corner;

Along said curve to the left, through a central angle of 2°12'43", having a radius of 225.00 feet, and a chord bearing and distance of South 61°22'47" East, 8.69 feet, an arc length of 8.69 feet to a point for corner;

Along said curve to the left, through a central angle of 2°07'32", having a radius of 1,350.00 feet, and a chord bearing and distance of North 33°15'14" East, 50.08 feet, an arc length of 50.08 feet to a point for corner;

Along said curve to the left, through a central angle of 7°54'05", having a radius of 1,350.00 feet, and a chord bearing and distance of North 381°16'02" East, 186.17 feet, an arc length of 186.02 feet to a point for corner;

South 27°44'20" West, a distance of 253.15 feet to a point for corner;

South 26°27'21" West, a distance of 279.84 feet to a point for corner in the approximate centerline of Spring Creek Parkway (variable width public right-of-way);

THENCE along the approximate centerline of Spring Creek Parkway the following courses and distances:

North 54°37'05" West, a distance of 32.47 feet to a point for corner;

North 56°39'44" West, a distance of 145.59 feet to a point for corner and the beginning of a curve to the left;

Along said curve to the left, through a central angle of 6°08'21", having a radius of 1,500.00 feet, and a chord bearing and distance of North 59°43'45" West, 160.64 feet, an arc length of 160.72 feet to a point for corner;

North 62°47'56" West, a distance of 755.07 feet to a point for corner and the beginning of a curve to the left;

Along said curve to the left, through a central angle of 06°19'09", having a radius of 1,400.00 feet, and a chord bearing and distance of North 65°57'30" West, 154.33 feet, an arc length of 154.41 feet to a point for corner;

THENCE departing the centerline of Spring Creek Parkway, crossing the northeast right-of-way line of Spring Creek Parkway and the southwest property line of the Spring – Tennyson tract, the following courses and distances:

North 20°34'20" East, a distance of 116.86 feet to a point for corner and the beginning of a curve to the right;

Along said curve to the right, through a central angle of 63°06'47", having a radius of 250.00 feet, and a chord bearing and distance of North 52°07'43" East, 261.67, an arc length of 275.38 feet to a point for corner and the beginning of a curve to the right;

Along said curve to the right, through a central angle of 12°47'19", having a radius of 275.00 feet, and a chord bearing and distance of North 77°17'28" East, 61.25 feet an arc length of 61.38 feet to a point for corner;

North 00°00'00" West, a distance of 426.75 feet to a point for a corner;

North 05°11'40" West, a distance of 55.23 feet to a point for a corner;

North 00°00'00" West, a distance of 115.97 feet to a 5/8-inch iron rod set for corner in the south line of a called 61.5875 acre tract of land described in the General Warranty Deed from E. W. Baccus and Laverne W. Baccus to Frito-Lay, Inc., recorded in Volume 2870, Page 660 – LRCCT;

THENCE along the south line of said Frito-Lay tract, North 89°16'27" East, a distance of 925.57 feet to a point for corner in the east line of a called 8.660 acre tract of land described in the Special Warranty Deed from Kerr-McGee Chemical Worldwide LLC to Kerr-McGee Oil & Gas Onshore L.P., recorded in Volume 5962, Page 537 – LRCCT;

THENCE along the south line of said called 8.660 acre tract the following courses and distance as follows:

South 46°00'00" East, a distance of 285.10 feet to a point for corner;

South 89°53'00" East, a distance of 587.90 feet to a point for the southeast corner of said 8.660 acre tract;

THENCE South 35°07'26" East, crossing the Collin RRE tract at a distance of 271.57 feet to a point for corner in the approximate centerline of Tennyson Parkway and the beginning of a curve to the left;

THENCE along the approximately centerline of Tennyson Parkway the following courses and distances:

Along a curve to the left, through a central angle of 15°16'41", having a radius of 1,055.75 feet, and a chord bearing and distance of South 47°14'14" West, 280.68 feet, an arc length of 281.52 feet to a point for corner and the beginning of a curve to the left;

Along said curve to the left, through a central angle of 14°11'55", having a radius of 2,181.61 feet, and a chord bearing and distance of South 33°06'10" West 539.25 feet, an arc length of 540.63 feet to a point for corner;

South 26°00'23" West, a distance of 151.06 feet to the POINT OF BEGINNING and CONTAINING 44.03 acres, more or less.

TRACT TWO

BEING a tract of land situated in the Henry Cook Survey, Abstract No. 235 and the Henry B. Miller Survey, Abstract No. 835, City of Plano, Denton County, Texas, and being part of a called 82.078 acre tract of land described in the General Warranty Deed from RRE Joint Venture to Collin RRE, L.P., recorded in Volume 5623, Page 3655 of the Land Records of Collin County, Texas, (hereinafter referred to as LRCCT), with the herein described tract of land being further described as held on the ground by metes and bounds as follows:

BEGINNING at a point for corner in the south line of a called 61.5875 acre tract of land described in the General Warranty Deed from E. W. Baccus and Laverne W. Baccus to Frito-Lay, Inc., recorded in Volume 2870, Page 660, LRCCT and the north line of said Collin RRE, L.P. tract;

THENCE along the south line of said Frito-Lay tract, North 89°16'27" East, a distance of 62.57 feet to a point for corner;

THENCE crossing aforementioned Collin RRE, L.P. tract as follows:

South 00°00'00" East, a distance of 115.97 feet to a point for corner;

South 05°11'40" East, a distance of 55.23 feet to a point for corner;

South 00°00'00" East, a distance of 426.75 feet to a point for corner and the beginning of a curve to the right;

Along said curve to the right, through a central angle of 12°47'19", having a radius of 275.00 feet, and a chord bearing and distance of South 77°17'28" West, 61.25 feet, an arc length of 61.38 feet to a point for corner;

Along said curve to the left, through a central angle of 63°06'47", having a radius of 250.00 feet, and a chord bearing and distance of South 52°07'43" West, 261.67 feet, an arc length of 275.38 feet to a point for corner;

South 20°34'20" West, a distance of 116.86 feet to a point for corner in the approximate centerline of Spring Creek Parkway (a variable width public right-of-way);

THENCE along the approximate centerline of Spring Creek Parkway, along a curve to the left, through a central angle of 9°34'53", having a radius of 1,400.00 feet, and a chord bearing and distance of North 73°54'32" West, 233.85 feet, an arc length of 234.12 feet to a point for corner;

THENCE departing the centerline of Spring Creek Parkway, crossing the aforementioned Collin RRE, L.P. tract as follows:

North 11°18'02" East, a distance of 55.97 feet to a point for corner and the beginning of a curve to the left;

Along said curve to the left, through a central angle of 10°58'43", having a radius of 250.00 feet, and a chord bearing and distance of North 05°48'40" East, 47.83 feet, an arc length of 47.90 feet to a point for corner;

North 00°19'19" East, a distance of 131.81 feet to a point for corner and the beginning of a curve to the right;

Along said curve to the right, through a central angle of 14°03'18", having a radius of 250.00 feet, and a chord bearing and distance of North 82°39'02" West, 61.17 feet, an arc length of 61.33 feet to a point for corner and the beginning of a curve to the left;

Along said curve to the left, through a central angle of 14°41'32", having a radius of 250.00 feet, and a chord bearing and distance of North 82°58'09" West, 63.93 feet, an arc length of 64.11 feet to a point for corner;

South 89°41'05" West, a distance of 227.87 feet to a point for corner;

North 00°00'00" East, a distance of 556.82 feet to the POINT OF BEGINNING and CONTAINING 13.29 acres, more or less.

TRACT THREE

BEING a tract of land situated in the Henry Cook Survey, Abstract No. 235 and the Henry B. Miller Survey, Abstract No. 835, City of Plano, Denton County, Texas, and being part of a called 82.078 acre tract of land described in the General Warranty Deed from RRE Joint Venture, to Collin RRE, L.P., recorded in Volume 5623, Page 3655 of the Land Records of Collin County, Texas, (hereinafter referred to as LRCCT), with the herein described tract of land being further described as held on the ground by metes and bounds as follows:

BEGINNING at a point for corner in the centerline of Spring Creek Parkway (a variable width public right-of-way) and the southwest corner of said Collin RRE tract for corner;

THENCE crossing aforementioned Collin RRE tract, the following courses and distances:

North 63°17'34" East, a distance of 865.68 feet to a point for corner;

North 26°55'21" East, a distance of 123.56 feet to a point for corner in the south line of a called 61.5875 acre tract of land described in the General Warranty Deed from E. W. Baccus and Laverne W. Baccus to Frito-Lay, Inc., recorded in Volume 2870, Page 660 – LRCCT;

THENCE along the south line of said Frito-Lay tract, North 89°16'27" East, a distance of 483.22 feet to a point for corner;

THENCE crossing the aforementioned Collin RRE tract, the following courses and distances:

South 00°00'00" West, a distance of 556.82 feet to a point for corner;

North 89°41'05" East, a distance of 227.87 feet to a point for corner and the beginning of a curve to the right;

Along said curve to the right, through a central angle of 14°41'32", having a radius of 250.00 feet, and a chord bearing and distance of South 82°58'09" East, 63.93 feet, an arc length of 64.11 feet to a point for corner and the beginning of a curve to the left;

Along said curve to the left, through a central angle of 14°03'18", having a radius of 250.00 feet, and a chord bearing and distance of South 82°39'02" East, 61.17 feet, an arc length of 61.33 feet to a point for corner;

South 00°19'19" West, a distance of 131.81 feet to a point for corner and the beginning of a curve to the right;

Along said curve to the right, through a central angle of 10°58'43", having a radius of 250.00 feet, and a chord bearing and distance of South 05°48'40" West, 47.83 feet, an arc length of 47.90 feet to a point for corner;

South 11°18'02" West, a distance of 55.97 feet to a point for corner in the centerline of Spring Creek Parkway;

THENCE along the approximate centerline of Spring Creek Parkway the following courses and distances:

Along said curve to the left, through a central angle of 11°36'57", having a radius of 1,400.00 feet, and a chord bearing and distance of North 84°30'27" West, 283.34 feet, an arc length of 283.83 feet to a point for corner;

South 89°41'05" West, a distance of 592.84 feet to a point for corner and the beginning of a curve to the right;

Along said curve to the right, through a central angle of 40°00'09", having a radius of 1,200.00 feet, and a chord bearing and distance of North 70°19'55" West, 820.90 feet, an arc length of 837.81 feet; to the POINT OF BEGINNING and CONTAINING 18.18 acres, more or less.

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:	12/11/06	Reviewed by Legal	☒ Yes	☐ Not Applicable
Department:	Planning		Initials	Date
Department Head	Phyllis M. Jarrell	Executive Director		12/01/06
Dept Signature:	P. Jarrell	City Manager		12/01/06
Agenda Coordinator (include phone #):	Lynn Woodall, ext. 7156			

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, accepting and approving the "Workforce Housing Study" as a guide for the creation of future programs related to workforce housing in the City of Plano, Texas, 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 Transition and Revitalization Commission (TRC) has completed the Workforce Housing Study and will be presenting the results for City Council consideration. TRC has spent more than six months examining the availability of workforce housing in Plano and this report recommends strategies for preserving and enhancing this critical component of the city's housing stock.

This document expands on the interim report was presented to City Council on August 28, 2006, and focuses on ways to assist workforce households (80% to 120% of median income) in purchasing and improving existing older homes in Plano. If approved by City Council, this document will become the basis for developing specific programs. Those involving significant expenditures will still require the City Council's authorization before they can be implemented.

The Planning & Zoning Commission reviewed the final report on November 20, 2006, and recommended it for adoption by City Council.

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
Workforce Housing Study (Exhibit A)	Plano Transition & Revitalization Commission Planning and Zoning Commission

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS ACCEPTING AND APPROVING THE "WORKFORCE HOUSING STUDY" AS A GUIDE FOR THE CREATION OF FUTURE PROGRAMS RELATED TO WORKFORCE HOUSING IN THE CITY OF PLANO, TEXAS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council recognizes that workforce housing is a critical component of Plano's housing stock; and

WHEREAS, the City Council formed the Plano Transition and Revitalization Commission to identify and review the challenges that should be addressed at maturity and develop recommendations to enhance the City based on its evaluations; and

WHEREAS, the Transition & Revitalization Commission was given the responsibility of evaluating examining the availability of workforce housing in Plano; and

WHEREAS, the Transition & Revitalization Commission prepared an interim report entitled "Workforce Housing Study" and presented it to the Planning & Zoning Commission on August 8, 2006, and the City Council on August 28, 2006, for input; and

WHEREAS, the Transition & Revitalization Commission has considered and adopted the proposed "Workforce Housing Study" and recommended its acceptance at its monthly meeting on September 20, 2006; and prepared and presented a final report to the Planning & Zoning Commission on November 20, 2006; and

WHEREAS, the Planning & Zoning Commission reviewed the final report of the "Workforce Housing Study" and recommended it for adoption by the City Council; and

WHEREAS, the City Council, having been presented the proposed "Workforce Housing Study", upon full review and consideration thereof and all matters attendant and related thereto, is of the opinion that this document should be approved, adopted and utilized as a guide for the future consideration of workforce housing in the City of Plano;

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

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

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Section II. The "Workforce Housing Study" shall be utilized by City Council, city staff and other city personnel, departments, boards, and commissions as a guiding document for matters relating to Workforce Housing.

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

DULY PASSED AND APPROVED THIS THE 11TH DAY OF DECEMBER, 2006.

_____
Pat Evans, MAYOR

ATTEST:

_____
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

Workforce Housing Study Report

INTRODUCTION

Background

The workforce housing study was initiated in response to a recommendation in the Plano City Council's "2005 Strategic Plan," Plano's jobs-housing balance, a related issue, is also a topic that received some discussion in the Housing Element of the Comprehensive Plan. This study considers "workforce housing" as a critical element of the community's economic vitality; and includes actions that the City of Plano could take to accommodate the provision of suitable housing for persons who are and will be employed by businesses located in Plano as well as government entities.

In early 2006, the Transition and Revitalization Commission (TRC) began working with city staff to develop an understanding of the various issues relating to workforce housing, its significance to Plano, and possible solutions. In the summer of 2006, the commission presented its initial findings to the Planning and Zoning Commission and City Council. Utilizing the input of those two bodies, the commission developed a series of recommendations and proposed implementation steps, which are included in this report. The text which follows defines and analyzes the issues, describes and evaluates solutions that have been utilized by other communities to address housing affordability, and provides a framework for developing programs that are most appropriate for Plano.

Definition

Workforce housing is defined as housing that it is affordable to those workers earning between 80% and 120% of the area median income (often these are the service workers essential to any community such as police officers, firefighters, teachers, government and retail workers). This group is distinct from those defined as "low-moderate income" whose salary is at or below 80% of area median income. Federal housing assistance programs typically address households in this category.

In order for communities to remain economically viable, there must be an adequate supply of housing in proximity to employment, public transportation, and community facilities such as public schools. The housing stock must include affordable for sale and rental units. Ideally, housing should be available at prices, sizes and in locations suited to the labor force in a community; when it's not, an imbalance is said to exist.

The availability of workforce housing directly impacts a city's ability to attract and retain an adequate, stable and skilled labor pool at competitive wages.

4-4

This in turn affects the ability of a community to attract and retain businesses. If suitable housing is not available, employers may decide that it is not cost effective to locate in a particular community.

The Big Picture

Affordability remains the biggest housing challenge nationwide. Approximately 33 million households (31% of the total) are housing burdened. This means that they are spending more than 30% of their household income on housing (including utilities). However, these statistics may actually understate the true magnitude of the housing affordability problem because they do not capture the tradeoffs people make to hold down their housing costs:

a. Families that are housing burdened compensate by reducing expenditures for other essentials such as food, clothing, and healthcare.

b. Commuting is also a common strategy for working families to cope with high housing costs. When the cost of transportation is considered together with the cost of housing, the percentage of working families paying more than half their total expenditures increases five-fold from 8.3% to 44.3%.

c. Families that are housing burdened often compensate by living in inadequate conditions such as overcrowded homes or substandard structures.

Sources: *Housing Challenges and Something's Gotta Give*

Further, there are some national and regional trends that impact housing decisions and needs:

a. The DFW region is projected to grow from 5.1 million in 2000 to 9.1 million in 2030.

b. This growth is expected to have significant impacts on congestion levels and travel time to and from work. Travel time will be adversely affected by increased traffic volumes as the region continues to grow.

c. Nationally, home prices and rents have outpaced wage growth.

d. As Plano's population grows older and more diverse, housing needs are changing. The housing preferences of the fastest growing population segments differ from the preferences of past home buyers and renters.

e. Minority, single-person, single-parent, and female-headed households are making up larger shares of the housing market than ever before.

What is the situation in Plano?

Even though the data is imperfect, what is available appears to support the assertion that there is a gap between the housing supply in Plano and the housing needs of our workforce. Considering the available data as well as regional growth and economic trends, the TRC does think that it would be appropriate to develop some strategies to help ensure that critical housing needs in our community are met. Opportunities for building additional affordable housing units are limited and lie primarily in existing and future urban centers. The approach that seems to be most feasible is to preserve and enhance our existing housing stock and to ensure that the homes in our community that are affordable to the "workforce" are safe, energy efficient, and appealing to the modern buyer.

Plano Housing Data

a. Median per capita income in Plano is $43,000 (making the 80% to 120% range: $34,400 to $51,600). (Source: U.S. Department of Housing and Urban Development)

b. A salary of $34,400 would allow someone to purchase a house costing up to $103,000 and a person earning $51,600 to purchase a home costing up to $155,000).

c. Homes in these price ranges are disproportionately located in the eastern part of Plano.

d. These more affordable homes also tend to be older homes and therefore they generally have heavier maintenance burdens and lower levels of energy efficiency.

e. 18.2% of Plano ownership households spend 30% or more of their income on housing (Source: 2000 US Census).

f. 30.3% of Plano rental households spend 30% or more of their income on housing (Source: 2000 US Census).

g. A major portion of Plano's employment base is located in western Plano away from the affordable housing and with limited mass transit access.

**Additional data is provided in Appendix A (Note: While there is salary data for Collin County and household income for people living in Plano; specific salary data for those employed in Plano is not currently available.)

4-6

Strategies and Tools Utilized by Other Cities

There is no one solution to "fix" the problem; but there are a variety of strategies that, over time, can have a positive impact. The most successful communities employ a variety of strategies and are flexible enough to adjust to changing political and fiscal environments. Some of the more common approaches are discussed below.

a. **Preservation of existing affordable units** - This strategy focuses on the preservation of older market-rate owner-occupied and renter-occupied housing, much of which is affordable to low and moderate income households. Disinvestment and physical deterioration are removing some of these affordable units from the supply. Newly constructed units tend to serve the upper end of the rent and ownership spectrum and therefore do not effectively replace these more moderately priced homes.

b. **Increasing sustainability and energy efficiency** - Integrating basic building (and renovation) strategies that consider easy access to jobs to minimize commuting, building orientation, water and energy efficient appliances, and appropriate landscaping can help make housing more affordable by increasing savings on transportation, operational, and maintenance costs.

c. **Land Banking** - One of the main issues for affordable housing production is the diminishing supply of vacant land available to prospective developers. Anecdotal information from local affordable housing developers indicates that it is becoming increasingly difficult to secure sites for new affordable housing projects. A land banking program would acquire unimproved sites that are appropriate for affordable housing and holds them long-term so that they are available when needed. Ultimately, land bank sites would be sold at a discount to non-profit or for-profit developers to build affordable housing projects.

d. **Community Land Trusts** - A Community Land Trust (CLT) is a private, nonprofit corporation created to provide secure, affordable access to land and housing for community members. CLTs generally focus on meeting the housing needs of those not served by the market. A CLT typically purchases and holds land while selling the structure along with a long-term lease on the land (typically 99 years). This strategy creates affordable housing by minimizing the cost of land.

e. **Housing Trust Fund** - Housing trust funds are distinct funds established by cities, counties, and states that permanently dedicate a source of public revenue to support the production and preservation of affordable housing.

Housing trust funds can support a variety of housing activities including new construction, preservation of existing housing, emergency repairs, housing-related services, and capacity building for nonprofit organizations.

f. **Mixed Land Uses** - Consider amending land-use provisions of zoning districts to allow mixed uses. Areas zoned for commercial uses may not allow any type of residence in the zone. Yet, a residential unit positioned over street-level retail or office space can be a very appropriate and convenient land use. Review all zoning classifications for the purpose of ensuring that compatible land uses are not specifically excluded. This will involve education and awareness efforts to change the culture of exclusionary zoning.

g. **Accessory Units** - Sometimes referred to as "granny-flats" or "mother-in-law" units, accessory units are small apartment-like units added to single-family homes typically intended as a low-cost apartment for single-person occupancy. Allowing accessory units in an otherwise low-density single-family neighborhood is frequently more palatable to the existing residents than encouraging development of large apartment complexes to accommodate the demand. An important issue related to the accessory units is that of parking. Opposition may center on concerns that the single family character of the neighborhood would be altered with the addition of these units.

h. **Home Occupation Regulations** - Living and working in the same place is probably the ultimate job/housing balance. Regulations regarding home occupations could be reviewed by for the purpose of expanding the variety of occupations that can be conducted out of the home while maintaining the nature and tranquility of the neighborhood. The review should focus on modifying restrictions that are unduly restrictive and the review may want to even encourage telecommuting. **Note: With regard to home occupations, Plano's existing regulations are already quite generous.**

i. **Live/Work Units** - Live/work housing units are specifically designed and built to accommodate a business office in the home. Typically this arrangement may involve a separate entrance and off-street parking.

j. **Inclusionary Zoning** - Inclusionary housing programs require developers to include some number (or percentage) of the units in a newly developed subdivision to be sold at a price that is affordable to lower income families. Typically the developer is allowed an increase in density to reduce the per-unit cost of site development and thereby partially or completely compensate the developer for selling the set-aside moderate-income units at a price below cost.

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A basic requirement of the inclusionary zoning is that the lower-cost homes be indistinguishable from the market rate homes. **Note: Texas does not currently allow inclusionary zoning. The only time we could require the inclusion of affordable units would be when the city is participating as a partner in a project. For example, as part of a development partnership the city might be upgrading infrastructure or selling land, then the provision of affordable housing might be included as part of the development agreement.**

Linkage Programs

A linkage program would require a major development (one that will attract a sizeable workforce) to provide or procure housing for the portion of the workforce that can not be housed by the existing supply. The term "local" would typically apply to a 10-mile or 20-minute commute distance from the development. The number and price range of the required units would be based on a projection of the future workforce broken down into income categories and a comparison of the new demand for housing with the existing and planned available inventory. The difference between the number of units that will be available and the projected new demand represents the need that the developer must meet. For example, a city might only have 800 houses available in a given range. A new employer bringing 1,000 new jobs to an area could be required to develop the additional 200 homes required to house their employees. **Note: Few cities in the U.S. have official linkage programs. Those that do include: Boston (MA), Cambridge (MA), San Diego (CA), San Francisco (CA), Sacramento (CA), Berkeley (CA), and Seattle (WA). This is not a likely scenario in Plano because there is not much land available and Texas is very strong on property rights.**

Findings

Although it is difficult to quantify the extent to which Plano's housing stock is out of balance with the workforce housing requirements of its employment sector, it is clear that Plano's continued economic vitality and success will be linked to its ability to ensure the existence of a reasonably priced residences for persons in the range of 80% to 120% of the area's median income. If housing in these ranges is not available or is dated and/or in poor condition, some employers might choose to move to locations where their employees can more readily find acceptable housing within a reasonable commuting distance from work.

Much of the residentially zoned land in Plano is developed and therefore opportunities to provide additional new housing are extremely limited. Urban Centers may provide some opportunities to add to our stock of workforce housing, particularly rental properties, but Plano's ability to meet the needs of households within this income range rests primarily with existing housing in older neighborhoods as opposed to the construction of additional housing units.

The focus on existing homes and neighborhoods will also help achieve some additional goals, already established by the City Council, which are to stabilize Plano's neighborhoods, maintain property values, and improve Plano's ability to compete with other cities for businesses and residents.

Recommendations

The Transition and Revitalization Commission developed the following recommendations and implementation steps focused on three main goals:

1. Ensure an adequate supply of workforce housing to meet the needs of those employees working in Plano earning between 80% and 120% of area median income.

2. Preserve and enhance Plano's existing neighborhoods and housing to ensure they remain attractive and functional to meet the needs of a modern lifestyle.

3. Urban Centers may provide an opportunity for the city to require workforce housing as a part of agreements to upgrade infrastructure.

Programs for Consideration

Housing Trust Fund

A housing trust fund is simply a dedicated revenue source established to meet the housing needs of a community. Most federal housing resources are focused on low-moderate income buyers (those earning 80% of area median income or below). This often leaves a void where those in the 80% to 120% range fall. For this reason, the TRC suggests that it may be necessary for the City of Plano to take the lead in this regard.

This could be accomplished by establishing a housing trust fund, which would create a dedicated source of revenue to encourage households within the workforce category to purchase, rehabilitate, and/or renovate Plano's existing stock of older homes. Without such incentives, many prospective homebuyers are likely to opt for newer homes in other cities that are less costly to purchase, require less additional investment following purchase, and have substantially lower energy costs.

Potential home buyers may need assistance in one or more of the above categories in order to purchase the home; address major repairs that affect the structural integrity, safety and energy efficiency of the home (i.e. - new roof, foundation stabilizing, electrical rewiring, and heating and air conditioning upgrades); and to complete renovations to modernize a home (i.e. - add a

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second or third bathroom, update the kitchen with new appliances and countertops, or replace older style wall and floor coverings).

Assistance through a housing trust fund could also encourage existing residents to stay in their home and in Plano by making it possible for homeowners to rehabilitate and/or renovate their home.

Information Clearinghouse

Collect and distribute relevant housing program information from all sources to help people take better advantage of existing housing programs. People considering the purchase of a home or reinvestment in an existing home in Plano are often unaware of the options available to them. Plano should develop a "clearinghouse" of one-line information, brochures, and other resources to help existing and future residents find and utilize available housing programs. For example, we could provide information about the Texas Department of Housing and Community Affairs Texas Professional Educators Home Loan Program.

Design Book

A Design Book could be developed to provide ideas to residents for the renovation, reorganization, and modernization of their homes to better meet the needs of today's lifestyles.

Employer-Assisted Housing

The City of Plano is should explore the possibility of creating an Employer-Assisted Housing Program for City of Plano employees. This program could serve as a model for other area employers.

Alternative Financing Means

The City of Plano should explore partnerships with local lending institutions that may further the city's effort to preserve and enhance the supply of workforce housing. The federal Community Reinvestment Act (CRA) of 1977 encourages financial institutions to meet the specific needs of the localities that they serve. Banks receive CRA ratings from federal examiners based on their meeting of certain criteria including the provision of services for income ranges representative of the entire community.

It may be possible for the City of Plano to help local lending institutions improve their CRA ratings by reducing down payment costs or lowering interest rates for qualified households in the workforce income range. The details of such programs and the extent to which they address Plano's workforce housing needs is difficult to determine at this time; however, such alternative financing approaches should be part of an overall package of workforce housing incentives.

Urban Centers Projects

The City of Plano should consider the potential for creating additional workforce housing as future Urban Center projects are developed. Such a partnership may create the opportunity to require the inclusion of workforce housing, in a mixed-use environment, in exchange for city participation in other aspects of the projects, such as infrastructure upgrades.

Implementation Steps

Based on the above recommendations, the City of Plano should take a series of proactive steps to implement an effective and comprehensive workforce housing program including:

a. **Explore the creation of a Housing Assistance Program for City employees that could serve as a model for other employers and show the city's commitment to workforce housing.** This program should be focused on employees that are part of households within the 80% to 120% range of the area's median income and be targeted toward older neighborhoods where reinvestment is most needed. This program should be carefully monitored and the lessons learned from it should be used in the development of other programs.

b. **Work with federal, state, and local officials to develop an information clearinghouse that can be part of the City's website and develop a series of informational brochures that can be distributed through various means.** his clearinghouse should be combined with a comprehensive public awareness and promotional program aimed at the targeted income categories and neighborhoods. The program should also be coordinated with local realtors and lending institutions.

c. **Conduct a detailed financial and legal analysis of the necessary components of a housing trust fund and determine if it is a program worthy of investment by the City of Plano.** Although the housing trust fund approach appears to have the greatest potential for becoming an effective and beneficial workforce housing program, there are number of complicated issues that will need to be addressed before it can be undertaken. Based on state statutes, it will not be possible to use bond monies for this program because the city cannot legally use its own credit to lend money to others. Funding for such a program will need to come from the city's general fund or through a special fee program established for this purpose.

   The initial amount of funding would depend on the number of households to be served by the program. It is likely that the amount of yearly expenditure on the trust fund could be reduced as loan payments were made over time and it could theoretically become a revolving fund.

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Based on an average loan amount of $35,000 for rehabilitation/renovation and $5,000 for down payment/closing costs, the table below depicts some scenarios for the trust fund. For example, in Scenario 1, if a Housing Trust Fund was created with $1,000,000 in funding, 25 households could receive rehabilitation or renovation loans and 25 households could receive down payment assistance.

Scenario	Total Funds	Rehabilitation/ Renovation	Number of Households	Down Payment	Number of Households	Total Number of Households
1	$1,000,000	$875,000	25	$125,000	25	50
2	$1,500,000	$1,330,000	38	$170,000	34	72
3	$2,000,000	$1,750,000	50	$250,000	50	100
4	$2,500,000	$2,170,000	62	$330,000	66	128

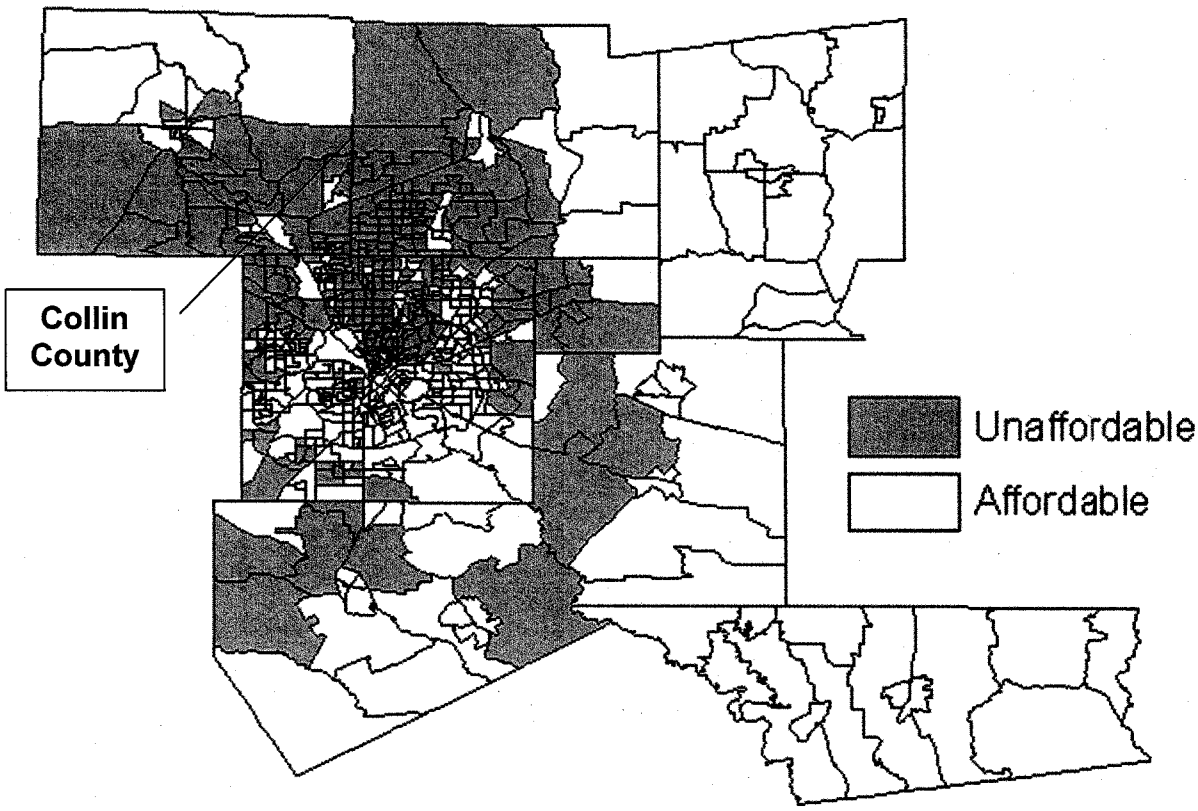
The above scenarios could easily be adjusted to focus more funding on down payments and closing costs as well as to serve more households, but such details will need to be determined as part of the suggested analysis.

d. **Continue to investigate other financial options, particularly those focused on local lending institutions.** Link these to a, b, and c to create a comprehensive workforce housing program. The city should work with local lending institutions to determine their interest in participating in programs aimed at improving the opportunities for households in the workforce income range to locate housing in Plano. Incentives such as improving CRA ratings should be considered as part of this effort.

e. **Investigate the City's ability to include requirements for workforce housing in projects involving city participation in infrastructure improvements to accommodate new or re-development.** In some areas, urban centers may require infrastructure upgrades. This may be particularly true in the case of sanitary sewer lines which were sized to accommodate non-residential development. The City may determine that its participation is necessary to facilitate the proposed development. In return for its participation, the city should consider requiring a portion of the residential units be dedicated to persons in the workforce income range.

f. **Issue a report in six months defining the various program elements, recommended funding amounts for loans and/or grants, associated administrative costs, and proposed fund sources.** Staffs from the appropriate departments are requested to work together to develop a comprehensive program including alternative funding levels and projected results for evaluation by the City Council.

Tracts Affordable to Teachers in Dallas, Texas



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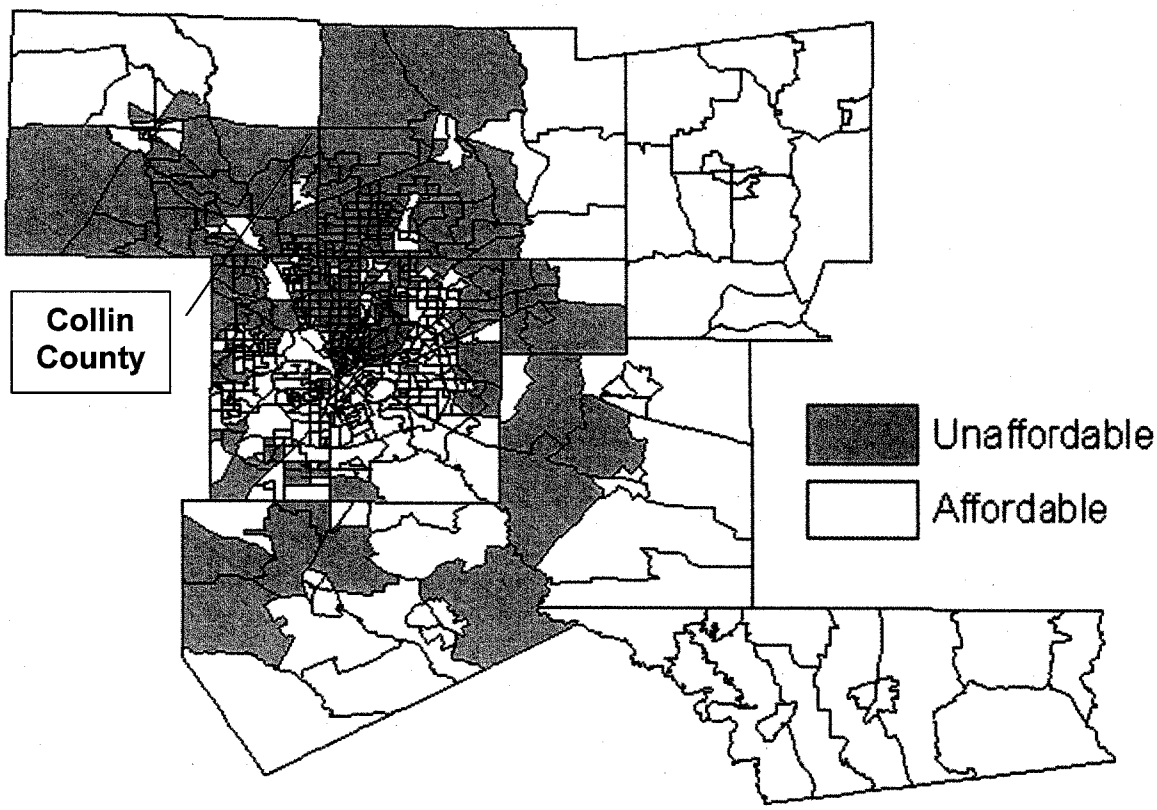
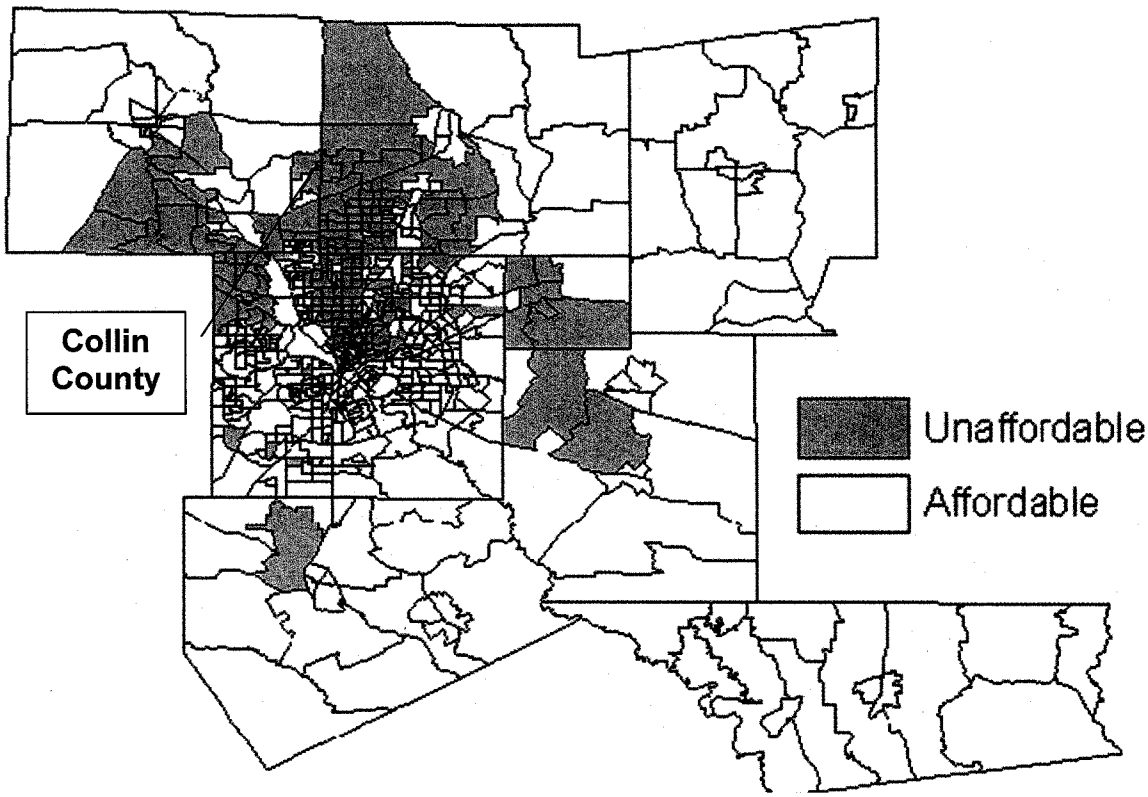
Source: 2000 US Census

Tracts Affordable to Police Officers in Dallas, Texas



Source: 2000 US Census

Tracts Affordable to Nurses in Dallas, Texas



Source: 2000 US Census

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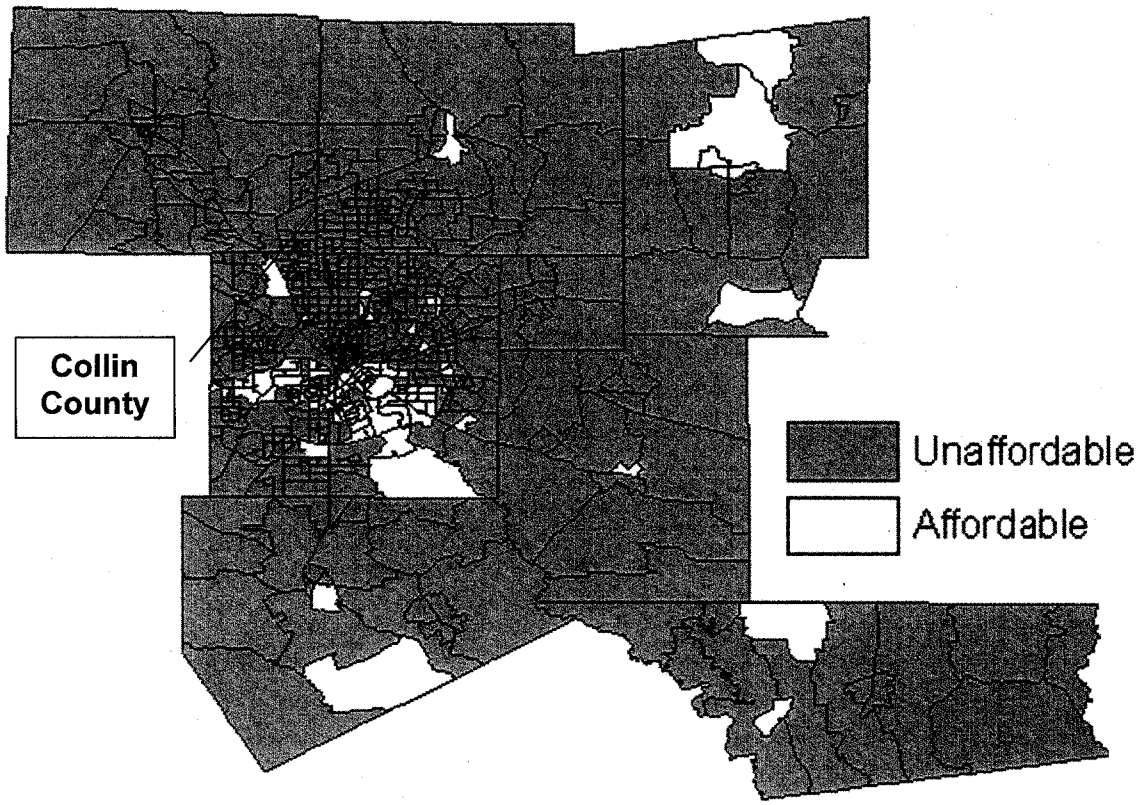
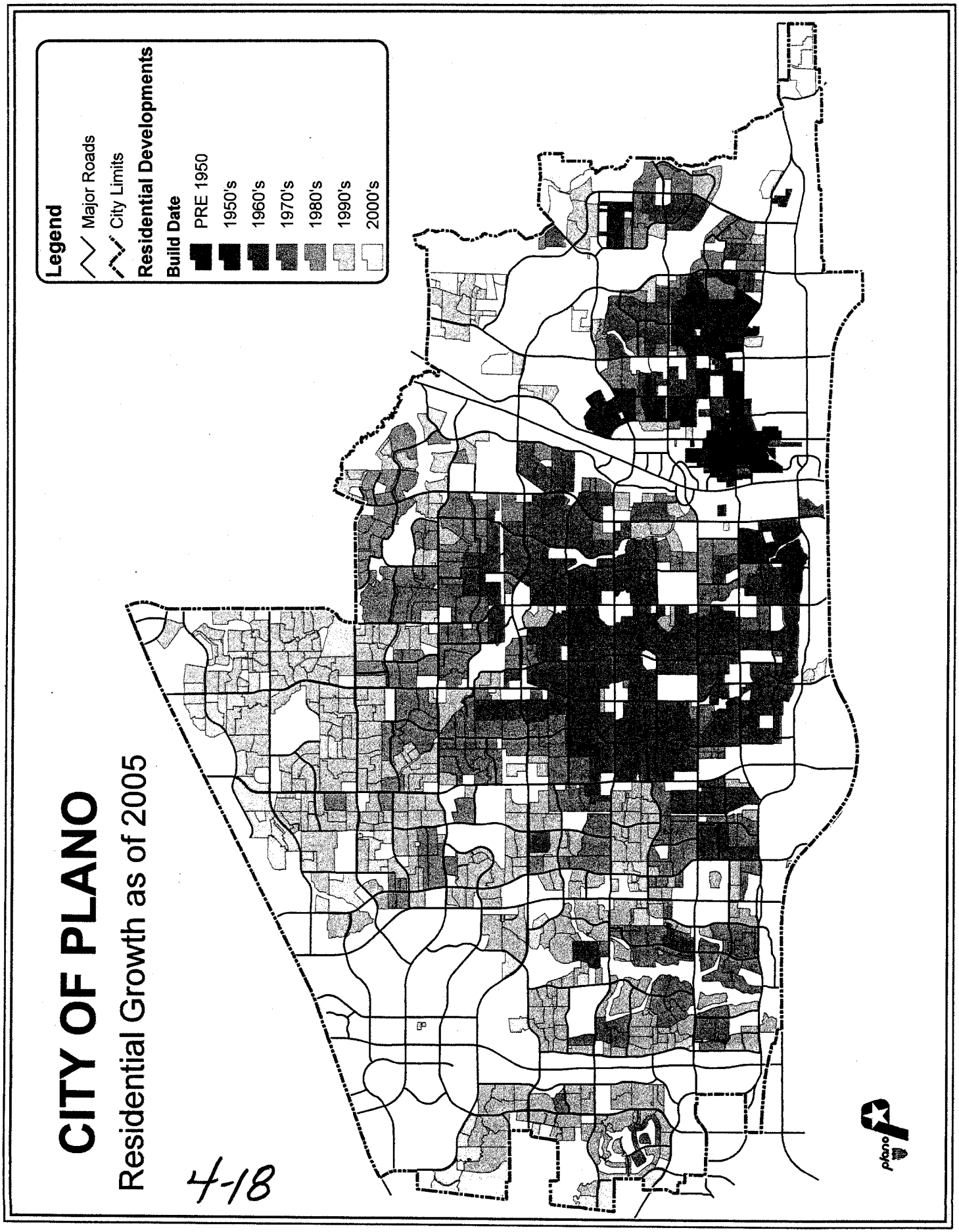
Tracts Affordable to Sales Persons in Dallas, Texas



Source: 2000 US Census


CITY OF PLANO
Residential Growth as of 2005
Legend
Major Roads
City Limits
Residential Developments
Build Date
PRE 1950
1950's
1960's
1970's
1980's
1990's
2000's
plano

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Workforce Housing Summary Statistics

Commute Data (Source: North Central Texas Council of Governments)

Where people who work in Plano live and how they travel								
Place of Residence	Workers	Percent of Total Workers	Travel Time (minutes)	Drove alone	Carpooled	Rode Transit	Other: Bicycle, walked, taxicab, motorcycle	Worked at home
Plano	45,390	39	16	33,275	4,525	115	1,800	5,585
Dallas	17,890	15	29	14,195	3,205	290	170	0
Garland	6,100	5	29	5,160	810	65	65	0
Allen	4,825	4	21	4,445	355	15	10	0
Richardson	4,750	4	19	4,170	470	60	25	0
McKinney	4,570	4	27	3,995	515	0	50	0
Frisco	3,980	3	22	3,545	415	15	4	0
Carrollton	3,075	3	26	2,870	195	4	10	0
Wylie	1,545	1	27	1,380	145	0	20	0
Lewisville	1,365	1	33	1,275	90	0	0	0
Mesquite	1,320	1	44	1,160	160	0	4	0
Rowlett	1,105	1	36	940	165	0	0	0
Irving	1,075	1	46	850	215	4	10	0
Outside North Central TX	972	1	47	824	103	0	20	0
Sachse	760	1	27	700	50	0	10	0
Flower Mound	725	1	42	690	25	0	10	0
Arlington	590	1	53	470	110	4	0	0

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Where people who live in Plano work and how they travel

Place of Work	Workers	Percent of Total Workers	Travel Time (minutes)	Drove alone	Carpooled	Rode Transit	Other: Bicycle, walked, taxicab, motorcycle	Worked at home
Plano	45,390	39	16	33,275	4,525	115	1,800	5,585
Dallas	31,650	27	36	28,390	2,240	915	105	0
Richardson	12,205	11	24	11,160	970	20	55	0
Irving	3,570	3	45	3,300	220	15	30	0
Farmers Branch	3,405	3	37	3,025	360	20	4	0
Addison	3,035	3	32	2,755	255	15	10	0
Carrollton	3,025	3	30	2,830	190	0	4	0
McKinney	2,425	2	24	2,075	305	4	35	0
Garland	2,110	2	31	1,790	245	60	15	0
Allen	1,715	1	17	1,520	180	0	15	0
Frisco	945	1	25	855	85	0	4	0
Lewisville	700	1	34	625	75	0	0	0
Mesquite	670	1	39	615	55	0	0	0
Outside Texas	620	1	42	342	85	32	153	0
Outside North Central TX	592	1	58	444	48	30	68	0

Demographic, Employment and Housing Data (Source: U.S. Census 2000)

HOUSEHOLDS BY TYPE		
Total households	80,875	100.0
Family households (families)	60,578	74.9
With own children under 18 years	33,973	42.0
Married-couple family	52,029	64.3
With own children under 18 years	28,802	35.6
Female householder, no husband present	6,069	7.5
With own children under 18 years	3,922	4.8
Nonfamily households	20,297	25.1
Householder living alone	16,359	20.2
Householder 65 years and over	2,369	2.9
Households with individuals under 18 years	35,371	43.7
Households with individuals 65 years and over	7,807	9.7
Average household size	2.73	(X)
Average family size	3.18	(X)
HOUSING OCCUPANCY		
Total housing units	86,078	100.0
Occupied housing units	80,875	94.0
Vacant housing units	5,203	6.0
For seasonal, recreational, or occasional use	238	0.3
Homeowner vacancy rate (percent)	1.4	(X)

4-22

Rental vacancy rate (percent)	12.6	(X)

YEAR STRUCTURE BUILT		
1999 to March 2000	7,831	9.1
1995 to 1998	19,470	22.6
1990 to 1994	13,379	15.5
1980 to 1989	23,808	27.6
1970 to 1979	16,983	19.7
1960 to 1969	3,619	4.2
1940 to 1959	823	1.0
1939 or earlier	194	0.2

Specified owner-occupied units	**53,260**	**100.0**
VALUE		
Less than $50,000	506	1.0
$50,000 to $99,999	6,267	11.8
$100,000 to $149,999	16,205	30.4
$150,000 to $199,999	12,609	23.7
$200,000 to $299,999	10,775	20.2
$300,000 to $499,999	5,134	9.6
$500,000 to $999,999	1,518	2.9
$1,000,000 or more	246	0.5
Median (dollars)	162,300	(X)

MORTGAGE STATUS AND SELECTED MONTHLY OWNER COSTS		
With a mortgage	47,398	89.0
Less than $300	40	0.1
$300 to $499	238	0.4
$500 to $699	1,157	2.2
$700 to $999	4,222	7.9
$1,000 to $1,499	15,881	29.8
$1,500 to $1,999	12,409	23.3
$2,000 or more	13,451	25.3
Median (dollars)	1,573	(X)
Not mortgaged	5,862	11.0
Median (dollars)	513	(X)
SELECTED MONTHLY OWNER COSTS AS A PERCENTAGE OF HOUSEHOLD INCOME IN 1999		
Less than 15 percent	16,729	31.4
15 to 19 percent	11,963	22.5
20 to 24 percent	9,122	17.1
25 to 29 percent	5,580	10.5
30 to 34 percent	3,110	5.8
35 percent or more	6,623	12.4
Not computed	133	0.2
Specified renter-occupied units	**25,182**	**100.0**
GROSS RENT		
Less than $200	283	1.1

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$200 to $299	63	0.3
$300 to $499	453	1.8
$500 to $749	6,529	25.9
$750 to $999	9,421	37.4
$1,000 to $1,499	6,249	24.8
$1,500 or more	1,760	7.0
No cash rent	424	1.7
Median (dollars)	862	(X)
GROSS RENT AS A PERCENTAGE OF HOUSEHOLD INCOME IN 1999		
Less than 15 percent	4,771	18.9
15 to 19 percent	4,692	18.6
20 to 24 percent	4,062	16.1
25 to 29 percent	3,358	13.3
30 to 34 percent	2,043	8.1
35 percent or more	5,592	22.2
Not computed	664	2.6

EMPLOYMENT STATUS		
Population 16 years and over	164,895	100.0
In labor force	124,183	75.3

OCCUPATION		
Management, professional, and related occupations	66,777	55.5
Service occupations	9,647	8.0
Sales and office occupations	32,833	27.3

Farming, fishing, and forestry occupations	46	0.0
Construction, extraction, and maintenance occupations	5,568	4.6
Production, transportation, and material moving occupations	5,359	4.5
INDUSTRY		
Agriculture, forestry, fishing and hunting, and mining	973	0.8
Construction	5,102	4.2
Manufacturing	16,352	13.6
Wholesale trade	5,395	4.5
Retail trade	15,397	12.8
Transportation and warehousing, and utilities	3,225	2.7
Information	10,442	8.7
Finance, insurance, real estate, and rental and leasing	12,590	10.5
Professional, scientific, management, administrative, and waste management services	19,701	16.4
Educational, health and social services	17,333	14.4
Arts, entertainment, recreation, accommodation and food services	7,053	5.9
Other services (except public administration)	4,494	3.7
Public administration	2,173	1.8

INCOME IN 1999		
Households	81,179	100.0
Less than $10,000	1,982	2.4
$10,000 to $14,999	1,595	2.0
$15,000 to $24,999	3,998	4.9
$25,000 to $34,999	5,670	7.0
$35,000 to $49,999	9,446	11.6

4-25

4-26

$50,000 to $74,999	15,798	19.5
$75,000 to $99,999	12,851	15.8
$100,000 to $149,999	16,880	20.8
$150,000 to $199,999	6,145	7.6
$200,000 or more	6,814	8.4
Median household income (dollars)	78,722	(X)

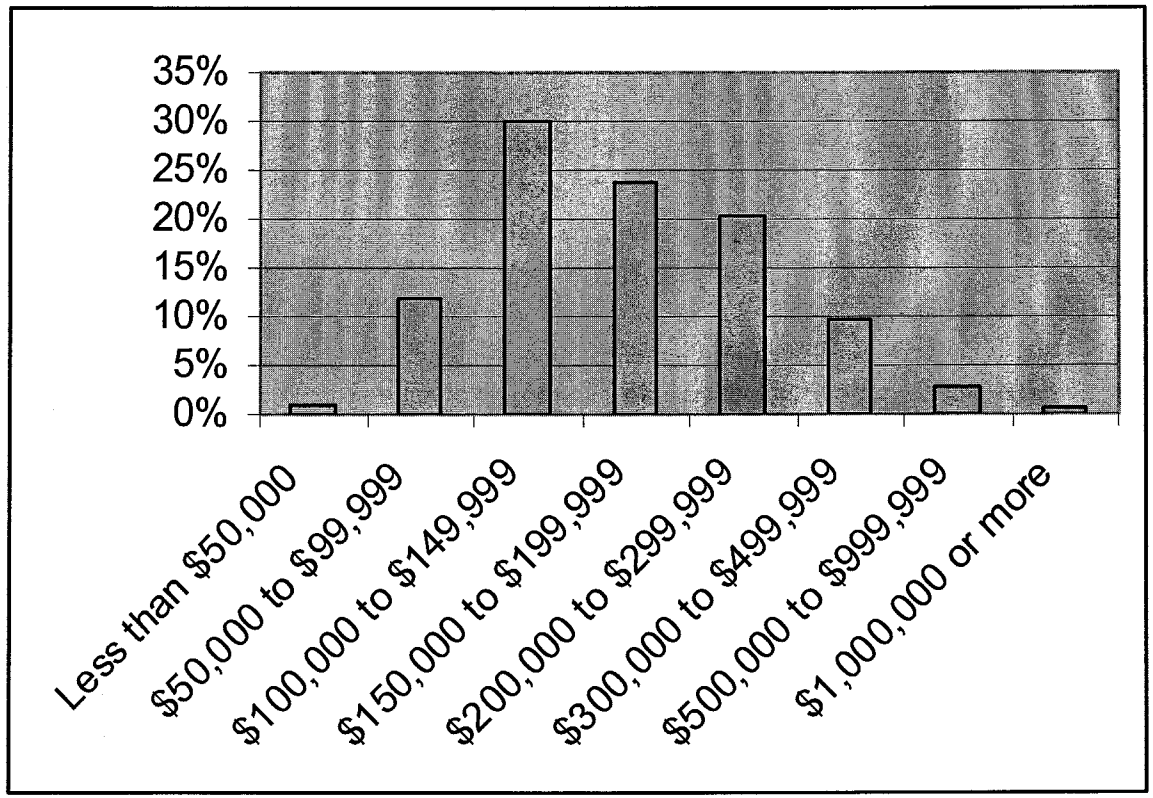

Figure 1: Plano Housing Stock by Value (1999). Source: US Census

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:	12/11/06	Reviewed by Legal	☒ Yes	☐ Not Applicable
Department:	City Manager		Initials	Date
Department Head	Thomas H. Muehlenbeck	Executive Director	RH	12-7-06
Dept Signature:		City Manager		
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 GRANT AND MAINTENANCE AGREEMENT FOR THE CONSTRUCTION AND MAINTENANCE OF A WATER FOUNTAIN AT LEGACY TOWN CENTER BY AND BETWEEN THE SHOPS AT LEGACY (NORTH), L.P. 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:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	**0**
Encumbered/Expended Amount	0	0	0	**0**
This Item	0	-1,000,000	0	**-1,000,000**
BALANCE	0	-1,000,000	0	**-1,000,000**

FUND(S): GENERAL FUND

COMMENTS: Approval of this item will require supplemental funding in the amount of $1,000,000, to be used for the construction and maintenance of a water fountain within Legacy Town Center. Once approved, a companion Supplemental Appropriation Ordinance agenda item will provide the necessary funding for this project.

STRATEGIC PLAN GOAL: Providing funding for the construction and maintenance of a water fountain within Legacy Town Center relates to the City's Goals of "Neighborhoods & Urban Centers," ""Premier City in which to Live" and "Diverse Business Center."

SUMMARY OF ITEM

This Resolution approves the Grant and Maintenance Agreement for the construction and maintenance of a water fountain along with its supporting infrastructure and landscaping at Legacy Town Center and authorizes the City Manager to execute all necessary documents in connection therewith.

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 GRANT AND MAINTENANCE AGREEMENT FOR THE CONSTRUCTION AND MAINTENANCE OF A WATER FOUNTAIN AT LEGACY TOWN CENTER BY AND BETWEEN THE SHOPS AT LEGACY (NORTH), L.P. 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, Chapter 380 of the Texas Local Government Code permits governing bodies of municipalities to establish grants of public money and provide services that promote local economic development and stimulate business and commerce activity in the municipality; and

WHEREAS, the development of Legacy Town Center will not only directly increase the real property values, but will attract visitors to the area and promote local economic development and stimulate business and commercial activity as well as increase sales tax revenues and enhance the desirability of office space within Legacy Town Center thereby promoting higher property tax values; and

WHEREAS, the City Council has been presented a proposed Grant and Maintenance Agreement for the construction of a water fountain along with its supporting infrastructure and landscaping on approximately .259 acres located at the intersection of Legacy Circle and Lonestar Drive, Plano, Collin County, Texas between The Shops at Legacy (North), L.P. 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. All matters in the above recited preamble are found to be true and correct and are incorporated into the body of this resolution as if copied in their entirety.

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

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

_____
Pat Evans, MAYOR

ATTEST:

_____
Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

GRANT AND MAINTENANCE AGREEMENT FOR LEGACY TOWN CENTER FOUNTAIN

STATE OF TEXAS §
§ **KNOW ALL MEN BY THESE PRESENTS**
COUNTY OF COLLIN §

THIS GRANT AND MAINTENANCE AGREEEMNT (hereinafter this "**Agreement**"), is entered into this _____ day of _____, 2007, by and between the **CITY OF PLANO, TEXAS,** a home-rule municipal corporation (hereinafter referred to as "**City**"), and **THE SHOPS AT LEGACY (NORTH), L.P.,** a Texas Limited Partnership (hereinafter referred to as "**Developer**"), both acting through their duly authorized officers or employees.

WITNESSTH:

WHEREAS, the Developer and other developers intend to develop Legacy Town Center as a 168 acre mixed-use development which is anticipated to create an estimated $1 Billion Dollars in real estate value, employ thousands of people, and generate retail sales of approximately $250,000,000 per year when fully developed;

WHEREAS, as part of Legacy Town Center, Developer plans to construct a $3 Million Dollar water fountain (the "Fountain") along with its supporting infrastructure and landscaping (collectively "Improvements") as shown in **Exhibit "A"** on approximately .259 acres located at the intersection of Legacy Circle and Lonestar Drive, Plano, Collin County Texas, as more particularly described and shown in **Exhibit "B"**, attached hereto and incorporated herein by reference (hereinafter called "**Property**"); and

WHEREAS, the City finds that the Improvements, which are accessible by the general public, will not only directly increase the real property values by $3 Million Dollars but will attract visitors to the area and will promote local economic development and stimulate business and commercial activity by expanding patronage for shops, restaurants, and hotels within all of Legacy Town Center; increase sales tax revenues; and enhance the desirability of office space within Legacy Town Center thereby promoting higher property tax values; and

WHEREAS, Chapter 380 of the Texas Local Government Code permits governing bodies of municipalities to establish grants of public money and provide services that promote local economic development and stimulate business and commerce activity in the municipality.

NOW, THEREFORE, for and in consideration of the covenants, obligations and undertakings to be performed by each of the parties to this Agreement, the said parties do hereby agree as follows:

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1. Developer shall construct or install or cause to be constructed or installed the Improvements on the Property as shown in the Plans and Specifications that substantially conforms to the drawings attached to Developer's Application for 380 Economic Development Incentives ("Application"), attached hereto as **Exhibit "C"** (the "Approved Concept Drawings"). Developer agrees that, for the Term of this Agreement, the Improvements shall be assessed as taxable real property and property taxes paid to the appropriate taxing entities.

2. Prior to construction or installation of the Improvements, Developer shall submit five (5) copies to the City's Planning Department and five (5) copies to the City's Engineering Department of the complete Plans and Specifications for the Improvements, which Plans and Specifications have been prepared by a practicing professional in the field. The Plans and Specifications shall be drawn to a known scale, including dimensions and distances, and shall clearly indicate the location, type, size and description of all features of the Fountain, including but not limited to esthetic and mechanical features, as well as supporting utilities and infrastructure. The Fountain and all adjacent landscaping improvements shall comply with all applicable ordinances and regulations of the City and shall substantially comply with the concept and model as presented to the city council as part of the grant application and approval process.

3. Upon submission of the Plans and Specifications, the City shall reasonably determine if they are of such quality as to improve and enhance the Property and its surrounding areas and are overall consistent with the design as shown in the Application. To this end, the City shall have the right to require such revisions to the original Plans and Specifications as are reasonably necessary to achieve the standards set forth above. The City will not unreasonably withhold approval or require revision if such Plans and Specifications substantially conform to the Approved Concept Drawings. The City will either provide written approval or submit a request for changes within fifteen (15) days after the receipt of the Plans and Specifications; failure to request changes during such fifteen (15) day period shall be deemed approved. In the event the City requests changes and if the changes are reasonable in nature, then Developer will cause the Plans and Specifications to be revised and will resubmit the revisions in the same manner as set forth under Paragraph 2 above.

4. The Developer shall furnish or cause to be furnished, at its expense (subject to reimbursement by the City up to the Development Contribution), all labor, material, equipment, accessories and services necessary to construct or install the Improvements in accordance with the approved Plans and Specifications. Construction shall be completed by December 1, 2007, (the "Completion Date").

5. The City shall periodically inspect the construction or installation of the Improvements, and Developer will construct the Improvements based upon the same standards as the City uses when installing similar improvements throughout the City of Plano.

6. The City shall pay to the Developer a grant in an amount equal to One Million Dollars ($1,000,000.00) ("Development Contribution") for the design, construction, equipment, and maintenance of the Improvements on the Property. No portion of the grant

shall be used for the construction of any other improvements on or adjacent to the Property. The grant shall be paid in monthly installments equal to 1/3 the Developer's actual cost for design and construction incurred during the previous month. The City shall retain One Hundred Thousand Dollars ($100,000.00) until final completion of all the Improvements. Developer shall deliver to the City documentation sufficient to establish the payment due from the City and the City will remit payment to Developer within 30 days of the date of each request for payment. Upon completion of the Improvements as mutually agreed by Developer and City, Developer will deliver to the City lien waivers by the contractor and its subcontractors and final request for payment and the City will remit to Developer the remaining One Hundred Thousand Dollars ($100,000.00) of the Development Contribution within 30 days after the delivery of the lien waivers. Prior to execution of this Agreement, the parties shall agree upon the form of security that will be provided by Developer to the City that will insure the completion of the Improvements in accordance with the Plans and Specifications.

7. The Developer, its representatives, successors or assigns, at its sole expense, shall furnish all labor, materials, equipment, accessories and services necessary to maintain the Improvements in accordance with the Plans and Specifications for a period of twenty (20) years (the "**Term**") after completion. No upgrades or modifications shall be made to the Fountain without the written approval of the City Manager, which approval shall not be unreasonably withheld. Developer shall at its sole expense provide all necessary utilities, to include water and electricity to the Improvements. The Developer shall also be responsible for the maintenance of all lighting in accordance with the Plans and Specifications.

8. During the Term, City shall periodically inspect the Improvements to determine that the Improvements are being properly maintained by Developer. If, upon such inspection, City finds that Developer is not reasonably maintaining the Improvements in accordance with its obligations hereunder, City shall so notify Developer in writing, specifying the deficiencies. If Developer does not remedy such deficiencies within thirty (30) days following receipt of such written notice and provided such deficiencies can reasonably be corrected in such thirty (30) day period, City shall have the option of performing the necessary maintenance work itself and billing Developer for all reasonable, direct costs incurred whether by independent contract or by force account. In the event that such deficiencies cannot be reasonably corrected in such thirty (30) day period, but Developer has commenced to cure such deficiencies and is diligently pursuing, Developer will not be deemed to be in breach of this paragraph and City will not commence to perform any such work. Developer shall remit all payments to City under this Section within thirty (30) days of receipt of a statement and requested back-up information as Developer may require from the City.

9. The Developer agrees to provide during the Term of this Agreement for public access to the Fountain. The public access easement shall be signed by the person or entity authorized to convey the same. Developer shall file in the Collin County Deed Records a public access easement that shall permit public pedestrian access to the Fountain from adjacent public streets and sidewalks. The public access easement shall not be construed to diminish the taxable value of the Improvements. If the Developer intends to contest, during the Term of this Agreement, the taxable value of the Improvements, the Developer agrees to

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notify the City prior to filing such contest. Public access to the Fountain shall not be restricted except during periods for routine maintenance or when weather conditions require closure for public safety. Any closure or non-operation of the Fountain for a period longer than a total of 5 days, for reasons other than force majeure, in any thirty day period shall require the approval of the City Manager or more than 30 consecutive calendar days without the prior consent of the City Council. Any closure for a period of more than four hours shall be considered a whole day. For the purposes of this paragraph a day is defined as the hours between 8:00 a.m. and 10:00 pm. Disabling the fountain during periods of freezing weather when temperatures are below the limit of safe operation of the fountain shall be excluded from the calculations under this paragraph. Without prior City Manager approval, there shall be no more than 4 Developer initiated events per calendar year that require closure of roads preventing at least two points of car access to the Fountain.

10. Developer, at its own expense, agrees to provide and keep in full force, (a) commercial general liability insurance, including blanket contractual liability coverage, with limits of not less than $3,000,000.00 combined single limit for personal injury and property damage; (b) comprehensive automobile liability insurance covering all owned, non-owned and hired vehicles, with limits of not less than $1,000,000.00 combined single limit for personal injury and property damage; and (c) statutory worker's compensation and employer's liability coverage, or qualified self-insurance, with sufficient evidence of such self-insurance as reasonably requested by City. The commercial general liability insurance referenced above shall be maintained for the Term of this Agreement and the insurance described in subsections (b) and (c) shall be maintained until completion of the Improvements. All such insurance policies shall provide that the insurance policy shall not be cancelled by the insured unless and until at least thirty (30) days written notice of such cancellation is delivered to the City. Upon receipt of written request from City, Developer shall furnish the City with certificates of all insurance required by this paragraph. Such certificates must be delivered to the City before Developer commences any work on the Improvements.

11. Developer, its representatives or assigns hereby covenants and agrees that no claim, loss, cause of action, suit or other action for damages resulting from death or personal injury to any of the above, or damage to personal property belonging to any of the above, and based upon in any manner the maintenance of the Improvements by Developer will be instituted by Developer, its representatives or assigns against the City, its agents or employees during the construction or maintenance period unless due to the negligence, act or omission of the City, its agents or employees.

12. Developer shall defend, indemnify and hold harmless the City and its agents and employees from the intentional misconduct or negligence of the Developer in and against all damages, claims, fees and expenses arising out of, or resulting from, the construction, installation or maintenance of the Improvements provided for in this Agreement, excluding any consequential, indirect or punitive damages. The City shall, to the extent allowed by law and without waiving any rights, defenses or immunities provided under Texas or Federal law, defend, indemnify and hold harmless Developer and its agents and employees from the intentional misconduct or negligence of the City in and against all damages, claims, fees and

expenses arising out of, or resulting from, the City being on and around the Property to inspect the Improvements, excluding any consequential, indirect or punitive damages.

13. In the event Developer fails to maintain the Fountain during the entire term of this Agreement, Developer shall refund to the City the remaining pro rata share of the Grant using the following formula: years remaining at time of default/ 20 x $1,000,000.00 = refund to City. The parties acknowledge that adherence by Contractor to the completion schedule set forth herein is essential to this Agreement. It is agreed by the parties that the actual damages which might be sustained by City by reason of the breach by Developer of its promise to complete the Fountain by the Completion Date or failure to maintain the operation of the Fountain as required under paragraph 9 above are uncertain and would be difficult to ascertain, therefore it is agreed that the sum of $500 Dollars per day for each day that completion is overdue, excluding periods subject to force majeure, or for each day non-operation exceeds the limits provided in paragraph 9, excluding periods subject to force majeure, would be reasonable and just compensation for such breach, and Contractor hereby promises to pay such sum as liquidated damages, and not as a penalty, in the event of such breach.

14. This Agreement and all requirements hereunder may be modified or amended only by written instrument executed by Developer and the City, their representatives or assigns.

15. The laws of the State of Texas shall govern the interpretation, validity, performance, and enforcement of this Agreement, and Collin County, Texas, shall be the exclusive venue for the bringing of any action to enforce the terms and conditions of this Agreement.

16. For purposes of this Agreement the term "force majeure" shall mean any event that prevents a party from performing any of its obligations by an act of God, by acts of war, riot, or civil commotion, by an act of State, by strikes, fire, flood, or by the occurrence of any other event beyond the control of the parties.

17. The Developer may not assign its rights or obligations under this Agreement without the express written consent of the City, which consent shall not be unreasonably withheld.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

CITY OF PLANO, TEXAS

BY: _____
Thomas H. Muehlenbeck
City Manager

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APPROVED AS TO FORM:

_____
Diane C. Wetherbee, City Attorney

THE SHOPS AT LEGACY L.P., a Texas Limited Partnership

By: K/S Legacy L.L.C.,
A Texas limited liability company,
General Parnter

By: _____
Fehmi Karahan
Manager

ACKNOWLEDGMENTS

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2006 by **THOMAS H. MUEHLENBECK,** City Manager of the **CITY OF PLANO, TEXAS,** a home rule municipal corporation, on behalf of said corporation.

_____
Notary Public, State of Texas

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me on the 7th day of December, 2006 by **FEHMI KARAHAN,** of **THE SHOPS AT LEGACY L.P.,** a Texas Limited Partnership, on behalf of said partnership.

Cynthia D. Pierce
Notary Public, State of Texas

CYNTHIA D. PIERCE
Notary Public, State of Texas
My Commission Expires
May 08, 2010

EXHIBIT A

FOUNTAIN DESCRIPTION

A fountain located within Legacy Circle, at the north terminus of Lone Star Drive, being more particularly described as follows:

A basin of two facing, half circular, shallow pools frames the vertical water activity and allows for a passage way through its central axis; each half circle forms the stage for concentric bands of rising and falling water, with pulsing water jets; these jets emerge directly through the reflective water surface; a rounded weir along the interior passage way, with the water washing over the edge of the basin and flowing down its side, connecting the horizontal surface of the basin with the ground; the fountain will be illuminated with white light.

F:\KARAHAN\17942 Legacy North - Phase II\061207 Legacy Circle Design Description.doc

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EXHIBIT B

That certain parcel of land consisting of approximately 0.259 acres of land, being a part of Lot 1, Block C, Legacy Town Center (North) as shown on that certain Revised Conveyance Plat of Legacy Town Center North, Lots 1, 4, 5, 6 and 7, block C, recorded in Volume 2006, Page 440, Map Records of Collin County, Texas, as the same is further depicted on Exhibit B-1 attached hereto and incorporated herein.

See continuation page comprising Exhibit B-1, attached hereto and incorporated herein.

F:\KARAHAN\17942 Legacy North - Phase II\061207 Exhibit B to Grant & Maintenance Agmt.doc

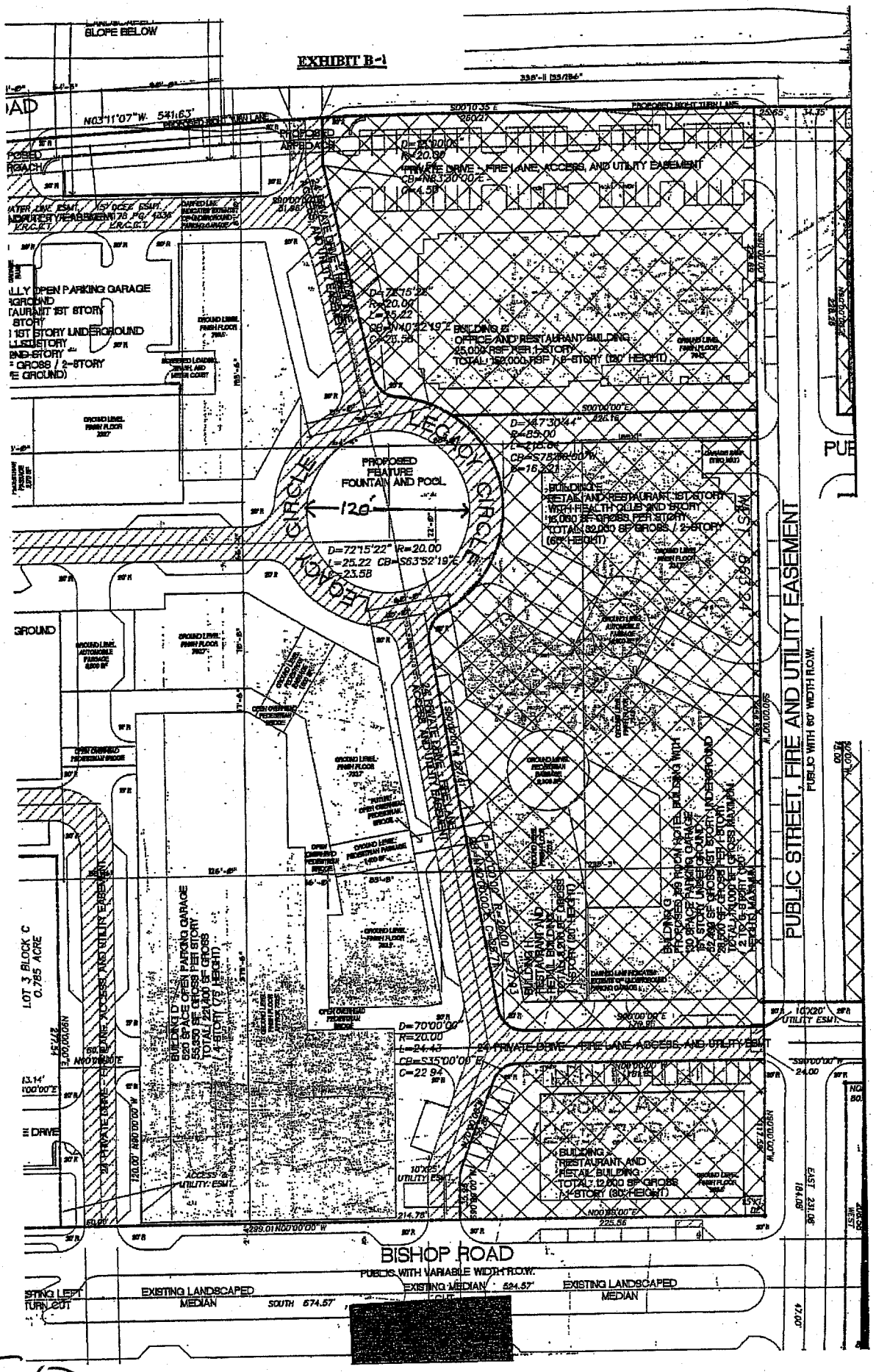
EXHIBIT B-1
SLOPE BELOW
PROPOSED RIGHT TURN LANE
PROPOSED APPROACH
PRIVATE DRIVE - FIRE LANE, ACCESS, AND UTILITY EASEMENT
BUILDING G
OFFICE AND RESTAURANT BUILDING
25,000 RSF PER 1-STORY
TOTAL: 150,000 RSF / 6-STORY (120' HEIGHT)
PROPOSED FEATURE FOUNTAIN AND POOL
LEGACY CIRCLE
120'
D=72°15'22" R=20.00
L=25.22 CB=S63°52'19"E
C=23.58
BUILDING E
RETAIL AND RESTAURANT 1ST STORY
WITH HEALTH CLUB 2ND STORY
15,000 SF GROSS PER STORY
TOTAL: 32,000 SF GROSS / 2-STORY
(60' HEIGHT)
PUBLIC STREET, FIRE AND UTILITY EASEMENT
PUBLIC WITH 60' WIDTH R.O.W.
BUILDING D
520 SPACE OPEN PARKING GARAGE
TOTAL: 22,400 SF GROSS
1-STORY (75' HEIGHT)
LOT 3 BLOCK C
0.785 ACRE
D=70°00'00"
R=20.00
L=24.43
CB=S35°00'00"E
C=22.94
24' PRIVATE DRIVE - FIRE LANE, ACCESS, AND UTILITY ESMT
BUILDING I
RESTAURANT AND
RETAIL BUILDING
TOTAL: 12,000 SF GROSS
1-STORY (30' HEIGHT)
BISHOP ROAD
PUBLIC WITH VARIABLE WIDTH R.O.W.
EXISTING LANDSCAPED MEDIAN
EXISTING MEDIAN
EXISTING LANDSCAPED MEDIAN
SOUTH 574.57'
[redacted]

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CITY OF PLANO

APPLICATION FOR 380 ECONOMIC DEVELOPMENT INCENTIVES

1. Applicant Company's Name: The Shops at Legacy (North), L.P.
   Company's Representative: Fehmi Karahan
   Title: Manager of Gen. Partner
   Mailing Address: 7200 Bishop Rd. #250, Plano, TX 75024
   Telephone Number: 214-473-9700
   Email Address: Fehmi@Karahanine.com
   Website Address: www.shopsatLegacy.com

2. Tenant's Representative: N/A
   Company: N/A
   Mailing Address: N/A
   Telephone Number: N/A
   Email Address: N/A

3. Property Owner: same as applicant
   Property Owner's Representative: "
   Company: "
   Mailing Address: "
   Telephone Number: "
   Email Address: "

4. Property Address and/or location description: Intersection of Legacy Circle and Lonestar Dr.

5. Property Legal Description (attach metes and bounds if required by the city):
   N/A

6. Located within:
   City of Plano ☒
   Plano Independent School District ☒
   Lewisville Independent School District ☐
   Frisco Independent School District ☐
   Collin County ☒
   Denton County ☐

7. Company description and overview (including headquarters location, year founded, products and services, and annual revenue and growth)
   The owner of real property on southeast corner of Tollway and Legacy Dr. Company formed in 2004.

8. Applicant business is:
   Public ☐
   Private ☒

9. Applicant company's four digit NAICS Industry Code: (if known)
   N/A

10. Description of Project: Choreographed fountain, approximately 100 ft. in diameter (see attached)

11. Is this project a redevelopment of an existing facility?
    NO

12. Will any zoning changes be necessary to accommodate the project? If yes, please provide additional information: NO

13. Will development of the project create any negative environmental impact (air quality, water quality, visual quality, etc.)? If yes, please describe the impact: NO

14. Does the applicant company plan to utilize Plano-based companies in the design, construction and on-going operations of the facility?
    yes, for on-going operations

15. Date projected for occupancy of project/initiation of operations: initial operation scheduled for Fall 2007.

16. Will applicant company occupy:
    Existing space: ☐ N/A
    Space currently planned or under construction: ☐
    Proposed new facility: ☐

17. Acreage of site: 0.33 acres

18. Square footage of occupied space: N/A

19. Type of occupancy: N/A
    Owner Occupied ☐
    Landlord/Tenant ☐
    If leasing, what is length of lease?

20. Applicant business is: (Check all that apply)
    Existing Plano company ☒
    New company to Plano ☐
    Expanding ☐
    Relocating from another city in Texas ☐
    Relocation from out-of-state or country ☐

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21. Specify economic assistance requested: $1,000,000 cash contribution

Employment Impact

1. Number of Full Time Equivalents (FTE) employed by applicant company at occupancy (exclusive of contract employees): N/A

2. Future FTE employment (if applicable): N/A
   Projected FTE employment (milestone) of by (indicate date)
   Projected FTE employment (milestone) of by (indicate date)

3. Is this an existing business in Plano? N/A If yes, what is the FTE employment that will be retained in Plano by this project?

4. Does the applicant company anticipate hiring contract employees? N/A If yes, what is the number of FTE contract employees? What is the median annual salary of the FTE contract employees?

5. If applicable, what is the number of FTE positions that will be relocated to Plano from applicant company's other locations? N/A
   Provide location(s) the positions are being relocated from:

6. Indicate the applicant company's FTE employment in each category (at occupancy): N/A
   Executive
   Professional
   Managerial
   Technical
   General Staff
   Production Workers _____
   Total

7. What will be the median annual salary of company's FTEs (at occupancy)?
   N/A

8. Projected annual payroll:
   N/A

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Fiscal Impact

	Initial Year	Year (If applicable)	Year (If applicable)
1. What is the value of the **Real Property** improvements (exclusive of land) that will be added to the tax base?	$3,000,000		
2. What is the value of the **Business Personal Property** improvements that will be added to the tax base?	—		
TOTAL IMPROVEMENTS	$ 3,000,000	$	$

3. If applicable, what is the annual value of inventory eligible for Freeport Exemption? N/A

4. If applicable, what is the annual value of sales that will be subject to sales tax collection by the City of Plano? N/A

5. Will additional infrastructure investment be required from the City of Plano at the proposed site(s)? If yes, detail required improvements including cost estimates. N/A

Community Impact

1. Please summarize the overall economic impact on the City of Plano (sales, real property and business personal property improvements, employment, business sector, etc.). Please see attached

2. Please describe the necessity in requesting an incentive . Describe the competitive, financial or other issues associated with this application.
Please see attached

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COMMUNITY IMPACT

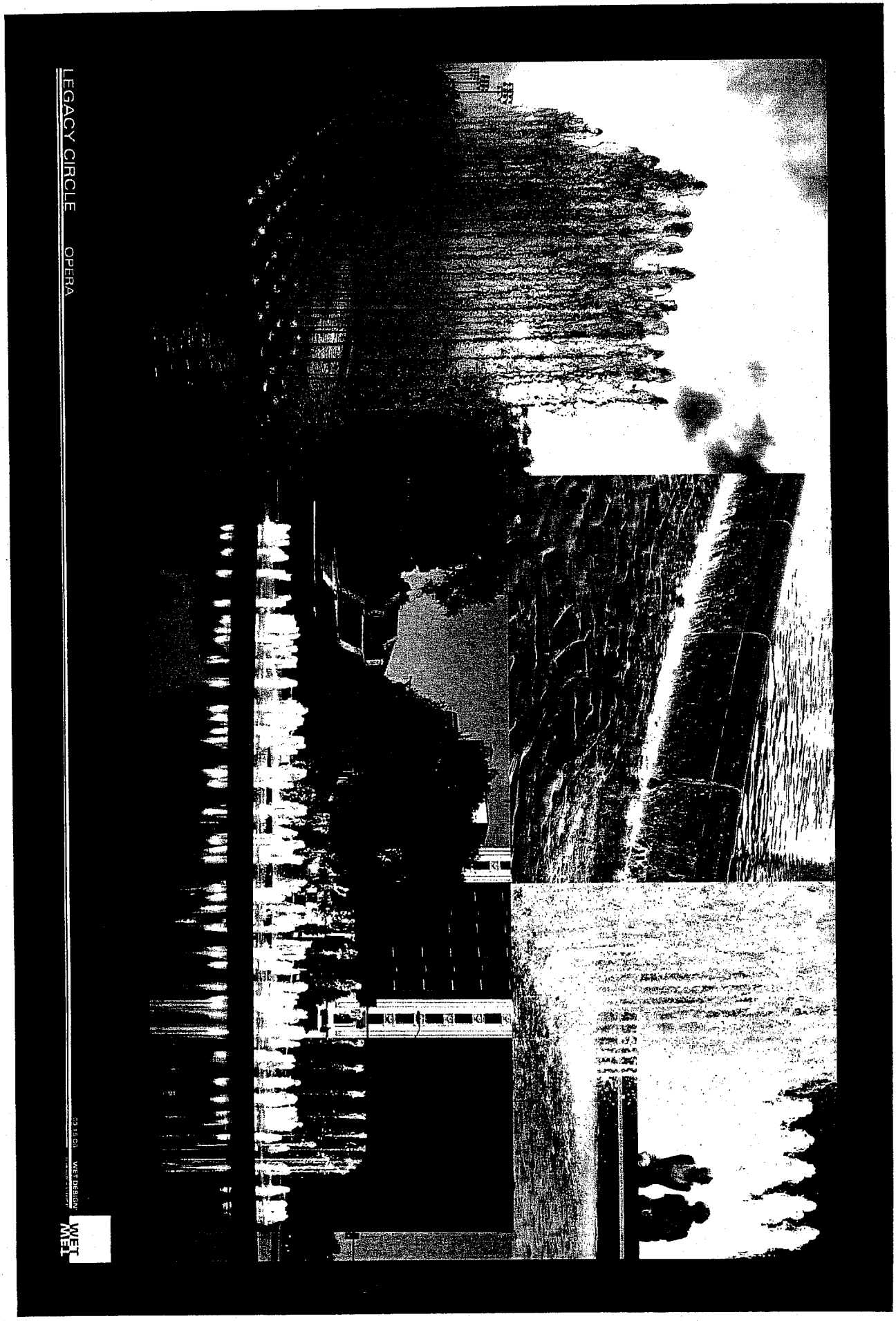
The Fountain will supplement and enhance the overall "amenity package" for Legacy Town Center, and thereby increase the "draw" of people from the Plano area as well as people from the larger regional area. The effects of the "fountain as magnet" will include but not be limited to (i) expanded patronage for shops, restaurants, and hotels within all of Legacy Town Center, (ii) corresponding increases in sales tax revenues resulting from expanded customer patronage, and (iii) enhanced desirability of office space within Legacy Town Center and thereby promoting higher and more stable office occupancies [and property tax values].

In addition to these direct benefits, there are numerous indirect benefits resulting from enhanced and inviting "public spaces" as this fountain/water feature will create. Urban planners universally promote public "amenity areas" such as this one, especially in higher density developments like Legacy Town Center, as a means of promoting overall citizen enjoyment of their community. Whether as "gathering place", strolling area, or simple visual aesthetic, people need, want and are drawn to attractive public spaces. This fountain will, indeed, create a very attractive public space.

Legacy Town Center (a 168-acre mixed-use development) will create, once fully developed, an estimated $1 billion in real estate value and employ thousands of people. In addition, retail sales will be expected $250,000,000 per year.

FOUNTAIN DESIGN DESCRIPTION

The experience of the central gathering point and traffic roundabout at Legacy is informed by a water feature of great sophistication. The feature's strong formal presence and inspiring expression draws and captivates people, and engages at a glance and over time.
A basin of two facing, half circular, shallow pools frames the vertical water activity and allows for a passage way through its central axis, connecting the cafes and restaurants to the hotel and offices. Each half circle forms the stage for concentric bands of continuously flowing, rising and falling water, while interwoven, pulsing water jets create staccato, rhythmic patterns. These jets emerge directly through the reflective water surface and are choreographed to create generous sculptural sweeps and kinetic displays ranging from tranquil and elegant to expansive and grant. The highly reflective surface of the shallow pools captures the light and patterns of the vertical water jet choreographies. A rounded weir along the interior passage way allows the water to wash over the edge of the basin and to flow down its side in a glassy sheet, connecting the horizontal surface of the basin with the ground. In the evening the fountain is illuminated with white light to create a vibrant night time event.



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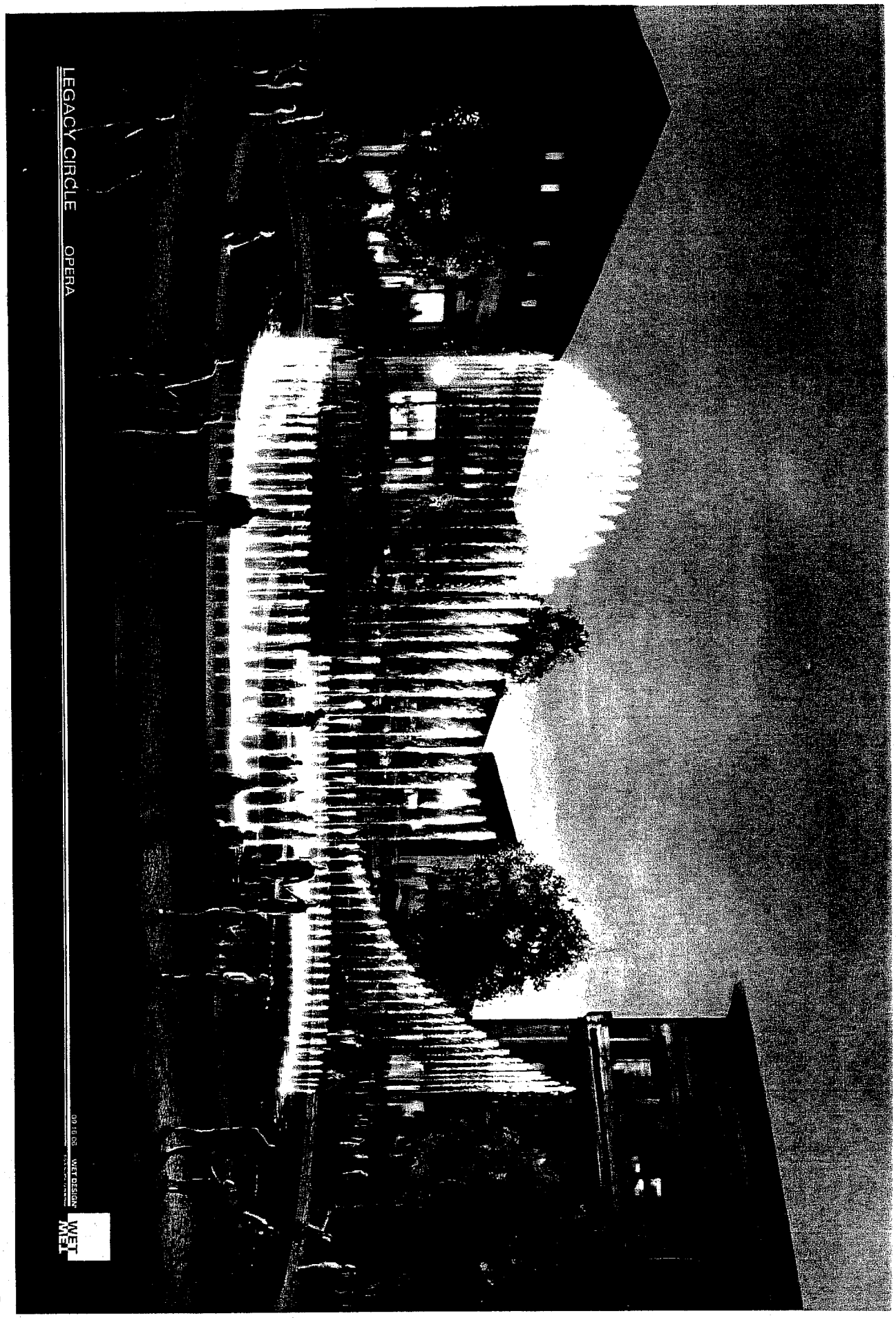

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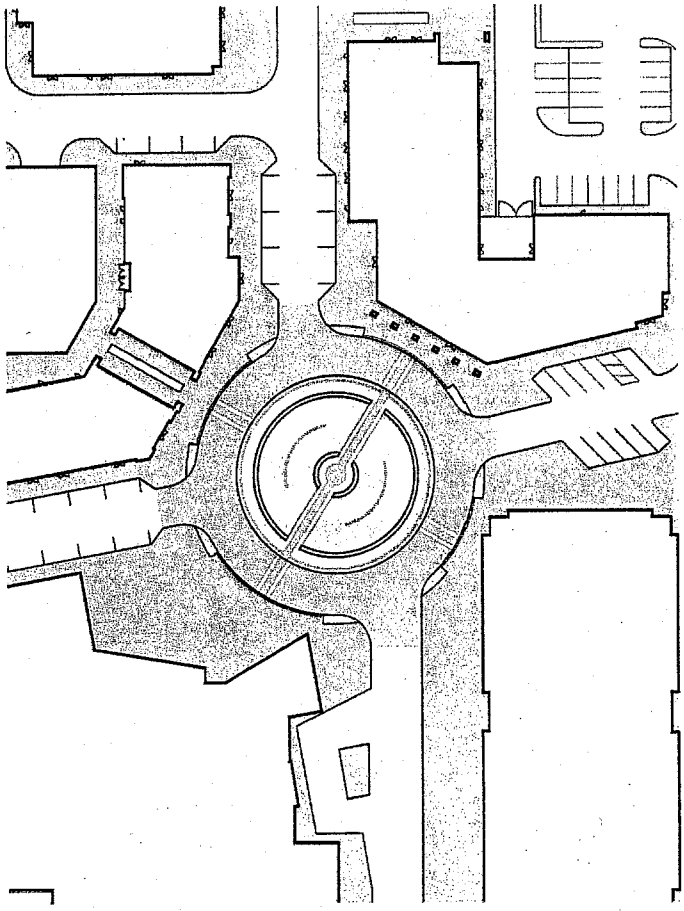

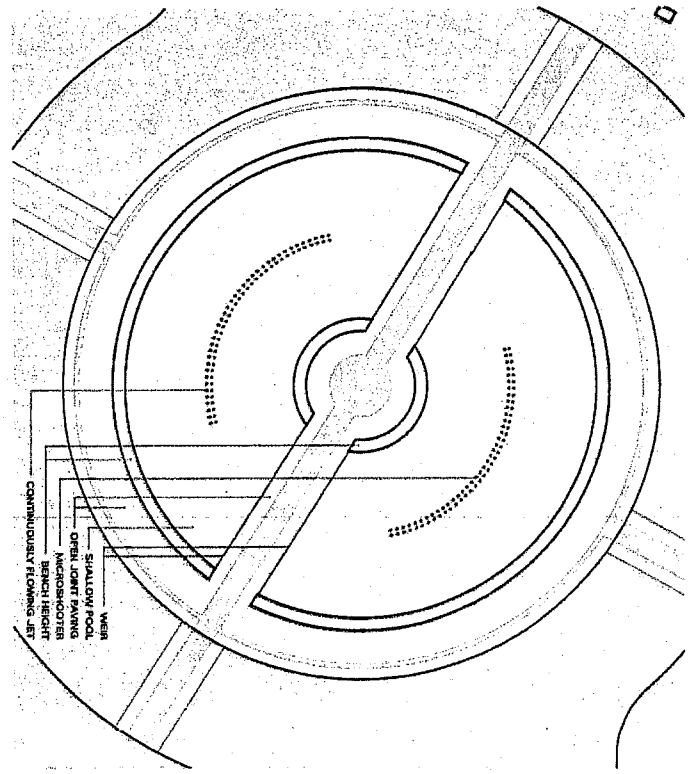

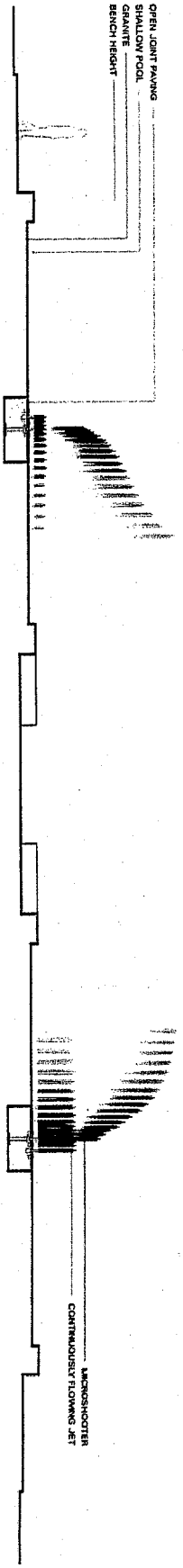

LEGACY CIRCLE OPERA

09.15.06 WET DESIGN

WET

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CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	☐ Yes	☒ Not Applicable
☐ Consent ☐ Regular ☐ Statutory		Reviewed by Budget C.S. for K.	☒ Yes	☐ Not Applicable
Council Meeting Date:	12/11/06	Reviewed by Legal	☐ Yes	☐ Not Applicable
Department:	Budget & Research		Initials	Date
Department Head	Karen M. Rhodes	Executive Director	RH	12-7-06
Dept Signature:	Casey Srader for Karen Rhodes	City Manager		
Agenda Coordinator (include phone #):	Casey Srader - ext. 5152			

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

CAPTION

AN ORDINANCE OF THE CITY OF PLANO, TEXAS, TRANSFERRING THE SUM OF $1,000,000 FROM THE GENERAL FUND UNAPPROPRIATED FUND BALANCE TO THE GENERAL FUND OPERATING APPROPRIATION FOR FISCAL YEAR 2006-07 FOR THE PURPOSE OF PROVIDING PARTIAL FUNDING FOR THE CONSTRUCTION AND MAINTENANCE OF A WATER FOUNTAIN WITHIN LEGACY TOWN CENTER; AMENDING THE BUDGET OF THE CITY AND ORDINANCE 2006-9-9, AS AMENDED, TO REFLECT THE ACTIONS TAKEN HEREIN; DECLARING THIS ACTION TO BE A CASE OF PUBLIC NECESSITY; AND PROVIDING AN EFFECTIVE DATE.

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☒ OPERATING EXPENSE ☐ REVENUE ☐ CIP

FISCAL YEAR: 2006-07	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	190,249,582	0	**190,249,582**
Encumbered/Expended Amount	0	0	0	**0**
This Item	0	1,000,000	0	**1,000,000**
BALANCE	0	191,249,582	0	**191,249,582**

FUND(S): **GENERAL FUND**

COMMENTS: This item is contingent upon approval of either the Approval to Fund or approval of the Contract companion agenda items. If either of the companion items are approved, this item will provide supplemental appropriations in the amount of $1,000,000 for the construction and maintenance of a water fountain within Legacy Town Center. Supplemental appropriations approved to date for the General Fund, including this item, total increases of $1,000,000.

STRATEGIC PLAN GOAL: Providing funding for the construction and maintenance of a water fountain within Legacy Town Center relates to the City's Goals of "Neighborhoods & Urban Centers", "Premier City in Which to Live" and "Diverse Business Center".

SUMMARY OF ITEM

Supplemental Appropriation No. 1

This supplemental appropriation will allow for partial funding to construct and maintain a water fountain on approximately .33 acres located at the intersection of Legacy Circle and Lonestar Drive within Legacy Town Center.

CITY OF PLANO
COUNCIL AGENDA ITEM

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
FY 2006-07 Supplemental Appropriations Log	

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REV (

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PLANO, TEXAS, TRANSFERRING THE SUM OF $1,000,000 FROM THE GENERAL FUND UNAPPROPRIATED FUND BALANCE TO THE GENERAL FUND OPERATING APPROPRIATION FOR FISCAL YEAR 2006-07 FOR THE PURPOSE OF PROVIDING PARTIAL FUNDING FOR THE CONSTRUCTION AND MAINTENANCE OF A WATER FOUNTAIN WITHIN LEGACY TOWN CENTER; AMENDING THE BUDGET OF THE CITY AND ORDINANCE 2006-9-9, AS AMENDED, TO REFLECT THE ACTIONS TAKEN HEREIN; DECLARING THIS ACTION TO BE A CASE OF PUBLIC NECESSITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Plano approved and adopted the budget for the City for Fiscal Year 2006-07 setting the appropriations for the General Fund at $190,249,582; and

WHEREAS, additional funding is required in order for the City of Plano to provide partial funding for the construction and maintenance of a water fountain within Legacy Town Center; and

WHEREAS, the City Council deems it to be in the best interest of the City of Plano and its citizens to expend public funds for this water fountain; and

WHEREAS, such costs cannot be fully met through appropriations in the existing budget; and

WHEREAS, the City Council now finds that additional appropriations to the General Fund Balance Operating Appropriation should be made in order to provide funding for construction and maintenance of the water fountain, and that such action is a public necessity.

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

SECTION I. The sum of ONE MILLION ($1,000,000) is hereby transferred from the General Fund Unappropriated Fund Balance to the General Fund Operating Appropriation.

SECTION II. The budget of the City of Plano for Fiscal Year 2006-07 as adopted by Ordinance No. 2006-9-9 and Section I (A.) is amended to reflect the action taken herein.

SECTION III. The actions taken herein are found and declared to be a case of public necessity pursuant to the City Charter Section 9.15.

SECTION IV. This supplemental appropriation Ordinance No. 1 shall become effective immediately from and after the date of its passage.

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

_____
Pat Evans, **MAYOR**

ATTEST:

_____
Elaine Bealke, **CITY SECRETARY**

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, **CITY ATTORNEY**

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FY 2006-07
SUPPLEMENTAL APPROPRIATIONS

Description	Department	Amount
Supplemental appropriation for partial funding for construction and maintenance of a fountain within Legacy Town Center.	215 - Non-Departmental	$ 1,000,000
TOTAL GENERAL FUND APPROPRIATIONS		$ 1,000,000
TOTAL CATV FUND APPROPRIATIONS		$ -
TOTAL MUNICIPAL DRAINAGE FUND APPROPRIATIONS		$ -
TOTAL WATER & SEWER FUND		$ -
TOTAL SUSTAINABILITY & ENVIRONMENTAL FUND APPROPRIATIONS		$ -
TOTAL CONVENTION & TOURISM FUND APPROPRIATIONS		$ -
TOTAL PROPERTY/LIABILITY FUND APPROPRIATIONS		$ -
TOTAL GOLF COURSE FUND APPROPRIATIONS		$ -
TOTAL RECREATION FUND APPROPRIATIONS		$ -
TOTAL INTERNAL SERVICE FUNDS AND OTHER FUNDS APPROPRIATIONS		$ -
GRAND TOTAL ALL FUNDS		**$ 1,000,000**