



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		April 22, 2013		
Department:		City Manager		
Department Head		Frank F. Turner		
Agenda Coordinator (include phone #): Sherry Jackson - Ext. 7122				
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, Columbus Realty Partners, Ltd., Encana Oil & Gas (USA) Inc. and Blue Horseshoe, Ltd for the purpose of providing for cost reimbursement for development and oversizing of the Legacy Town Center North Lift Station; and authorizing its execution by the City Manager or his authorized designee; and providing an effective date.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2012-13	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	393,665	0	393,665
Encumbered/Expended Amount	0	0	0	0
This Item	0	-393,665	0	-393,665
BALANCE	0	0	0	0
FUND(S): WATER & SEWER				
COMMENTS: Funds are available in the 2012-13 Water & Sewer Fund.				
STRATEGIC PLAN GOAL: This item relates to the City's goal of Financially Strong City with Service Excellence.				
SUMMARY OF ITEM				
Agreement for the purpose of providing for cost reimbursement for development and oversizing of the Legacy Town Center North Lift Station.				
List of Supporting Documents: Resolution; Agreement			Other Departments, Boards, Commissions or Agencies	

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an agreement by and between the City of Plano, Texas, Columbus Realty Partners, Ltd., Encana Oil & Gas (USA) Inc. and Blue Horseshoe, Ltd for the purpose of providing for cost reimbursement for development and oversizing of the Legacy Town Center North Lift Station; and authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

WHEREAS, the City Council has been presented a proposed Lift Station Improvement Reimbursement Agreement by and between the City of Plano, Texas, Columbus Realty Partners, Ltd., a Texas limited liability company, Encana Oil & Gas (USA) Inc., a Delaware corporation, and Blue Horseshoe, Ltd, a Texas limited liability company, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and

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

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

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

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

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

DULY PASSED AND APPROVED this the 22nd day of April, 2013.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

**LIFT STATION IMPROVEMENT
REIMBURSEMENT AGREEMENT**

This agreement is made and entered into by and between the City of Plano, Texas, a home rule municipal corporation (the "City"), Columbus Realty Partners, Ltd, a Texas limited liability company ("Columbus Realty"), Encana Oil & Gas (USA) Inc., a Delaware corporation ("Encana") and Blue Horseshoe, Ltd, A Texas limited liability company ("Heady), (collectively the "Parties").

WHEREAS, the Parties have entered into this Agreement for the purpose of providing for cost reimbursement for development and oversizing of the Legacy Town Center North Lift Station pursuant to a per capacity basis rather than a pro rata basis as provided for in Chapter 21, Article V, Division 3 of the City Code of Ordinances.

NOW, THEREFORE, for and in consideration of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**ARTICLE I.
CONSTRUCTION OF
PUBLIC IMPROVEMENTS**

Columbus Realty constructed the Legacy Town Center North Lift Station, the location of which is shown on the attached Exhibit "A" attached hereto and incorporated herein and made a part hereof by reference, which included oversizing to serve the surrounding area in accordance with the City's Standard Specifications for Public Works Construction, a copy of which is available in the City's Public Works Department and which is incorporated herein and made a part hereof by reference ("Standard Specifications"), and Columbus Realty's Engineering Plans approved by the City on December 19, 2012, a copy of which is available in the City's Public Works Department and which are incorporated herein and made a part hereof by reference ("Engineering Plans"). Columbus Realty paid the entire cost for construction of the Improvements in the amount of Seven Hundred Eighty Seven Thousand and Three Hundred Twenty Nine dollars (\$787, 329.00). The City, Encana and Heady have agreed to reimburse Columbus Realty on a per capita cost basis in lieu of the pro rata basis in Chapter 21, Article V, Division 3 of the City Code of Ordinances and to be paid in accordance with Article II herein.

ARTICLE II.
REIMBURSEMENT FOR
OVERSIZE IMPROVEMENTS

The City, Encana, and Heady shall reimburse Columbus Realty for their per capita share of the construction costs for construction of the Legacy Town Center North Lift Station in the specified amounts as identified and described in Exhibit "B" which is attached hereto and incorporated herein by reference. The City and Heady shall pay Columbus Realty their share of the costs as shown in Exhibit "B" within thirty (30) days of execution of this Agreement. Encana agrees that the development at the property located on Lot 6, Block C Legacy Town Center (North), as shown in the attached Exhibit "C" which is attached hereto and incorporated herein by reference (the "Encana Property"), shall connect to the Legacy Town Center North Lift Station and that Encana shall pay Columbus Realty its share of the costs as shown in Exhibit "B" within thirty (30) days of the date of final engineering plan approval by the City for the Encana Property. This Agreement shall be binding on any successors or assigns of the Parties in accordance with Section 3.04 herein.

ARTICLE III.
MISCELLANEOUS PROVISIONS

3.01. Entire Agreement

This Agreement contains the entire agreement between the Parties and cannot be varied except by written agreement. This Agreement shall be subject to change, amendment or modification only in writing, and by the signatures and mutual consent of the Parties.

3.02. Notices

Unless instructed otherwise in writing, all notices or communications to City permitted or required under this Agreement shall be as follows:

For the City:
City of Plano, Texas
Attn: Gerald Cosgrove, Public Works Director
P.O. Box 860358
Plano, TX 75086-0358

For Columbus Realty:
Columbus Realty Partners, Ltd
Attn:
8343 Douglas Avenue
Suite 360
Dallas, Texas 75225

For Encana:

For Heady:
Blue Horseshoe, LTD
Attn:
2500 N Dallas Pkwy
Suite 220
Plano, TX 75025

3.03. Recitals and Headings

Recitals contained at the beginning of this Agreement shall be construed as a part of this Agreement. However, headings used throughout this Agreement have been used for administrative convenience only and do not constitute matter to be considered in interpreting this Agreement.

3.04. Successors and Assigns, Covenants with the Land, and Subordination by Lienholders

This Agreement shall be binding upon the successors and assigns of the Parties and shall be covenants running with the land. This Agreement or a memorandum thereof, may be recorded in the Land Records of the county in which the Property is located.

3.05. Venue

This Agreement shall be construed under and in accordance with the laws of the State of Texas and is fully performable in Collin County, Texas. Exclusive venue shall be in Collin County, Texas.

3.06. Severability

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

3.07. No Waiver of Governmental Immunity

Nothing contained in this Agreement shall be construed as a waiver of the City's sovereign or governmental immunity.

3.08. Developer's Authority

The Developer represents and warrants to the City that it has full power and authority to enter into and fulfill the obligations of this Agreement.

3.09 Effective Date

This Agreement shall be effective from and after the date of execution by the last signatory hereto as evidenced below.

CITY OF PLANO, TEXAS
a home rule municipal corporation

Date: _____

By: _____
Bruce D. Glasscock
CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ENCANA OIL & GAS (USA) INC.,
a Delaware corporation

Date: _____

By: _____
Name: _____
Title: _____

**COLUMBUS REALTY PARTNERS, LTD, a
Texas limited liability company**

Date: _____

By: _____

Name: _____

Title: _____

**BLUE HORSESHOE, LTD, a Texas limited
liability company**

Date: _____

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENTS

STATE OF TEXAS §

§

COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2013, by **BRUCE D. GLASSCOCK**, City Manager of the **CITY OF PLANO, TEXAS**, a Home Rule Municipal Corporation, on behalf of said Municipal Corporation.

Notary Public, State of Texas

--- AND ---

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2013, by _____ of **ENCANA OIL & GAS (USA) INC.**, a Delaware corporation, for and on behalf of said Limited Liability Company.

Notary Public, State of Texas

--- AND ---

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2013, by _____ of **COLUMBUS REALTY PARTNERS, LTD**, a Texas limited liability company, for and on behalf of said Limited Liability Company.

Notary Public, State of Texas

--- AND ---

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2013, by _____, _____ of **BLUE HORSESHOE, LTD**, a Texas limited liability company, for and on behalf of said Limited Liability Company.

Notary Public, State of Texas

EXHIBIT "A"

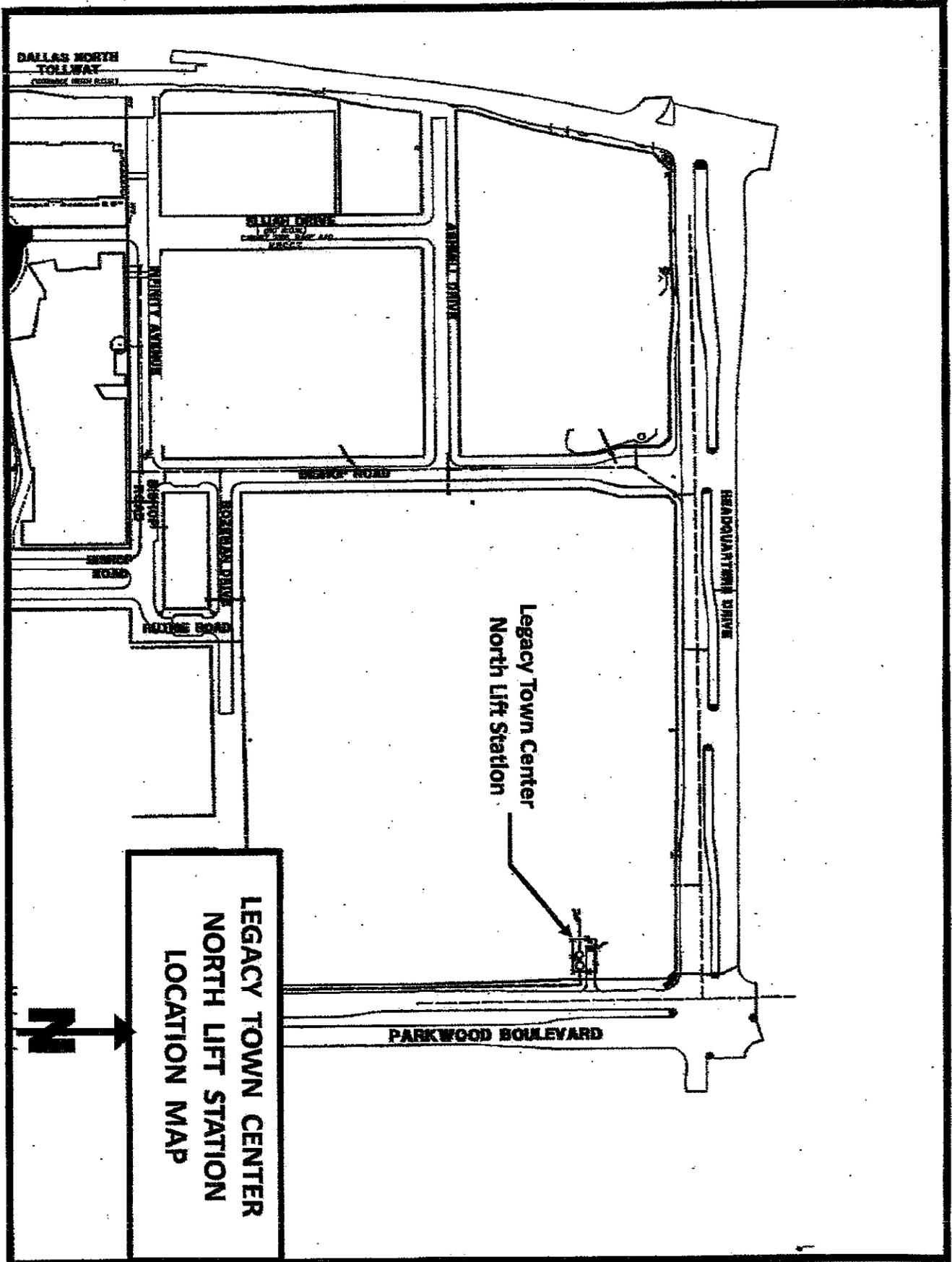


EXHIBIT "B"

Legacy Lift Station				
Lift Station and Force Main Cost		\$787,329		
Participants	2008 Design			Proposed Development Agreement
	Peak Flow MGD	Percentage of Total Flow	Cost Share	Cost Share
Columbus Realty Partners	0.612	81.4%	\$640,752	\$320,376
Encana (Formerly K Hovanian)	0.091	12.1%	\$95,275	\$47,638
Heady (Formerly Karahan)	0.049	6.5%	\$51,302	\$25,651
City of Plano	N/A	N/A	N/A	\$393,665
Total	0.752	100%	\$787,329	\$787,329

