



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

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

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

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

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

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

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

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

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

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

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

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

ATTEST:

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

APPROVED AS TO FORM:

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

## REAL ESTATE CONTRACT

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

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

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

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

### 1. Agreement to Convey

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

### 2. Purchase Price and Escrow

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

#### 2.2. Earnest Money

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

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

**3. Title Commitment and Title Insurance**

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

**4. Due Diligence Period**

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

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

**5. The Closing**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**9. Disclosures of Seller**

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

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

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

**10. Conditions Precedent**

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

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

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

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

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

Seller acknowledges covenants and agrees with City as follows:

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

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

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

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

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

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

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

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

### **13. Default**

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

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

### **14. Non-waiver**

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

**15. Representations Survive Closing**

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

**16. Miscellaneous Provisions**

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

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

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

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

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

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

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

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

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

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

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

*[Remainder of page intentionally left blank.]*

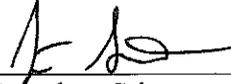
IN WITNESS WHEREOF, the parties have executed this Contract as of the dates shown beside their respective signatures.

**SELLER:**

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

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

Date: 11-14-12

By: 

Name: Jonathan Stites

Title: Vice President

Address: 3030 LBJ Freeway, Suite 1475  
Dallas, Texas 75234

**CITY:**

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

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

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

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

APPROVED AS TO FORM:

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

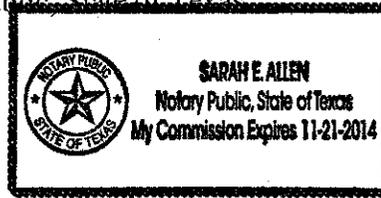
**ACKNOWLEDGMENTS**

STATE OF TEXAS §

COUNTY OF COLLIN §

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

Sarah E. Allen  
Notary Public, State of Texas



STATE OF TEXAS §

COUNTY OF COLLIN §

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

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

## EXHIBIT "A"

### Description of the Property

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

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

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

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

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

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

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

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

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

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

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

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