



**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:		9/13/10		
Department:		Public Works & Engineering		
Department Head:		Alan L. Upchurch		
Agenda Coordinator (include phone #): Irene Pegues (7198)				
CAPTION				
A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of a Memorandum of Understanding between the State of Texas and the City of Plano for the adoption of the Texas Department of Transportation's federally-approved Disadvantaged Business Enterprise Program; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget				
Encumbered/Expended Amount				
This Item				
BALANCE				
FUND(S):				
COMMENTS: This item allows for the receipt of Federal funds through TxDOT's Disadvantaged Business Enterprise Program but has no specific fiscal impact at this time.				
STRATEGIC PLAN GOAL: Receiving outside funding for Capital Projects relates to the City's Goals of Financially Strong City with Service Excellence and Partnering for Community Benefit.				
SUMMARY OF ITEM				
This Agreement provides for the adoption of TxDOT's federally-approved Disadvantaged Business Enterprise Program. It is a federal requirement that the City of Plano, as a recipient of federal funds, implement a program approved by the Federal Highway Administration for disadvantaged business enterprises. To date, TxDOT is the only approved program in the State of Texas. It is easier and cheaper for the City of Plano to adopt TxDOT's program rather than develop its own program.				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
N/A			N/A	

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of a Memorandum of Understanding between the State of Texas and the City of Plano for the adoption of the Texas Department of Transportation's federally-approved Disadvantaged Business Enterprise Program; 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 Memorandum of Understanding (MOU) for the adoption of the Texas Department of Transportation's federally-approved Disadvantaged Business Enterprise Program, 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 MOU, 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 should be authorized to execute it on behalf of the City of Plano.

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

Section I. The terms and conditions of the MOU, 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 MOU 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 13th day of September, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

Exhibit "A"

**MEMORANDUM OF UNDERSTANDING
REGARDING THE ADOPTION OF THE TEXAS DEPARTMENT OF
TRANSPORTATION'S FEDERALLY-APPROVED DISADVANTAGED BUSINESS
ENTERPRISE PROGRAM BY THE CITY OF PLANO**

This Memorandum of Understanding is by and between the **TEXAS DEPARTMENT OF TRANSPORTATION ("TxDOT")**, an agency of the State of Texas; and the **CITY OF PLANO**, a political subdivision of the State of Texas.

Whereas, from time to time the City of Plano receives federal funds from the Federal Highway Administration ("FHWA") through TxDOT to assist the City of Plano with the construction and design of projects partially or wholly funded through FHWA; and

Whereas, the City of Plano, as a sub-recipient of federal funds, is required by 49 CFR 26, to implement a program for disadvantaged business enterprises ("DBEs"), as defined by 49 CFR 26 ("DBE Program"); and

Whereas, TxDOT has implemented a Disadvantaged Business Enterprise Program (DBE Program) that is approved by the FHWA pursuant to 49 CFR part 26; and

Whereas, certain aspects of the City of Plano's procurement of construction and design services are subject to review and/or concurrence by TxDOT as a condition of receiving federal funds from FHWA through TxDOT; and

Whereas, the City of Plano and TxDOT undertake substantially similar roadway construction projects and design projects and construct and design their respective projects using substantially the same pool of contractors; and

Whereas, the City of Plano desires to implement a federally compliant DBE Program by adopting the TxDOT approved program, as recommended by FHWA; and

Whereas, TxDOT and the City of Plano find it appropriate to enter into this Memorandum of Understanding to memorialize the obligations, expectations and rights each has as related to the City of Plano's adoption of the TxDOT DBE Program to meet the federal requirements;

Now, therefore, TxDOT and the City of Plano, in consideration of the mutual promises, covenants and conditions made herein, agree to and acknowledge the following:

(1) TxDOT has developed a DBE Program and annually establishes a DBE goal for Texas that is federally approved and compliant with 49 CFR 26 and other applicable laws and regulations.

(2) The City of Plano is a sub-recipient of federal assistance for construction projects and design projects and, in accordance with 49 CFR § 26.21, must comply with a federally approved DBE Program. The City of Plano receives its federal assistance through TxDOT. As a sub-recipient, the City of Plano has the option of developing its own program or adopting and operating under TxDOT's federally approved DBE Program. The FHWA recommends that sub-recipients, such as the City of Plano, adopt the DBE program, administered through TxDOT, and the City of Plano by its prescribed protocol adopted the TxDOT DBE Program on September 13, 2010.

(3) This Memorandum of Understanding evidences FHWA's and TxDOT's consent to the adoption of the TxDOT DBE Program by the City of Plano to achieve its DBE participation in federally assisted

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Construction and Design Projects.

(4) The parties will work together in good faith to assure effective and efficient implementation of the DBE Program for the City of Plano and for TxDOT.

(5) The City of Plano and TxDOT have agreed upon the following delegation of responsibilities and obligations in the administration of the DBE Program adopted by the City of Plano:

(a) The City of Plano will be responsible for project monitoring and data reporting to TxDOT. The City of Plano will furnish to TxDOT any required DBE contractor compliance reports, documents or other information as may be required from time to time to comply with federal regulations. TxDOT will provide the necessary and appropriate reporting forms, to the City of Plano.

(b) The City of Plano will recommend contract-specific DBE goals consistent with TxDOT's DBE guidelines and in consideration of the local market, project size, and nature of the good(s) or service(s) to be acquired. The City of Plano's recommendation may be that no DBE goals are set on any particular project or portion of a project or that proposed DBE goals be modified. The City of Plano and TxDOT will work together to achieve a mutually acceptable goal, however, TxDOT will retain final decision-making authority regarding DBE goals.

(c) TxDOT will cooperate with the City of Plano in an effort to meet the timing and other requirements of the City of Plano projects.

(d) The City of Plano will be solely responsible for the solicitation and structuring of bids and bid documents to procure goods and services for its projects that use federal funds and will be responsible for all costs and expenses incurred in its procurements.

(e) The DBEs eligible to participate on TxDOT construction projects or design projects also will be eligible to participate on City of Plano construction projects or design projects subject to the DBE Program. The DBEs will be listed on TxDOT's website under the Texas Unified Certification Program (TUCP).

(f) The City of Plano will conduct reviews and provide reports with recommendations to TxDOT concerning any DBE Program compliance issues that may arise due to project specific requirements such as Good Faith Effort (GFE), Commercially Useful Function (CUF), etc. The City of Plano and TxDOT will work together to achieve a mutually acceptable goal, however, TxDOT will retain final decision-making authority on those issues and reserves the right to perform compliance reviews. The City of Plano shall provide TxDOT with a listing of sanctions that will be assessed against contractors for violation of federal DBE regulations and its procedures for investigation of violations and assessment of sanctions for documented violations. The City of Plano will require contractors for its FHWA federally assisted projects to use the attached forms as follows:

Attachment 1 – Disadvantaged Business Enterprise (DBE) Program Commitment Agreement Form SMS 4901

Attachment 2 – DBE Monthly Progress Report Form SMS 4903

Attachment 3 – DBE Final Report Form SMS 4904

Exhibit "A"

Attachment 4 – Prompt Payment Certification Form (Federal-air Projects) 2177

- (g) The City of Plano will designate a liaison officer to coordinate efforts with TxDOT's DBE Program administrators and to respond to questions from the public and private sector regarding the City of Plano's administration of the DBE Program through TxDOT.
 - (h) The City of Plano will be responsible for providing TxDOT with DBE project awards and DBE Commitments, monthly DBE reports, DBE Final Reports, DBE shortfall reports, and annual and updated goal analysis and reports.
 - (i) TxDOT will be responsible for maintaining a directory of firms eligible to participate in the DBE Program, and providing business development and outreach programs. The City of Plano and TxDOT will work cooperatively to provide supportive services and outreach to DBE firms in the City of Plano area.
 - (j) The City of Plano will submit DBE semi-annual progress reports to TxDOT.
 - (k) The City of Plano will participate in TxDOT sponsored training classes to include topics on Title VI of the Civil Rights Act of 1964, DBE Annual Goals, DBE Goal Setting for Construction Projects and Design Projects, DBE Contract Provisions, and DBE Contract Compliance, which may include issues such as DBE Commitments, DBE Substitution, and Final DBE Clearance. TxDOT will include DBE contractors performing work on the City of Plano projects in the DBE Education and Outreach Programs.
 - (l) The Executive Director of the City of Plano will implement all federal requirements , including those stated in Attachments A through F, which are incorporated as though fully set out herein for all purposes.
 - (m) In accordance with 23 CFR 200.1, the City of Plano shall develop procedures for the collection of statistical data (race, color, religion, sex, and national origin) of participants in , and beneficiaries of Sate highway programs, i.e., relocatees, impacted citizens and affected communities; develop a program to conduct Title VI review of program areas; and conduct annual reviews of special emphasis program areas to determine the effectiveness of program area activities at all levels. TxDOT, in accordance with federal law, may conduct compliance reviews by TxDOT's OCR.
 - (n) The City of Plano will comply with 49 CFR 26.29 as stated in Attachment F.
- (6) In the event there is a disagreement between TxDOT and the City of Plano about the implementation of the TxDOT DBE Program by the City of Plano the parties agree to meet within ten (10) days of receiving a written request from the other party of a desire to meet to resolve any disagreement. The parties will make good faith efforts to resolve any disagreement as efficiently as is reasonably possible in consultation with FHWA. Non-compliance by the City of Plano can result in restitution of federal funds to TxDOT and withholding of further federal funds upon consultation with FHWA.
- (7) This Memorandum of Understanding becomes effective upon execution by all parties and automatically renews each year unless a party notifies the other parties of its intent to terminate the agreement.
- (8) If this Memorandum of Understanding is terminated for any reason, the City of Plano will

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be allowed reasonable time in which to seek approval from FHWA for an alternative DBE Program, without being deemed non-compliant with 49 CFR Part 26.

(9) This Memorandum of Understanding applies only to projects for which the City of Plano is a sub-recipient of federal funds through TxDOT. The City of Plano may also implement a Minority and Women-Owned Small Business Enterprise (M/W/SBE) policy and program that applies to projects for which it is not a sub-recipient of federal funds through TxDOT and which are not subject to the TxDOT DBE Program. The City of Plano may, at its option, use some aspects of the TxDOT DBE Program and other similar programs in implementing its other policies and programs for its non-federally funded projects.

(10) The following attachments to this Memorandum of Understanding are also incorporated as if fully set out herein for all purposes:

Attachment A - FHWA Memorandum HCR-1/HIF-1 (relating to access required by the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973);

Attachment B - SPECIAL PROVISION – 000-1966

Attachment C – 49 CFR §26.13 (contractual assurances)

Attachment D – DBE Program Compliance Guidance for Local Government Agencies

Attachment E – FHWA Form 1273

Attachment F – Texas Department of Transportation (TxDOT) Disadvantaged Business Enterprise (DBE) Program with attachments as follows:

Attachment F 1 – DBE Regulations: 49 CFR Part 26

Attachment F 2 – DBE Special Provisions 000-1966

Attachment F 3 – TxDOT's Organizational Chart

Attachment F 4 – Measurement and Payment Special Provision 009-007

Attachment F 5 – Texas Unified Certification Program (TUCP) DBE directory example and website address to the directory

Attachment F 6 – DBE Goal Methodology

Attachment F 7 – DBE Bidder Certification

Attachment F 8 – DBE Joint Check Approval Form

Attachment F 9 – TUCP Standard Operating Procedures (SOP)

Attachment F 10 – TUCP Memorandum of Agreement (MOA)

Attachment F 11 – Forms list

(11) The following procedure shall be observed by the parties in regard to any notifications:

(a) Any notice required or permitted to be given under this Memorandum of Understanding shall be in writing and may be effected by personal delivery, by hand delivery through a courier or a delivery service, or by registered or certified mail, postage prepaid, return receipt requested, addressed to the proper party, at the following address:

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City of Plano:

Thomas H. Muehlenbeck
City Manager

Hand Delivery:

1520 K Avenue, Suite 250, Plano, Texas, 75074

Registered or Certified Mail (Return receipt requested):

1520 K Avenue, Suite 250, Plano, Texas, 75074

TEXAS DEPARTMENT OF TRANSPORTATION
DBE Liaison
Office of Civil Rights
Address: 125 E. 11th Street
Austin, Texas 78701

(b) Notice by personal delivery or hand delivery shall be deemed effective immediately upon delivery, provided notice is given as required by Paragraph (a) hereof. Notice by registered or certified mail shall be deemed effective three (3) days after deposit in a U.S. mailbox or U.S. Post Office, provided notice is given as required by Paragraph (a) hereof.

(c) Either party hereto may change its address by giving notice as provided herein.

(12) This Memorandum of Understanding may be modified or amended only by written instrument, signed by both the City of Plano and the Texas Department of Transportation and dated subsequent to the effective date(s) of this MOU. Except as authorized by the respective parties, no official, employee, agent, or representative of the parties has any authority, either express or implied, to modify or amend this MOU.

(13) The provisions of this MOU are severable. If any clause, sentence, provision, paragraph, or article of this MOU, or the application of this MOU to any person or circumstance is held by any court of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, such invalidity, illegality, or unenforceability shall not impair, invalidate, nullify, or otherwise affect the remainder of this MOU, but the effect thereof shall be limited to the clause, sentence, provision, paragraph, or article so held to be invalid, illegal, or unenforceable, and the application of such clause, sentence, provision, paragraph, or article to other persons or circumstances shall not be affected; provided, however, the City of Plano and TxDOT may mutually agree to terminate this Memorandum of Understanding.

(14) The following provisions apply in regard to construction of this MOU:

(a) Words of any gender in this MOU shall be construed to include the other, and words in either number shall be construed to include the other, unless the context in this MOU clearly requires otherwise.

(b) When any period of time is stated in this MOU, the time shall be computed to exclude the first day and include the last day of the period. If the last day of any period falls on a

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Saturday, Sunday, or national holiday, or state or county holiday, these days shall be omitted from the computation. All hours stated in this MOU are stated in Central Standard Time or in Central Daylight Savings Time, as applicable.

(15) This Memorandum of Understanding shall not be construed in any way as a waiver by the parties of any immunity from suit or liability that parties may have by operation of law, and the parties hereby retain all of their respective affirmative defenses.

EXECUTED in triplicate originals by TxDOT and the City of Plano, acting through each duly authorized official and effective on the latest date signed.

The signatories below confirm that they have the authority to execute this MOU and bind their principles.

TEXAS DEPARTMENT OF TRANSPORTATION

CITY OF PLANO

By: _____
Amadeo Saenz, Jr. P.E.
Executive Director

By: _____
Thomas H. Muehlenbeck
City Manager

Date: _____

Date: _____