



# CITY OF PLANO COUNCIL AGENDA ITEM

<b>CITY SECRETARY'S USE ONLY</b>				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		11/23/15		
Department:		Finance		
Department Head		Denise Tacke		
Agenda Coordinator (include phone #): <b>Toshia Kimball x 7479</b>				
<b>CAPTION</b>				
<p>A Resolution of the City of Plano, Texas, approving the form of a Certificate of Formation for the Plano Improvement Corporation and authorizing the City Manager to execute and file said Certificate with the Secretary of State; authorizing the City Manager to negotiate and execute a purchase and sale agreement with the Plano Improvement Corporation pursuant to Texas Local Government Code Section 272.001(b)(4) for sale and development as required by the City of 1.09± acres of land described in Exhibit "B" hereto for the subsequent resale to SWC Tollway &amp; 121, LLC, and assigns; authorizing the City Manager to negotiate and execute the termination of the Lease Agreement by and between the City of Plano, Texas and SWC Tollway &amp; 121, LLC dated April 21, 2015; and providing an effective date.</p>				
<b>FINANCIAL SUMMARY</b>				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: <b>2015-16</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget	0	0	0	<b>0</b>
Encumbered/Expended Amount	0	0	0	<b>0</b>
This Item	0	0	0	<b>0</b>
BALANCE	0	0	0	<b>0</b>
<b>FUND(s):     N/A</b>				
<b>COMMENTS:</b> This item has no financial impact.				
STRATEGIC PLAN GOAL: Approving the Resolution for the Certificate of Formation for the Plano Improvement Corporation relates to the City's Goal of Financially Strong City with Service Excellence.				
<b>SUMMARY OF ITEM</b>				
Request to approve the form of a Certificate of Formation for the Plano Improvement Corporation.				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Resolution				
Certificate of Formation				
Metes and Bounds				

**A Resolution of the City of Plano, Texas, approving the form of a Certificate of Formation for the Plano Improvement Corporation and authorizing the City Manager to execute and file said Certificate with the Secretary of State; authorizing the City Manager to negotiate and execute a purchase and sale agreement with the Plano Improvement Corporation pursuant to Texas Local Government Code Section 272.001(b)(4) for sale and development as required by the City of 1.09± acres of land described in Exhibit “B” hereto for the subsequent resale to SWC Tollway & 121, LLC, and assigns; authorizing the City Manager to negotiate and execute the termination of the Lease Agreement by and between the City of Plano, Texas and SWC Tollway & 121, LLC dated April 21, 2015; and providing an effective date.**

**WHEREAS**, the City desires to create an independent foundation for the purpose of the transfer of land and improvements that the City wants developed pursuant to Tex. Loc. Gov’t Code §272.001(b)(4); and

**WHEREAS**, the City Council finds it in the best interest of the City to develop and sell 1.09± acres of land described in Exhibit “B” hereto by transferring the land to the independent foundation for the subsequent resale to SWC Tollway & 121, LLC, and assigns;

**WHEREAS**, from time to time, owners of real and/or personal property, including both individuals as well as charitable corporations, foundations, and similar entities, desire to donate such property to the City of Plano to further the charitable purposes of the person or entity and to benefit the residents of the City; and

**WHEREAS**, on occasion, state or federal law, or the documents governing an entity desiring to make a donation to the City, require such donations to be made to a non-profit entity eligible to carry out the functions of a charitable organization as defined in Section 501(c) of the Internal Revenue Code; and

**WHEREAS**, an independent foundation can accomplish all of the purposes outlined above and the City Council finds it is in the best interest of the City that a non-profit corporation be created as the Plano Improvement Corporation to accomplish the purposes as further outlined in Exhibit “A” attached hereto.

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

**Section I.** The City Council of the City of Plano, Texas, hereby finds and determines that it is advisable to form a non-profit corporation to be known as the “Plano Improvement Corporation” (“the Corporation”) pursuant to the Texas Nonprofit Corporation Law (i.e. Chapters 20 and 22 of the Texas Business Organizations Code, as amended).

**Section II.** The City Manager is hereby authorized to execute and file with the Texas Secretary of State a Certificate of Formation substantially in the form set forth in Exhibit “A,” attached hereto and incorporated herein by reference, and to perform such additional acts and prepare, execute, and file such additional documents as necessary to cause the formation for the Corporation.

**Section III.** Upon the formation of the Corporation and concurrent with or following the Corporation's organizational meeting, the City Manager or designee is authorized to negotiate and execute on behalf of the City a purchase and sale agreement pursuant to Tex. Loc. Govt. Code §272.001(b)(4) with the Corporation for sale and development as required by the City of 1.09± acres of land described in Exhibit "B" attached hereto and incorporated herein by reference ("the Property") for the subsequent resale to the Corporation to SWC Tollway & 121, LLC, and assigns. The City Manager, or designee is further authorized to prepare and execute such other documents and instruments deemed reasonable and necessary by the City Manager after consultation with the City Attorney to close such transaction, including the termination of that certain Lease Agreement by and between the City of Plano, Texas and SWC Tollway & 121, LLC, dated April 21, 2015.

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

**DULY PASSED AND APPROVED** this 23rd day of November, 2015.

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Harry LaRosiliere, MAYOR

ATTEST:

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Lisa C. Henderson, CITY SECRETARY

APPROVED AS TO FORM:

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Paige Mims, CITY ATTORNEY

**CERTIFICATE OF FORMATION  
OF  
PLANO IMPROVEMENT CORPORATION**

**Article I  
Entity Name**

The name of the entity being formed is **PLANO IMPROVEMENT CORPORATION** (“the Corporation”).

**Article II  
Type of Entity**

The Corporation is a nonprofit corporation.

**Article III  
Purpose and Authority**

**3.01** The Corporation is organized for any lawful purpose or purposes not expressly prohibited under Sections 2.001 et seq. or 22.001 et seq. of the Texas Business Organizations Code, including, but not limited to aiding, assisting, and acting on behalf of the City of Plano in the performance of its governmental functions to promote the common good and general welfare of the City of Plano (“City”).

**3.02** The Corporation shall have and exercise all of the rights, powers, privileges, and functions given by the general laws of Texas to non-profit corporations incorporated under the Texas Nonprofit Corporation Law (i.e., Tex. Bus. Org. Code Chapters 20 and 22 and the provisions of Title I thereof to the extent applicable to non-profit corporations, as amended) or their successor.

**3.03** The Corporation shall have all other powers of a like or different nature not prohibited by law which are available to non-profit corporations in Texas and which are necessary or useful to enable the Corporation to perform the purposes for which it is created, including the power to issue bonds, notes or other obligations, and otherwise exercise its borrowing power to accomplish the purposes for which it was created; provided, however, that the Corporation shall not issue any bond, certificate, note or other obligation evidenced by an instrument without the prior written consent of each of the Cities or as otherwise allowed by the Bylaws.

**3.04** In addition to the foregoing purposes, the Corporation is established to:

- A. Perform charitable activities within the meaning of the Internal Revenue Code § 501(c)(3) and Texas Tax Code §11.18(c);

- B. Accept land, bequests, and other donations to further the purposes of the Corporation;
- C. Take, accept, hold, manage, and acquire by bequest, devise, gift or purchase donations of monies and any property, real, personal or mixed, whether tangible or intangible;
- D. Transfer and convey, whether by grant, gift, donation, or sale, any such funds or property to or for the benefit of the City
- E. Act as independent foundation for the City for the purpose of the transfer of land and improvements that the City wants developed pursuant to Tex. Loc. Gov't Code §272.001(b)(4), as amended; and
- F. Provide management, support and assistance to the non-profit associations, corporations and organizations that promote, sponsor, and further municipal parks and recreational facilities and activities within the City.

**Article IV**  
**Registered Agent and Registered Office**

The initial registered agent of the Corporation is Denise Tacke. The street address for the initial registered office of the initial registered agent is 1520 K Avenue, Suite 340, Plano, Collin County, Texas 75074.

**Article V**  
**Management**

**5.01** The management of the affairs of the Corporation is vested in a board of three (3) directors appointed by the City Council of the City of Plano, Texas, and shall consist of the City Manager of the City of Plano, Texas, the Director of Finance for the City of Plano, Texas, and either (i) the Deputy City Manager of the City of Plano, Texas, or (ii) in the absence of or the non-existence of the position of Deputy City Manager of the City of Plano, Texas, then an Assistant City Manager of the City of Plano, Texas. Any director who ceases to hold the respective required office or position described above shall immediately be ineligible to hold office as a director of the Corporation, and shall be deemed to have resigned on the date such person ceases to be qualified to be such director. The Bylaws will provide the duties, terms, and other matters relating to the Board of Directors.

**5.02** The initial Board of Directors and the names and addresses of the persons who are to serve as the Board of Directors of the Corporation until their successors are elected or qualified are as follows:

**Names of Directors**

**Addresses of Directors**

Bruce D. Glasscock

1520 K Avenue, Plano, Texas 75074

Denise Tacke

1520 K Avenue, Plano, Texas 75074

Mark Israelson

1520 K Avenue, Plano, Texas 75074

**5.03** The Board of Directors shall establish and adopt Bylaws in compliance and not in conflict with this Certificate of Formation and the Texas Nonprofit Corporation Law establishing policies and procedures for the governance of the Corporation and the operations of the Board. The Bylaws and any amendments thereto shall not be effective unless and until approved by the City Council of the City of Plano, Texas.

**Article VI  
Members**

The Corporation has no members.

**Article VII  
Organizer**

The name and street address of the organizer of this nonprofit corporation is Bruce Glasscock, City Manager of the City of Plano, Texas, whose address is 1520 K Avenue, Plano, Collin County, Texas 75074.

**Article VIII  
Duration**

The duration of the corporation is perpetual.

**ARTICLE IX  
Director Liability**

No Director shall be liable to the Corporation for monetary damages for an act or omission in the Director’s capacity as a Director, except for liability (i) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (ii) for any transaction from which the Director received an improper benefit, whether or not the benefit resulted from an act taken within the scope of the Director’s office, or (iii) for acts or omissions for which the liability of a Director is expressly provided by statute. Any repeal or amendment of this Article by the Directors shall be prospective only, and shall not adversely affect any limitation on the personal liability of a Director existing at the time of such repeal or amendment. In addition to the circumstances in which a Director is not personally liable as set forth in the preceding sentences, a Director shall not be liable to the fullest extent permitted by any amendment to the Texas statutes hereafter enacted that further limits the liability of a Director.

**ARTICLE X**  
**Indemnification of Directors and Officers**

**10.01** *Right to Indemnification.* Subject to the limitations and conditions as provided in this Article X and the Bylaws of the Corporation, each person who was or is made a party or is threatened to be made a party to or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative or investigative (hereinafter a “proceeding”), or any appeal in such a proceeding or any inquiry or investigation that could lead to such a proceeding, by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a Director or officer of the Corporation shall be indemnified by the Corporation to the fullest extent permitted by the Texas Nonprofit Corporation Law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment) against judgments, penalties (including excise and similar taxes and punitive damages), fines, settlements and reasonable expenses (including, without limitation, attorneys’ fees) actually incurred by such person in connection with such proceeding, and indemnification under this Article X shall continue as to a person who has ceased to serve in the capacity which initially entitled such person to indemnity hereunder. The rights granted pursuant to this Article X shall be deemed contract rights, and no amendment, modification or repeal of this Article X shall have the effect of limiting or denying any such rights with respect to action taken or proceedings arising prior to any such amendment, modification or repeal. It is expressly acknowledged that the indemnification provided in this Article X could involve indemnification for negligence or under theories of strict liability.

**10.02** *Advance Payment.* The right to indemnification conferred in this Article X shall include the right to be paid in advance or reimbursed by the Corporation the reasonable expenses incurred by a person of the type entitled to be indemnified under Section 10.01 who was, is or is threatened to be made a named defendant or respondent in a proceeding in advance of the final disposition of the proceeding and without any determination as to the person’s ultimate entitlement to indemnification, provided; however, that the payment of such expenses incurred by any such person in advance of the final disposition of a proceeding, shall be made only upon delivery to the Corporation of a written affirmation by such Director or officer of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification under this Article X and a written undertaking, by or on behalf of such person, to repay all amounts so advanced if it shall ultimately be determined that such indemnified person is not entitled to be indemnified under this Article X or otherwise.

**10.03** *Non-exclusivity of Rights.* The right to indemnification and the advancement and payment of expenses conferred in this Article X shall not be exclusive of any other right which a Director or officer or other person indemnified pursuant to Section 10.01, above, may have or hereafter acquire under any law (common or statutory), provision of this Certificate of Formation or the Bylaws of the Corporation, agreement, or vote of disinterested Directors or otherwise.

**10.04** *Insurance.* The Corporation may purchase and maintain insurance, at its expense to protect itself and any person who is or was serving as a Director, officer, employee or agent of

the Corporation or is or was serving at the request of the Corporation as a Director, officer, partner, venture, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, proprietorship, employee benefit plan, trust or other enterprise against any expense, liability or loss, whether the Corporation would have the power to indemnify such person against such expense, liability or loss under this Article X.

**10.05 Savings Clause.** If this Article X or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify and hold harmless each Director, officer or any other person indemnified pursuant to this Article X as to costs, charges and expenses (including attorneys' fees), judgments, fines and in amounts paid in settlement with respect to any action, suit or proceeding, whether civil, criminal, administrative or investigative, to the full extent permitted by any applicable portion of this Article X that shall not have been invalidated and to the fullest extent permitted by applicable law.

## **ARTICLE XI**

### **Limits on Use of Corporate Assets**

In accordance with the provisions of Section 501(c)(3) of the Internal Revenue Code (the "Code"), and regardless of any other provisions of this Certificate of Formation or the laws of the State of Texas, the Corporation shall not: (a) permit any part of the net earnings of the Corporation to inure to the benefit of any private individual (except that reasonable compensation may be paid for personal services rendered to or for the Corporation in effecting one or more of its purposes); (b) devote more than an insubstantial part of its activities to attempting to influence legislation by propaganda or otherwise; (c) participate in, or intervene in (including the publication or distribution of statements), any political campaign on behalf of any candidate for public office; or (d) attempt to influence the outcome of any election for public office or to carry on, directly or indirectly, any voter registration drives. No part of the Corporation's income shall inure to the benefit of any private interests.

## **ARTICLE XII**

### **Corporation as Private Foundation**

If the Corporation is a private foundation within the meaning of Section 509(a) of the Code, the Corporation: (a) shall distribute its income for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by Section 4942 of the Code; (b) shall not engage in any act of self-dealing as defined in Section 4941(d) of the Code; (c) shall not retain any excess business holdings as defined in Section 4943(c) of the Code; (d) shall not make any investments in such manner as to subject it to tax under Section 4944 of the Code; and (e) shall not make any taxable expenditures as defined in Section 4945(d) of the Code.

**Article XIII.  
Winding Up and Dissolution**

After all liabilities and obligations of the Corporation in the process of winding up are paid, satisfied, and discharged in accordance with Tex. Bus. Org. Code §11.053, the property of the Corporation shall be applied and distributed as follows:

(a) Property held by the Corporation on a condition requiring return, transfer, or conveyance because of the winding up or termination shall be returned, transferred, or conveyed in accordance with that requirement; and

(b) All remaining assets shall be distributed to the City of Plano, Texas, to be used for tax-exempt purposes to the benefit of one or more organizations that are exempt under Section 501(c)(3), Internal Revenue Code, or described by Section 170(c)(1) or (2), Internal Revenue Code, under a plan of distribution adopted under Chapter 22 of the Texas Business Organizations Code.

No winding up or dissolution of the Corporation shall occur prior to approval of a plan of distribution by the Board of Directors and the City Council of the City of Plano, Texas.

**Article XIV  
Amendments**

This Certificate of Formation may not be changed or amended unless first approved by motion or resolution adopted by the City Council of the City of Plano, Texas.

**Article XV  
Effective Date**

This Certificate of Formation shall be effective upon filing of this certificate with the Secretary of State's office as required by Sections 4.001 et seq. of the Texas Business Organization Code.

*(remainder of page intentionally blank)*

### **Execution Certificate**

The undersigned affirms that the person designated as Registered Agent has consented to the appointment. The undersigned signs this Certificate of Formation subject to the penalties imposed by law for the submission of materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized to execute the filing instrument.

Signed this \_\_\_\_ day of November, 2015.

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Bruce D. Glasscock, Organizer  
1520 K Avenue  
Plano, Texas 75074

**BEING** a tract of land situated in the J.C. Barrow Survey, Abstract No. 90, the H.N. Thompson Survey, Abstract No. 896 and the Garland Martin survey Abstract No. 662, City of Plano, Collin County, Texas, being all of Lots 1 and 2, Block B of Legacy West Addition, Lot 1 and Lot 2, Block B, Lot 1, Block C, Lot 1R, Block B and Lots 1 and 2, Block E, an addition to the City of Plano according to the plat thereof recorded in Cabinet 2015, Page 63, Map Records, Collin County, Texas and being part of called described in Limited General Warranty Deed, to SWC Tollway & 121 LLC, recorded in Instrument Number 20140205000109390, Official Public Records, Collin County, Texas and being more particularly described as follows:

**BEGINNING** at a point for the north corner of a corner clip at the intersection of the east right-of-way line of Leadership Drive (110' ROW) and the south right-of-way of State Highway 121 (variable width ROW);

**THENCE** with the south right-of-way line, North  $71^{\circ}34'10''$  East, a distance of 2143.80 feet to a point for corner;

**THENCE** leaving said west right-of-way line, South  $63^{\circ}25'53''$  East, a distance of 35.23 feet to a point for corner in the west right-of-way line of Communication Parkway (92' ROW);

**THENCE** with said west right-of-way line, the following courses and distances to wit:

South  $18^{\circ}13'53''$  East, a distance of 90.92 feet to a point at the beginning of a tangent curve to the right having a central angle of  $17^{\circ}45'10''$ , a radius of 654.00 feet, a chord bearing and distance of South  $9^{\circ}21'18''$  East, 201.83 feet;

In a southeasterly direction, with said curve to the right, an arc distance of 202.64 feet to a point for corner;

South  $0^{\circ}28'43''$  East, a distance of 986.23 feet to a point at the beginning of a tangent curve to the right having a central angle of  $12^{\circ}02'26''$ , a radius of 238.00 feet, a chord bearing and distance of South  $5^{\circ}32'30''$  West, 49.92 feet;

In a southwesterly direction, with said curve to the right, an arc distance of 50.02 feet to a point at the beginning of a reverse curve to the left having a central angle of  $12^{\circ}02'26''$ , a radius of 262.00 feet, a chord bearing and distance of South  $5^{\circ}32'30''$  West, 54.96 feet;

In a southwesterly direction, with said curve to the left, an arc distance of 55.06 feet to a point for corner;

South  $0^{\circ}28'43''$  East, a distance of 94.20 feet to a point at the beginning of a tangent curve to the right having a central angle of  $104^{\circ}30'48''$ , a radius of 105.00 feet, a chord bearing and distance of South  $51^{\circ}46'41''$  West, 166.06 feet;

In a southwesterly direction, with said curve to the right, an arc distance of 191.53 feet to a point in the north right-of-way line of Headquarters Drive (variable width ROW) for the beginning of a compound curve to the right having a central angle of  $21^{\circ}44'23''$ , a radius of 870.00 feet, a chord bearing and distance of North  $65^{\circ}05'43''$  West, 328.13 feet;

**THENCE** with said north right-of-way line, the following courses and distances to wit:

In a northwesterly direction, with said curve to the right, an arc distance of 330.10 feet to a point at the beginning of a reverse curve to the left having a central angle of  $68^{\circ}41'37''$ ,

a radius of 1212.43 feet, a chord bearing and distance of North 88°34'20" West, 1368.11 feet;

In a northwesterly direction, with said curve to the left, an arc distance of 1453.62 feet to a point for corner;

South 57°12'08" West, a distance of 16.51 feet to a point for corner;

North 77°52'30" West, a distance of 35.40 feet to a point for corner in the east right-of-way line of said Leadership Drive;

**THENCE** with said east right-of-way line, the following course and distances to wit:

North 32°57'07" West, a distance of 23.72 feet to a point at the beginning of a tangent curve to the right having a central angle of 13°44'23", a radius of 1445.00 feet, a chord bearing and distance of North 26°04'56" West, 345.69 feet;

In a northwesterly direction, with said curve to the right, an arc distance of 346.52 feet to a point for corner;

North 19°12'44" West, a distance of 400.66 feet to a point for corner;

North 26°10'43" East, a distance of 35.11 feet to the **POINT OF BEGINNING** and containing 48.68 acres of land.