CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY
☐ Consent ☐ Regular ☐ Statutory

Council Meeting Date:	May 23, 2011
Department:	Legal
Department Head	Diane Wetherbee
Agenda Coordinator (include phone #):	**Betsy Allen # 7545**

CAPTION

A Resolution of the City Council of the City of Plano, Texas, approving the settlement agreement between the City of Plano and the United States of America, acting through the United States Department of Justice regarding a dispute concerning ambulance billing for Medicare/Medicaid reimbursement; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☒ OPERATING EXPENSE ☐ REVENUE ☐ CIP

FISCAL YEAR: **2010-11**	**Prior Year (CIP Only)**	**Current Year**	**Future Years**	**TOTALS**
Budget	0	0	0	**0**
Encumbered/Expended Amount	0	0	0	**0**
This Item	0	-433,263	0	**-433,263**
BALANCE	0	-433,263	0	**-433,263**

FUND(S): GENERAL FUND

COMMENTS: This item is for the settlement agreement between the City of Plano and the United States of America, acting through the United States Department of Justice regarding a dispute concerning ambulance billing for Medicare/Medicaid reimbursement. There is a companion supplement appropriation agenda item in the same amount, $433,263.

STRATEGIC PLAN GOAL: This settlement agreement relates to the City's Goal of Financially Strong City with Service Excellence.

SUMMARY OF ITEM

This Resolution approves the settlement of a dispute concerning ambulance billing for Medicare/Medicaid reimbursement that was performed by the City's service provider Southewest General Services. In order to avoid further expense and the potential for greater liability that may arise from a trial, the settlement of this dispute is in the City's best interest.

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
Settlement Agreement	

A Resolution of the City Council of the City of Plano, Texas, approving the settlement agreement between the City of Plano and the United States of America, acting through the United States Department of Justice regarding a dispute concerning ambulance billing for Medicare/Medicaid reimbursement; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

WHEREAS, the United States of America, acting through the Department of Justice, has notified Plano of a claim regarding inappropriate coding for Medicare/Medicaid reimbursement in conjunction with Plano's ambulance billing; and

WHEREAS, the parties agreed to settle this dispute for the amount of **FOUR HUNDRED THIRTY THREE THOUSAND TWO HUNDRED SIXTY TWO AND 60/100 DOLLARS ($433,262.60)** in accordance with the terms of a Settlement Agreement attached hereto as Exhibit "A" and other good and valuable consideration subject to the approval of the City Council; and

WHEREAS, the City Council of the City of Plano hereby finds that it is in the public interest to accept the terms of the Settlement Agreement and that the City Manager or his authorized designee shall be authorized to execute any and all documents necessary to consummate the settlement.

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

Section I. The City Council approves the settlement of this dispute in the amount of **FOUR HUNDRED THIRTY THREE THOUSAND TWO HUNDRED SIXTY TWO AND 60/100 DOLLARS ($433,262.60)** pursuant to the terms and conditions of the attached Settlement Agreement.

Section II. The City Manager or his authorized designee is hereby authorized to execute any and all documents necessary to consummate the settlement.

Section III. This Resolution shall become effective immediately after its passage.

DULY PASSED AND APPROVED this the 23rd day of May, 2011.

_____
Phil Dyer, MAYOR

ATTEST:

_____
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement (Agreement) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General of the United States Department of Health and Human Services (OIG-HHS) (collectively the "United States"); the Texas Attorney General's Office and the Texas Health and Human Services Commission (HHSC) (collectively "Texas"); Douglas Moore (Relator); and the City of Plano (Plano) (hereafter referred to as "the Parties"), through their authorized representatives.

II. RECITALS

As a preamble to this Agreement, the Parties agree to the following:

A. Plano is a home-rule Texas municipal corporation with principal offices located in Collin County, Texas. At all times relevant to this Agreement, Plano offered a 911-dispatch service for emergency ambulance transportation to persons within the city-limits. At all times relevant to this Agreement, 911 transports were staffed by paramedics within its Fire Department. At all times relevant to this Agreement, Plano contracted with Southwest General Services of Dallas L.L.C. (SWGS) to appropriately code ambulance services and submit bill claims for reimbursement to various payors, including federal health care programs in compliance with the law. At all times relevant to this Agreement, SWGS coded 911-dispatched ambulance transports at the advance life support (ALS) level, regardless of patient condition at the time of transport or whether any ALS-type

service was rendered. At all times relevant to this Agreement, Plano's Medicare fiscal intermediary was Trailblazer Health Enterprises, LLC, and its Medicare provider number was 50-****. At all relevant times, Plano's Texas Medicaid contractor was Texas Medicaid Healthcare Partnership, and its Medicaid provider number was 088****-**. At all times relevant to this Agreement, Plano participated in and caused SWGS to submit claims on behalf of Plano to the Medicare Program (Medicare), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1, and Texas Medicaid Program (Medicaid), Chapter 32 of the Texas Human Resources Code.

B. Relator Douglas Moore is a resident of Texas. On February 5, 2010, Relator filed a *qui tam* suit against 25 separate municipalities, including Plano in the United States District Court for the Northern District of Texas captioned *United States ex rel. Moore v. City of Addison, et al.*; No. 3:10-cv-0233-O (Civil Action). The Civil Action alleges that since at least January 1, 2006, until present, Plano and SWGS knowingly defrauded the Medicare and Texas Medicaid programs by billing for ALS ambulance services for city-dispatched 911 calls, regardless of whether the patient's medical condition justified the ALS claim, or whether an ALS service was furnished. Relator alleges that in certain cases the service should have been appropriately coded at the basic life support (BLS) level, which is reimbursed at a lower rate by both Medicare and Medicaid. The Civil Action alleges that both Plano and SWGS defrauded those programs by systematically seeking and being paid for upcoded ambulance transports.

C. The United States and Texas contend that they have certain civil claims against Plano for knowingly defrauding the Medicare and Texas Medicaid programs by causing the submission of false claims for certain ambulance transports between January 1, 2006, and May 31, 2010. The United States and Texas contend Plano failed to adequately supervise SWGS' coding and submission of ALS claims to the Medicare and Texas Medicaid programs. The United States and Texas contend that Plano, as a result, caused fraudulent claims submitted to both programs to be improperly coded as ALS, which indicate that an ALS-type service was furnished by the paramedics, and/or that the patient's condition necessitated an ALS intervention. The United States and Texas thus believe that Plano, between January 1, 2006, and May 31, 2010, caused to be submitted for payment claims falsely representing to Medicare and Texas Medicaid that ALS services were appropriate and furnished by Plano personnel when in fact no ALS-service was rendered and/or the patient did not require an ALS transport. All of the conduct described in this Paragraph II.C. is hereinafter referred to as the "Covered Conduct."

D. This Agreement is neither an admission of liability by Plano, nor a concession by the United States and Texas that their claims are not well founded. Plano denies all such claims against it described as Covered Conduct.

E. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to Relator's reasonable expenses, attorneys' fees and costs.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties reach a full and final settlement pursuant to the Terms and Conditions below.

III. TERMS AND CONDITIONS

1. Plano agrees to pay to the United States and Texas $433,262.60 (Settlement Amount) by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney for the Northern District of Texas no later than the Effective Date of this Agreement.

2. Conditioned upon the United States receiving the Settlement Amount from Plano and as soon as feasible after receipt, the United States and Texas agree to pay a share to Relator by electronic funds transfer pursuant to written instructions to be provided by Relator.

3. Subject to the exceptions in Paragraph 8 (concerning excluded claims) below, and conditioned upon Plano's full payment of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release Plano from any civil or administrative monetary claim the United States has or may have under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a, or the common law theories of payment by mistake, unjust enrichment, and fraud, for the Covered Conduct only.

4. Subject to the exceptions in Paragraph 8 (concerning excluded claims) below, and conditioned upon Plano's full payment of the Settlement Amount, Texas (on behalf of itself, its officers, agents, agencies, and departments) releases Plano from any civil or administrative claim, monetary or otherwise, including, but not limited to, claims for suspension or revocation of Plano's provider agreement, recovery of fees, expenses, or attorney's fees incurred by the Texas Attorney General or the HHSC in investigating the Covered Conduct, or other administrative remedies Texas may have for the Covered Conduct under the Texas Medicaid Fraud Prevention Act, Tex Hum. Res. Code Ann. § 36.001 et seq.; or common law theories of payment by mistake, unjust enrichment, fraud, or in equity, for the Covered Conduct only.

5. Subject to the exceptions in Paragraph 8 below, and conditioned upon Plano's full payment of the Settlement Amount, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, agrees to release Plano from any civil monetary claim the Relator has on behalf of the United States and Texas for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

6. OIG-HHS expressly reserves all rights to institute, direct, or to maintain any administrative action seeking exclusion against Plano from Medicare, Medicaid, and all other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) under 42 U.S.C. § 1320a-7(a) (mandatory exclusion), or 42 U.S.C. § 1320a-7(b) or 42 U.S.C. § 1320a-71 (permissive exclusion).

7. HHSC expressly reserves all rights to comply with any statutory obligations to exclude Plano from Medicaid, under Chapter 32 and/or Chapter 36 of the Texas Human Resources Code and Chapter 531 of the Texas Government Code, based upon the Covered Conduct. Nothing in this Paragraph precludes the HHSC from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 8 below. Plano reserves and does not waive any right to appeal such action.

8. Notwithstanding the releases given in Paragraphs III.3 - 7. of this Agreement, or any other term of this Agreement, the following claims of the United States and Texas are specifically reserved and are not released:

a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);

b. Any criminal liability;

c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs or debarment;

d. Any liability to the United States, Texas, (or their agencies) for any conduct other than the Covered Conduct;

e. Any liability based upon such obligations as are created by this Agreement;

f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;

g. Any liability for failure to deliver goods or services due;

h. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct;

i. Except as explicitly stated in this Agreement, any liability of individuals, including officers and employees.

9. Relator and his heirs, successors, attorneys, agents, and assigns agree not to object to this Agreement and agree and confirm that this Agreement is fair, adequate, and reasonable under all circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Conditioned upon Relator's receipt of the payment described in Paragraph 2, Relator, for himself individually, and for his heirs, successors, agents and assigns, fully and finally releases, waives, and forever discharges the United States and Texas, their officers, agents, and employees, from any claims arising from or relating to 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or Civil Action as to Plano only.

10. Conditioned upon Plano's full payment of the Settlement Amount, Relator, for himself, and for his heirs, successors, attorneys, agents, and assigns, releases Plano, and its officers, agents, and employees, from any liability to Relator arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs or the Texas Medicaid Fraud Prevention Act, Tex Hum. Res. Code Ann. §

36.001 et seq. Nothing contained herein shall release SWGS or any other defendant from any claims Relator, his heirs, successors, attorneys, agents, and assigns, or the United States or Texas have or may have against SWGS or any other defendant under the False Claims Act, 31 U.S.C. §§ 3729-3733, and the Texas Medicaid Fraud Prevention Act, Tex Hum. Res. Code Ann. § 36.001 et seq.

11. Plano waives and shall not assert any defense Plano may have to any criminal prosecution or administrative action relating to the Covered Conduct, that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Plano reserves all other defenses regarding such a criminal prosecution or administrative action. Nothing in this Paragraph or any other provision of this Agreement constitutes an agreement by the United States or Texas concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

12. Plano fully and finally release the United States, Texas, and their agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) which they have asserted, could have asserted, or may assert in the future against the United States, Texas, or their agencies, employees, servants, and agents, related to the Covered Conduct and the United States' or Texas' investigation and prosecution thereof.

13. Plano fully and finally release the Relator and his heirs successors, attorneys, assigns, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) which they have asserted, could have asserted, or may assert in the future against Relator related to the Covered Conduct and his investigation and prosecution thereof, or the filing of the Civil Action.

14. Relator, for himself, his heirs, successors, attorneys, agents and assigns, releases Plano from any claims (including attorney fees and costs, and expenses of every kind and however denominated) which they could have asserted, or may assert in the future against Plano related to the Covered Conduct and his investigation and prosecution thereof, or the filing of the Civil Action conditioned upon Plano's payment described in Paragraph 1.

15. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare carrier or intermediary, or any state payer, related to the Covered Conduct; and Plano agrees not to resubmit to any Medicare carrier or intermediary or contractor or any state payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

16. Plano agrees to the following:

a. Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47, and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk and 1396-1396W-5, and the regulations and

official program directives promulgated thereunder) incurred by or on behalf of Plano in connection with the following shall be "unallowable costs" on government contracts and under the Medicare Program, Medicaid Program, Tricare Program, and FEHBP:

(1) the matters covered by this Agreement,

(2) the United States' or Texas' audit(s) and civil investigation(s) of the matters covered by this Agreement,

(3) Plano's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees),

(4) the negotiation and performance of this Agreement, and

(5) the payments Plano makes to the United States, Texas or Relator pursuant to this Agreement.

All costs described or set forth in this Paragraph 16.a. are hereafter, "unallowable costs."

b. Future Treatment of Unallowable Costs: These unallowable costs shall be separately determined and accounted for in non-reimbursable cost centers by Plano and Plano shall not charge such unallowable costs directly or indirectly to any contracts with the United States, Texas or any state Medicaid program, or seek payment for such unallowable costs through any cost report, cost statement, information statement, or payment request submitted by Plano to the Medicare, Medicaid, Tricare, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: If applicable, Plano further agrees that within 90 days of the Effective Date of this Agreement, Plano shall identify to applicable Medicare and Tricare fiscal intermediaries, carriers, and/or contractors, and Medicaid, VA, and FEHBP fiscal agents, any unallowable costs (as defined in this Paragraph) included in payments previously sought from the United States, Texas or any state Medicaid Program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Plano, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the unallowable costs. Plano agrees that the United States and Texas, at a minimum, shall be entitled to recoup from Plano any overpayment plus applicable interest and penalties as a result of the inclusion of such unallowable costs on previously-submitted cost reports, information reports, cost statements, or requests for payment. Any payments due after the adjustments have been made shall be paid to the United States and Texas pursuant to the direction of the Department of Justice, and/or the affected agencies. The United States and Texas reserve their right to disagree with any calculations submitted by Plano on the effect of inclusion of unallowable costs (as defined in this Paragraph) on Plano's cost reports, cost statements, or information reports.

d. Nothing in this Agreement shall constitute a waiver of the rights of the United States or Texas to audit, examine, or re-examine Plano's books and records to

determine that no unallowable costs have been claimed in accordance with the provisions of this Paragraph.

17. This Agreement is intended to be for the benefit of the Parties, only. The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraph 18 (waiver of beneficiaries paragraph) below.

18. Plano waives and shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors based upon the claims defined as Covered Conduct.

19. Plano warrants that it has reviewed its financial situation and that it is currently solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall remain solvent following payment to the United States and Texas of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they: (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Plano, within the meaning of 11 U.S.C. § 547(c)(1); and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value which is not intended to hinder, delay, or defraud any entity

to which Plano was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

20. Except as expressly provided to the contrary in this Agreement, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

21. Each party and signatory to this Agreement represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

22. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement shall be the United States District Court for the Northern District of Texas, Plano Division.

23. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

24. Upon receipt of the payment described in Paragraph III.1., above, the United States, Texas, and Relator shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal with prejudice of the Civil Action pursuant to Rule 41(a)(1).

25. The individuals signing this Agreement on behalf of Plano represent and warrant that they are authorized by Plano to execute this Agreement. The individuals signing this Agreement on behalf of Relator represent and warrant that they are authorized by Relator to execute this Agreement. The United States and Texas

signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

26. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

27. This Agreement is binding on Plano's successors, transferees, and assigns.

28. This Agreement is binding on Relator's successors, transferees, heirs, and assigns

29. All Parties consent to the United States', Texas', Relator's and Plano's disclosure of this Agreement, and information about this Agreement, to the public.

30. This Agreement is effective on the date of signature of the last signatory to the Agreement ("Effective Date" of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

ON BEHALF OF THE UNITED STATES OF AMERICA

DATED:_____ BY: _____

Sean R. McKenna
Assistant United States Attorney
Northern District of Texas

DATED:_____ BY: _____

Gregory E. Demske
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
U.S. Department of Health and Human Services

ON BEHALF OF THE STATE OF TEXAS

DATED:_____ BY: _____
Ray Winter
Office of the Attorney General of Texas

DATED:_____ BY: _____
Thomas Suehs
Executive Commissioner
Health and Human Services Commission

ON BEHALF OF THE CITY OF PLANO

DATED:_____ BY: _____
Bruce D. Glasscock
Plano City Manger

DATED:_____ BY: _____
Diane C. Weatherbee, Esq. (as to form only)

City Attorney for Plano

DOUGLAS MOORE - RELATOR

DATED:_____ BY: _____
Douglas Moore
Relator

DATED:_____ BY: _____
Dave Haron, Esq. (as to form only)
Frank, Haron, Weiner & Navarro

Counsel for Relator