



**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:	10/11/10
Department:	Parks and Recreation
Department Head	Amy Fortenberry
Agenda Coordinator (include phone #): <b>Susan Berger (7255)</b>	

**CAPTION**

A Resolution of the City of Plano, Texas approving the terms and conditions of an agreement by and between the City of Plano and Maurice Barnett Geriatric Wellness Center, Inc., for administration of the senior transportation program; and authorizing its execution by the City Manager or his designee; and providing an effective date.

**FINANCIAL SUMMARY**

NOT APPLICABLE       OPERATING EXPENSE       REVENUE       CIP

FISCAL YEAR: <b>2010-11</b>	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	60,000	0	<b>60,000</b>
Encumbered/Expended Amount	0	0	0	<b>0</b>
This Item	0	-25,000	0	<b>-25,000</b>
<b>BALANCE</b>	0	35,000	0	<b>35,000</b>

**FUND(S):      GENERAL FUND**

**COMMENTS:** Funds are available from an agreement signed into effect September 2010 with Dallas Area Rapid Transit to provide funds for the Senior Transportation Agreement. The programs will be administered by Maurice Barnett Geriatric Wellness Center Inc. The remaining balance will be used for contractual expenditures related to the program.

**STRATEGIC PLAN GOAL:** Administration of the Senior Transportation Program relates to the City's Goal of a "Financially Strong City with Service Excellence."

**SUMMARY OF ITEM**

Approval is recommended for the terms and conditions set forth in the agreement between the City of Plano, Texas, and Maurice Barnett Geriatric Wellness Center for administration of the Senior Transportation Program. The agreement is for a two (2) year period beginning as of the effective date of this agreement with the City. This program will service those Plano seniors 65 and older who are unable to access transportation through personal means or public/private services. This service will allow trips to businesses, grocery stores and medical services in Plano by means of a cab voucher program. Maurice Barnett Geriatric Wellness Center has administered this program for the last two years.

Additionally, the Maurice Barnett Geriatric Wellness Center will provide insurance.



**CITY OF PLANO  
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List of Supporting Documents: Agreement	Other Departments, Boards, Commissions or Agencies

**A Resolution of the City of Plano, Texas approving the terms and conditions of an agreement by and between the City of Plano and Maurice Barnett Geriatric Wellness Center, Inc., for administration of the senior transportation program; and authorizing its execution by the City Manager or his designee; and providing an effective date.**

**WHEREAS**, the City Council has been presented a proposed Agreement by and between City of Plano and Maurice Barnett Geriatric Wellness Center, Inc., a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (herein called "Agreement"); and,

**WHEREAS**, upon full review and consideration of the Agreement, and all matters attendance 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 designee, shall be authorized to execute it on behalf of the City of Plano;

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

**Section I.** The terms and conditions of the Agreement, having been reviewed by the City Council of the City of Plano 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 designee is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreement.

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

**DULY PASSED AND APPROVED** this the 11<sup>th</sup> day of October, 2010.

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Phil Dyer, MAYOR

ATTEST:

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Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

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Diane C. Wetherbee, CITY ATTORNEY

**FUNDING AGREEMENT BETWEEN CITY OF PLANO  
AND  
MAURICE BARNETT GERIATRIC WELLNESS CENTER, INC.**

The **CITY OF PLANO**, a Texas home rule municipal corporation (hereinafter referred to as "City"), and **MAURICE BARNETT GERIATRIC WELLNESS CENTER, INC.**, a Texas non-profit corporation, acting herein through its duly authorized representative (hereinafter referred to as "Contractor"), enter into this funding agreement for Administration of the Senior Transportation Program entitled Senior Rides Program.

**WHEREAS**, the City Council finds that the expenditure of public funds to Contractor is in the best interest of the residents and the City of Plano; and

**WHEREAS**, the City Council finds that expending public funds for the purpose stated above is a valid public purpose; and

**WHEREAS**, the City Council finds that the City should expend the sum of \$25,000 per year for two years for the purposes outlined in the specifications attached hereto as **Exhibit A** (the "Specifications") provided that funds are available as set forth in the Senior Citizen Transportation Funding Agreement between the City and Dallas Area Rapid Transit (the "DART Agreement") and attached hereto as **Exhibit B**.

**WHEREAS**, Contractor has established itself as having the ability to perform such activities.

**NOW, THEREFORE**, for and in consideration of the covenants, obligations, and undertakings of each of the respective parties to the Agreement, the parties hereby agree as follows:

**SECTION I  
PURPOSES/CONSIDERATION; PRIORITY OF DOCUMENTS**

**1.01 Purpose/Consideration.**

This Agreement provides the terms and conditions under which City will make available the sum of \$25,000 for the first year and distribute funds the second year as outlined in the DART Agreement, for use to support the activities outlined in the Specifications. The City's sole source of funding for this contract is provided by DART pursuant to the DART Agreement. Contractor agrees to accept responsibility for guaranteeing City grant funds are used solely for the items in **Exhibit A**. In consideration of the City of Plano providing the funding specified for the 2010-11 and 2011-12 fiscal years, Contractor shall abide by the terms and conditions of this Agreement.

**1.02 Priority of Documents.**

This Agreement and its Exhibits are complementary, and what is called for by one shall be binding as if called for by all. In the event of inconsistency in any provisions of the documents, the inconsistency shall be resolved by giving precedence to the documents in the following order: This Agreement, Exhibit A, Exhibit B, Exhibit C, Exhibit D, Exhibit E.

**SECTION II  
PERMITTED USES OF FUNDS; CONDITIONS OF USE**

**2.01** Contractor shall use any and all funds furnished by City under this Agreement for the purposes outlined in **Exhibit A**.

1. Subsequent to the initial contract submittal, should the Contractor wish to utilize funds for a purpose other than those stated in **Exhibit A**, the Contractor must submit an additional amended Line Item Budget of Approved Expenditures and request approval from the Contractor's Board, and City Manager. No change may occur unless:

- a. Approved by Contractor's Board, as evidenced by the official minutes of the Board authorizing the change; and
- b. Approved by the City Manager

Contractor cannot expend any funds for a purpose not listed in the funding application until receipt of written approval from the City Manager or his designee.

**2.02** All expenditures of City funds must comply with the Agreement and attachments hereto. Agreement compliance is defined as:

1. At least 90% of expenses budgeted in each category of the Proposal and funded by City monies must be spent in that category;
2. Contractor must meet all other conditions of this Agreement.

**2.03** Contractor agrees to the general conditions of the grant as set forth in the attachment entitled "General Conditions of Contract" (hereinafter referred to as the "General Conditions"), which is attached hereto and incorporated herein for all purposes as **Exhibit C**.

**2.04** Unexpended and unencumbered City funds that remain with the Contractor after September 30, 2010, will revert to the City.

### **SECTION III NON-ASSIGNMENT**

**3.01** Contractor may not assign any interest in this Agreement, whether in whole or part, without prior approval of the City Council, as reflected by a duly authorized resolution.

### **SECTION IV INDEPENDENT CONTRACTOR**

**4.01** The City enters into this Agreement with Contractor for the purposes enumerated in Section I. Contractor asserts and agrees that Contractor is an independent contractor and not an officer, agent, servant or employee of the City. Contractor has exclusive control over the details of the activity, and is responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants. The doctrine of respondeat superior does not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors and consultants. Further, this agreement does not create a partnership or joint enterprise between City and Contractor.

**SECTION V  
DISBURSEMENT OF FUNDS**

**5.01** The City will disburse funds provided under this Agreement by or near October 15, 2010 and then quarterly beginning October 2011 as funding is available per the DART Agreement.

**5.02** Expenses incurred after the termination date will not be reimbursed under this Agreement and the City shall assume no liability for same.

**5.03** Failure to comply with the reporting requirements as outlined in Section 5.07 of this agreement below, including submittal of an executed certificate of compliance, shall result in funds being withheld from disbursement to the Contractor until a properly prepared report is submitted to the City as required.

**5.04** Failure to submit a revised Line Item Budget as required in Section II of this agreement when applicable shall result in funds being withheld from disbursement to the Contractor until it is submitted to the City.

**5.05** Failure to submit an Employee Dishonesty Bond as required in Section VII of this agreement when applicable shall result in funds being withheld from disbursement to the Contractor until it is submitted to the City as required.

**5.06** Contractor recognizes that this Contract shall commence upon the effective date herein and continue in full force and effect until termination in accordance with its provisions. Contractor and City herein recognize that the continuation of any contract after the close of any given fiscal year of the City of Plano, which fiscal year ends on September 30<sup>th</sup> of each year, shall be subject to Plano City Council approval. In the event that the Plano City Council does not approve the appropriation of funds for this contract, the Contract shall terminate at the end of the fiscal year for which funds were appropriated and the parties shall have no further obligations hereunder.

**5.07 Reporting Requirements.**

Within twenty (20) days of the close of each quarter of the contract term, Contractor agrees to provide financial statements to the Contract Administrator sufficiently describing the expenditure of funds provided by the City to be compared against the line item budget as submitted in the Proposal, as well as a description of program goals achieved and/or progress of same for the preceding quarter. These reports shall contain a Certificate of Compliance with notarized signatures of two members of Contractor's executive board or, in the alternative, one member of Contractor's executive board and the executive director. Reports submitted without required notarized signatures will be rejected and considered incomplete.

At the end of the Contract Term or in the event of earlier termination, Contractor shall provide a final written report of its activities and expenditures to the Contract Administrator.

**SECTION VI  
AFFIDAVIT OF NO PROHIBITED INTEREST**

**6.01** Contractor acknowledges and represents it is aware of all applicable laws, the City Charter, and the City Code of Conduct regarding prohibited interests, and that the existence of a prohibited interest at any time will render the Contract voidable. At the time of signing this Agreement, a representative of Contractor shall execute the Affidavit of No Prohibited Interest attached and incorporated herein as **Exhibit D.**

**SECTION VII  
INSURANCE REQUIREMENTS/INDEMNIFICATION****7.01 Insurance.**

At its own expense, Contractor agrees to maintain during the term of this Agreement, or any extension thereof, insurance in the type and amounts as shown in **Exhibit E.** Additionally,

this insurance must specifically cover any and all activities occurring on City property, including those activities of Contractor's employees, volunteers, vendors, contractors, or subcontractors. Contractor must provide proof of this insurance to the Contract Administrator within ten (10) days of execution of this Agreement. A properly executed certificate of insurance issued by Contractor's insurance agency is sufficient proof of insurance. Contractor must maintain a current copy of the certificate(s) and provide proof of its current insurance to City throughout the entire term of this Contract.

**7.02 Employee Dishonesty Bond Requirement Applicable to Contractors Receiving Funds of \$75,000.00 or greater**

At its own expense, a Contractor receiving funds in the amount of \$75,000.00 or more agrees to maintain during the term of this Agreement, or any extension thereof, an Employee Dishonesty Bond (EDB) in an amount equal to the total dollar amount awarded to Contractor by the City as defined in the grant agreement. A copy of proof of EDB, if applicable, shall be attached to the funding agreement as an additional attachment to **Exhibit F**. Bonds shall be placed with insurers with an A.M. Best rating of no less than A:VI or a Standard & Poors rating of A or better.

Bonds shall be made payable to the City of Plano and shall be maintained by Contractor throughout the contract period. Contractor must provide proof of this EDB to the Contract Administrator within ten (10) days of execution of this Agreement. A properly executed bond certificate issued by Contractor's insurance agency is sufficient proof of EDB. Contractor must maintain a current copy of the certificate(s) and provide proof of its current EDB to City throughout the entire term of this Contract. Failure to provide proof of the EDB shall result in the City withholding disbursement of funds to the Contractor until proof is provided as required under this Agreement.

**7.03 Indemnification.**

**THE CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS**

**AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONTRACTOR'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE CONTRACTOR IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS. THE CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.**

**CONTRACTOR AT ITS OWN EXPENSE IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF CONTRACTOR'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF CONTRACTOR'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. CONTRACTOR SHALL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF CONTRACTOR FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND CONTRACTOR SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY.**

#### **SECTION VIII TERM**

**8.01** The term of this Agreement is October 1, 2010, through September 30, 2012 subject to funding by DART pursuant to the terms of the DART Agreement. At the expiration of this Agreement, the Contractor shall have the continuing obligation to complete any unfulfilled terms and conditions of this Agreement, including the submission of a final written report to the City and any other requested written documentation verifying Contractor's compliance with the terms of this Agreement.

## SECTION IX TERMINATION

**9.01** Each party shall have the right to an early termination of this Agreement by giving the other party written notice thirty (30) days before the desired early termination date. After a notice of early termination, Contractor may use City funds only for costs incurred before the notice of termination date. Contractor, however, must return to the City the unused balance of any funds disbursed to the Contractor pursuant to this Agreement within ten (10) days of either an early termination or at the end of the Agreement term.

**9.02** In the event Contractor breaches any of the terms or conditions of this Agreement, whether in whole or part, the City may immediately terminate this Agreement by providing written notice to the Contractor, notwithstanding any other provision. Contractor is solely responsible for funds expended contrary to the terms and conditions of this Agreement, and must return the City funds within ten (10) days of the termination.

## SECTION X MISCELLANEOUS

### **10.01 Entire Agreement.**

This Agreement and its attachments constitute the entire agreement between the parties. The parties may only modify, amend, or supplement this Agreement through a written instrument executed by both parties.

### **10.02 Authority**

The undersigned represents and warrants that he or she is the duly authorized representative of the Contractor, and that the Board of Trustees (or equivalent) of the Contractor has approved and accepted this Agreement by Board resolution. Contractor at all times shall maintain a copy of the Board resolution for submission to City upon request.

This Agreement does not become binding on the City of Plano until both the Contractor and the City Manager or his designee have executed it.

**10.03 Successors and Assigns**

This Contract is binding upon the parties hereto, their successors, heirs, personal representatives and assigns.

**10.04 Notice.**

Any Notice, Reports or Documents required to be provided by this Agreement shall be in writing and delivered to the parties as follows:

City – Contract Administrator  
Parks and Recreation Department  
Attention: Colette Hall  
1409 Avenue K  
Plano, Texas

Contractor  
Maurice Barnett Geriatric Wellness Center, Inc.,  
Attention: Carolyn Rice  
401 West 16<sup>th</sup> Street, Suite 600  
Plano, Texas 75075

**10.05 Paragraph Headings.**

The paragraph headings contained herein are for convenience only and do not define or limit the scope of any provisions in this Agreement.

**10.06 Interpretation of Contract.**

Although this Agreement is drafted by the City, should any part be in dispute, the parties agree that the Agreement shall not be construed more favorably for either party.

**10.07 Venue.**

The parties agree that the laws of the State of Texas govern this Agreement, and which is performable in Collin County, Texas. In the event of breach of this Agreement, venue for all causes of action shall exclusively lie in Collin County, Texas.

Signed this the 29 day of Sept, 2010.

**MAURICE BARNETT GERIATRIC WELLNESS  
CENTER, INC.**

BY:   
Jim Strozewski  
BOARD CHAIR

**CITY OF PLANO, TEXAS**

BY: \_\_\_\_\_  
Thomas H. Muehlenbeck  
CITY MANAGER

APPROVED AS TO FORM:

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

ACKNOWLEDGMENTS

STATE OF TEXAS

COUNTY OF Collin)

This instrument was acknowledged before me on the 29 day of September, 2010 by **JIM STROZEWSKI**, Board Chair of **Maurice Barnett Geriatric Wellness Center, Inc.**, a non-profit corporation, on behalf of said corporation.

Brenda Richardson

Notary Public in and for the State of Texas

STATE OF TEXAS

COUNTY OF COLLIN )

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

\_\_\_\_\_  
Notary Public in and for the State of Texas

**EXHIBIT A**

**SPECIFICATIONS FOR PLANO SENIOR RIDES PROGRAM**

Plano Senior Rides Program is a transportation program for Plano senior citizens 65 and older to be run as a taxi cab voucher program.

Administer Plano Senior Rides including but not limited to the following:

- along with the City of Plano staff, set the parameters and rules of the program
- become the point of contact for the program
- all advertising and marketing
- determine with the City of Plano the eligibility requirements of participants
- receive invoice, used vouchers and taxi destination logs to check for accuracy
- sell taxi coupon booklets and deposit money daily with the Senior Center
- submit an approved formatted quarterly report no later than twenty (20) business days from the first of the quarter.
- use only the taxi company approved by the city
- any changes must be discussed with the City of Plano staff

EXHIBIT B

## SENIOR CITIZEN TRANSPORTATION FUNDING AGREEMENT

Between

DALLAS AREA RAPID TRANSIT

And

CITY OF PLANO

THIS SENIOR CITIZEN TRANSPORTATION FUNDING AGREEMENT, (the "Agreement") is by and between DALLAS AREA RAPID TRANSIT ("DART"), a regional transportation authority organized and existing pursuant to Chapter 452, Texas Transportation Code and the CITY OF PLANO, TEXAS ("the CITY"), acting by and through their respective representatives.

**WITNESSETH:**

WHEREAS, the CITY desires to provide enhanced transportation services to senior citizens (age 65 and older) serving various residential, commercial and other locations within its boundaries, and serving other various locations where medical services are provided during the Term of this Agreement and in advance of the opening of DART's Northwest Park and Ride facility located at the North Dallas Tollway north of Spring Creek Parkway (the "Service"); and,

WHEREAS, the CITY has requested financial participation from DART in order to implement the Service; and,

WHEREAS, DART analysis predicts the attraction of new riders to the DART transit system through provision of such Service; and

WHEREAS, DART desires to cooperate with the CITY by providing funding to support the Service.

NOW THEREFORE, in consideration of the mutual promises contained in this Agreement and other valuable consideration, the sufficiency and receipt of which are acknowledged, the parties agree as follows:

**1. City Responsibilities**

1.01. The CITY shall be responsible for all aspects of the Service, including but not limited to the development, design, implementation, operation, management, administration and promotion of the Service and the eligibility criteria for use of the Service.

1.02. The CITY shall make information about the Service and the eligibility criteria available to the public and shall acknowledge DART's participation in funding the Service in all advertising and promotion of the Service.

1.03. The CITY shall maintain records related to the Service, including records of all costs and expenses related to providing the Service along with ridership information, and shall make such information available to DART upon reasonable request.

1.04. The CITY shall be responsible for receiving and responding to all customer communications and complaints related to the Service. DART shall not be responsible for handling or resolving any customer communication or complaint related to the Service.

1.05. The CITY shall at all times be responsible for the safe operation of the Service and the protection of the passengers.

1.06. The CITY shall secure or cause to be secured all permits and other governmental authorizations which may be required to provide the Service.

1.07. The CITY, its agents, employees and contractors shall abide by and be governed by all laws, ordinances and regulations of any and all governmental entities having jurisdiction over the Service.

1.08. For the period beginning on October 1, 2011 and ending on the opening date of DART's Northwest Park and Ride facility or September 30, 2012, whichever is earlier, the City shall prepare and forward to DART an invoice once each quarter that itemizes the actual costs for providing the Service, including costs for administration of the Service.

1.09. If the CITY discontinues or otherwise fails to provide the Service during the Term of this agreement, the CITY shall promptly provide Notice to DART and shall promptly return to DART a pro-rata portion of the funding received from DART under this Agreement based on the length of time that the service was not provided as required under this Agreement.

1.10. Within 60 days following the end of the Term of this Agreement, the CITY shall return to DART any funds paid by DART to the CITY under this agreement that were not expended for the Service.

## **2. DART Responsibilities.**

2.01 DART shall make a one-time payment in the amount of \$50,000 to the CITY no later than 30 days following execution of this Agreement by both parties.

2.02 DART Shall provide at least 30 days written notice to the City of the opening date of DART's Northwest Park and Ride facility.

2.03 Beginning on October 1, 2011 and ending on the opening date of DART's Northwest Park and Ride facility or September 30, 2012, whichever is earlier, DART shall pay to the City the amount invoiced for the actual costs for providing the Service, including costs for administration of the Service, but in no event shall DART be obligated to pay for Service provided after the opening of DART's Northwest Park and Ride facility. The total aggregate amount of payments under this paragraph shall not exceed \$50,000.

2.04. Upon receipt of the CITY's written request, DART shall provide to the City such DART logos, trademarks or service marks, whether registered or not, that may be required to carry out the terms of this Agreement.

**3. Term.** The Term of this Agreement shall begin on October 1, 2010 and shall end on September 30, 2012.

**4. Audit; Retention of Records.** DART, upon giving five (5) business days notice, shall have the right to request, at DART's expense, an audit of the CITY records reflecting the costs of providing the Service. The CITY shall retain adequate cost accounting records for auditing purposes for a period of three (3) years after the expiration of this Agreement.

**5. Indemnification.** The CITY shall, to the extent allowed by law, and without waiving the right to assert any defenses or immunities provided under state or federal law, defend, indemnify and hold DART, its Board, officers and employees, harmless from all loss, cost and expense by reason of injury (including death) to any person or damage to property, arising out of or from any accident or other occurrence in connection with the operation of the Service during the performance of this Agreement, which injury or damage results from negligence or willful misconduct on the part of the CITY, its agents, employees, or contractors. In the event of joint or concurring negligence or fault of the CITY and DART, responsibility and indemnity, if any, shall be apportioned comparatively in accordance with the law of the State of Texas. The provisions of this section are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity, nor limit the right of DART to assert any governmental immunity defense to any claim of such other party or entity and shall survive termination of this Agreement.

**6. Miscellaneous.**

**6.01. Assignment.** Neither party may assign this Agreement in whole or in part, without first obtaining the written consent of the other party.

**6.02. Notices.** Any notice by either party to the other shall be in writing and shall be deemed to have been duly given only if delivered personally or sent by United States mail, certified, return receipt requested, in a postage paid envelope addressed to the party at the address set out below:

DART:

DALLAS AREA RAPID TRANSIT  
P.O. Box 660163  
Dallas, Texas 75266-7210  
Attention: Vice President, Planning and Development

CITY:

THE CITY OF PLANO  
P.O. Box 860358

Plano, Texas 75086-0358  
Attention: Thomas H. Muehlenbeck, City Manager

Either party may designate another address by giving notice thereof to the other party.

**6.03. Binding Effect.** The provisions of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

**6.04. Headings.** The paragraph headings in this Agreement are intended for convenience only and shall not be taken into consideration in the construction or interpretation of this Agreement.

**6.05. Number and Gender.** Whenever used herein, unless the context otherwise provides, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all other genders.

**6.06. Partial Invalidity.** Any portion of this Agreement being declared by law to be invalid shall not invalidate the remaining provisions which shall remain in full force and effect.

**6.07. Merger and Amendment.** This instrument constitutes the entire agreement of the parties with respect to the matters contemplated herein and it may be modified or amended only in writing, approved and signed by all parties hereto.

**6.08. No Partnership or Joint Enterprise.** It is mutually understood and agreed that this Agreement is intended by the parties to establish only an independent contractual relationship and is not intended to create a partnership or joint venture.

**6.09. Use of Contractors.** Nothing in this agreement shall prevent the CITY from using a contractor or agent to perform the duties and responsibilities contemplated by this Agreement.

**6.10. Effective Date.** This Agreement shall be effective on the last date of execution of this Agreement.

**6.11. No Waiver.** Neither party shall be deemed, by any actor omission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by the waiving party, and then only to the extent specifically set forth in such writing. A waiver with reference to one event shall not be construed as continuing or as a bar to or waiver of any right or remedy as to a subsequent event.

{This space intentionally left blank – Signature page follows}

Executed this the \_\_\_\_ day of \_\_\_\_\_ 2010.

DALLAS AREA RAPID TRANSIT

By: \_\_\_\_\_  
Gary C. Thomas  
President/Executive Director

Executed this the \_\_\_\_ day of \_\_\_\_\_ 2010.

CITY OF PLANO

By: \_\_\_\_\_  
Thomas H. Muehlenbeck, City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
DIANE C. WETHERBEE  
City Attorney

**EXHIBIT C****GENERAL CONDITIONS OF AGREEMENT**

The Contractor agrees to the following general conditions:

- (1) The Contractor must provide reports of its activities as described in Section V, *Disbursement of Funds*, Paragraph 5.07, *Reporting Requirement*, of the Funding Agreement and as otherwise required by the Special Conditions of the Agreement on a format acceptable to the City. Disbursements may cease if reports are not submitted.
- (2) All of Contractor's procedures, records, and reports of programs and accounts shall be available for inspection by a duly authorized representative of the City. The materials shall be made available during regular business hours and not later than three (3) business days after request to do so. An independent audit of Contractor's financial records, paid for by Contractor, shall be furnished to the City upon request.
- (3) The Contractor agrees to on-site inspection of its facilities and/or programs by the City.
- (4) Improper use of funds provided by City may result in the termination of the Agreement, forfeiture of any outstanding monies to be provided by City, recovery of previous payments, recovery of bond payments, requirement for Contractor to provide an Employee Dishonesty Bond for future participation and/or disqualification of Contractor from future participation in grant programs offered or sponsored by or through City.
- (5) Programs, activities, employment opportunities, and other participatory events funded totally or partially by the City of Plano must be made available to all people regardless of race, color, religion, sex, age, national origin, disability, familial status, or political affiliation.
- (6) The Contractor and any person or organization it contracts with shall comply with all applicable laws, regulations, ordinances, and codes of the United States of America, the State of Texas, and the City of Plano.
- (7) The Contractor shall comply with all Federal, State and Local conflict of interest laws, statutes, and regulations; these laws shall apply to all parties and beneficiaries under this Agreement as well as to all officers, employees, and agents of City.
- (8) None of the funds, materials, property, or services provided directly under this Agreement shall be used for any partisan political activity, to further the election or defeat of any candidate for public office, or for publicity, lobbying and/or propaganda purposes designed to support or defeat legislation pending before the Congress of the United States of America, the Legislature of the State of Texas, the City Council of the City of Plano, or any other political body.
- (9) The City shall have the right to review any and all of Contractor's agreements and contracts prior to execution by the Contractor. City further has the right to require the modification, addition, or deletion of such terms and conditions in Contractor's agreements or contracts as it deems necessary to protect the City's interests.

- (10) For a non-profit corporation in existence for more than one (1) year at the time of the execution of this Agreement, Contractor agrees to provide a sworn statement attesting to the fact that the status of the Contractor is currently valid as a non-profit corporation. All corporations must be in good standing with the Texas Secretary of State.



**EXHIBIT E**

**INSURANCE**

Contractor shall procure and maintain for the duration of the grant agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the services performed or to be performed hereunder by the Contractor, its agents, representatives, employees, volunteers, officers, directors or sub-contractors.

The Contractor shall maintain insurance with limits not less than \$500,000 per occurrence, \$1,000,000 aggregate and will be as broad as ISO Form Number GL 0002 (Ed 1/72) covering Comprehensive General Liability and ISO Form Number GL 0404 covering Broad Form Comprehensive General Liability, or ISO Commercial General Liability coverage ("occurrence" form CG 0001). Coverage will include: A) Premises - Operations, B) Broad Form Contractual Liability, C) Broad Form Property Damage and D) Personal Injury.

The policy will be endorsed to contain the following provisions: The City, its officials, employees, volunteers, Boards and Commissions are to be added as "Additional Insureds" in respect to liability arising out of any activities performed by or on behalf of the Contractor. The policy shall contain no special limitations to the scope of coverage afforded to the City. The Contractor's insurance coverage shall be primary and any insurance or self-insurance shall be in excess of the Contractor's insurance and shall not contribute with it. Certificate must include a waiver of subrogation as regards the workers compensation policy.

Insurance shall be placed with insurers with an A.M. Best rating of no less than A:VI or a Standard & Poors rating of A or better.

The Contractor shall furnish the City with a certificate of insurance which shows the coverage provided. The insurance policy will be endorsed to state that coverage shall not be suspended, voided, canceled, non-renewed, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.