



**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:		2/22/2010			
Department:		Purchasing			
Department Head		Mike Ryan			
Agenda Coordinator (include phone #): <b>Sharron Mason x7247</b>					
<b>CAPTION</b>					
A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Agreement by and between Tony Picchioni and the City of Plano; authorizing its execution by the City Manager or his authorized designee; and providing an effective date. The term of this Agreement shall be an initial three (3) years with a City option to extend an additional three (3) additional one (1) year periods.					
<b>FINANCIAL SUMMARY</b>					
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	<b>2009-10, 2010-11, 2011-12, 2012-13</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget		0	205,064	146,015	<b>351,079</b>
Encumbered/Expended Amount		0	-87,589	0	<b>-87,589</b>
This Item		0	-29,203	-146,015	<b>-175,218</b>
BALANCE		0	88,272	0	<b>88,272</b>
<b>FUND(S):    GENERAL</b>					
<p><b>COMMENTS:</b> This item approves price quotes. Expenditures will be made in the Human Resources Department based on need within the approved budget appropriations for each year of the contract. The estimated annual amount to be spent in FY 2009-10 is \$29,203. The estimated future annual amounts (\$58,406 in FY 2010-11; \$58,406 in FY 2011-12; and \$29,203 in FY 2012-13) total \$146,015, which will be made within approved budget appropriations.</p> <p><b>STRATEGIC PLAN GOAL:</b> Providing consulting services for Human Resources Department relates to a "Financially Strong City with Service Excellence."</p>					
<b>SUMMARY OF ITEM</b>					
This Agreement is for professional consulting services by Tony Picchioni, which shall be coordinated through the Human Resources Director. The term of this agreement shall be an initial three (3) years with a City option to extend an additional three (3) additional one (1) year periods.					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		
Resolution and Agreement					

**A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Agreement by and between Tony Picchioni and the City of Plano; 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 agreement for Professional Consultant Services between Tony Picchioni, and the City of Plano, 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 Agreement, and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the City Manager or his authorized designee shall be authorized to execute it on behalf of the City of Plano.

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

**Section I.** The terms and conditions of the 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 authorized 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 immediately upon its passage.

**DULY PASSED AND APPROVED** this the 22nd day of February, 2010.

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

ATTEST:

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

APPROVED AS TO FORM:

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

**AN AGREEMENT BETWEEN THE CITY OF PLANO AND  
TONY PICCHIONI FOR PROFESSIONAL CONSULTANT SERVICES**

**THIS AGREEMENT** is made and entered by and between the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, hereinafter referred to as "City" and **TONY PICCHIONI**, of Plano, Texas, hereinafter referred to as "Professional" to be effective from and after the date of execution by City.

**WITNESSETH:**

**WHEREAS**, the City has identified a need for professional consultant services (hereinafter the "Project"); and

**WHEREAS**, City desires to engage the services of the Professional to assist in such Project and to render its services on the terms and conditions provided in this Agreement; and

**WHEREAS**, the Professional agrees to render its services to the City as provided herein;

**THEREFORE**, the City hereby engages the services of the Professional, and in consideration of the mutual promises herein contained, the parties agree as follows:

**I.  
TERM**

The term of this Contract shall be a period of three (3) years commencing upon the effective date hereof; provided however, that the City shall have the right and option to extend the term hereof by three (3) additional one (1) year periods by giving written notice to Professional of City's election to so extend the terms hereof, such notice to be given not more than sixty (60) days prior to the expiration of the initial term. The parties further agree that City may cancel and terminate this Contract without cause, upon ten (10) days written notice to Professional.

**II.  
SERVICES**

All services provided by the Professional shall be coordinated through the Human Resources Director or her designee as follows:

- informal resolution conferences
- mediation
- 40 hour Conflict Mediation (certificate program for the State of Texas)
- communication and skill building

- intervention with interpersonal conflict
- coaching and mentoring
- negotiation skills
- facilitation
- serve as Director and facilitator/instructor of the City's succession plan, the Management Preparation Program of Plano (MP<sup>3</sup>)
- facilitating the Dispute Resolution System
- monitor the mentoring program and provide training, guidance, and support for participants
- develop and conduct training classes through the Professional Development Center for conflict management, communication skills, interest based negotiations, third party facilitation, and other classes as requested

### III. COMPENSATION/EXPENSES

Professional shall provide sixty (60) hours of service at the **monthly rate of FOUR THOUSAND EIGHT HUNDRED SIXTY SEVEN AND 17/100 DOLLARS (\$4,867.17)** in connection with the Project. In consideration for the services to be rendered under this Agreement, including all expenses, Professional shall be paid a fee not to exceed **FIFTY EIGHT THOUSAND FOUR HUNDRED SIX AND NO/100 DOLLARS (\$58,406.00)** annually. Professional may invoice City upon completion and acceptance of services to be provided or may invoice City on a monthly basis. Such invoices shall be itemized to show services performed, expenses and corresponding charges. Professional shall keep accurate records of its services and expenses incurred in the performance of this Agreement and shall make the same available to City for inspection and copying upon five (5) days notice thereof. These records shall be kept by Professional for two (2) years following the expiration of this Agreement. No interest or other late payment charges shall ever be due.

Professional 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. Professional 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 30th 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.

**IV.  
ADDITIONAL SERVICES**

In addition to the above services, Professional will also provide training to other organizations where such services are requested through or in conjunction with the City. City and Professional agree that compensation for these additional services shall be divided at the rate of forty percent (40%) for City and sixty (60%) for Professional for all fees received less actual expenses incurred by City.

**V.  
USE OF AGENTS OR ASSISTANTS**

Neither this Agreement nor any duties or obligations hereunder shall be assignable by the Professional without the prior written consent of City. Upon consultation and with the approval of the Human Resource Director or his/her designee, professional may engage the services of any agents or assistants which he may deem proper, and he may further employ, engage, or retain the services of such other persons or corporations to aid or assist it in the proper performance of his duties. The cost of the services of such agents or assistants shall be borne by Professional at his sole cost and expense.

**VI.  
INSURANCE**

Professional agrees to meet all insurance requirements, and to require all consultants who perform work for Professional to meet all insurance requirements, as set forth in Exhibit "A", which is attached hereto and thereby made a part of this Agreement. Workers' compensation insurance is waived for a contractor who is a sole proprietor only after he/she has fully executed a Sole Proprietor Affidavit certifying his/her status as attached hereto as Exhibit "B".

**VII.  
OWNERSHIP OF DOCUMENTS**

All documents and reports developed as a result of the services of this Agreement shall be the property of the City. Any use by Professional of the information developed for publication or work with other clients must receive prior written permission from the City.

Upon termination of this Agreement, Professional shall transfer, assign and make available to City, or its representatives, all property and materials in its possession or control belonging to the City and paid for by the City. In the event that the material, which is the subject of this Agreement, is copyrightable subject matter, Professional and City agree that for the purposes of this order the material shall be a work made for hire and the property of the City. In the event that the material which is the subject of this Agreement is not copyrightable

subject matter, or for any reason is determined not to be a work made for hire, then and in such event Professional hereby assigns all right, title and interest to said material to City for the fees specified herein.

**VIII.  
MAXIMUM COMPENSATION UPON TERMINATION BY CITY OR  
PROFESSIONAL**

In the event of termination by City without cause, the Professional shall be compensated only for actual expenses and fees incurred by Professional in providing those services acceptable to City which are within the scope of work under this Agreement to date of notice of termination. Expenses do not include overhead such as utilities, rent, insurance, etc., and shall not exceed the total amount due under this Agreement.

**IX.  
INDEPENDENT CONTRACTOR**

Professional covenants and agrees that he is an independent contractor and not an officer, agent, servant or employee of City; that Professional shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of his officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between City and Professional, his officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Professional.

**X.  
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.

#### **XI. ENTIRE AGREEMENT**

This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other agreement, statement, or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding. The parties agree that this Agreement and its attachments constitute the entire understanding of the parties. In the event of conflict between the Agreement and Proposal, the Agreement shall control.

#### **XII. SUCCESSORS AND ASSIGNS**

City and Professional each bind themselves, their successors, executors, administrators and assigns to the other party to this Agreement. Neither City nor Professional will assign, sublet, subcontract or transfer any interest in this Agreement without the written consent of the other party. No assignment, delegation of duties or subcontract under this Agreement will be effective without

the written consent of City. Subject to the provision regarding assignment, this Agreement shall be binding on the administrators, legal representatives, successors, and assigns of the respective parties.

**XIII.  
GOVERNING LAW/VENUE**

The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the State of Texas. The parties agree that it is performable in Collin and Denton County, Texas and that exclusive venue shall be in Collin County, Texas.

**XIV.  
APPLICABLE LAW**

This Agreement is entered into subject to the charter and ordinances of City as they may be amended from time to time, and is subject to and is to be construed, governed and enforced under all applicable federal and state laws. Professional shall make any and all reports required in accordance with federal, state or local law, including but not limited to proper reporting to the Internal Revenue Service as required in accordance with Professional's income.

**XV.  
SEVERABILITY**

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

**XVI.  
AFFIDAVIT OF NO PROHIBITED INTEREST**

Professional acknowledges and represents it is aware of the laws, City Charter, and City Code of Conduct regarding prohibited interests and that the existence of a prohibited interest at any time will render the Agreement voidable. At the time of executing this Agreement, a representative of Professional will execute the Affidavit of No Prohibited Interest, attached and incorporated herein as Exhibit "C".

**XVII.  
NONWAIVER**

It is further agreed that one (1) or more instances of forbearance by City in the exercise of its rights herein shall in no way constitute a waiver thereof.

**XVIII.  
PARAGRAPH HEADINGS**

The descriptive headings of the several Articles, Sections and Paragraphs contained in this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

**XIX.  
CONTRACT INTERPRETATION**

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.

**EXECUTED** on the dates indicated below.

**CITY OF PLANO, TEXAS**, a home-rule  
Municipal Corporation

By: \_\_\_\_\_  
THOMAS H. MUEHLENBECK  
City Manager  
1520 K Avenue  
P. O. Box 860358  
Plano, Texas 75086-0358

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

By: \_\_\_\_\_  
**TONY PICCHIONI**  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

APPROVED AS TO FORM:

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

**ACKNOWLEDGMENTS**

**STATE OF TEXAS** §  
  §  
**COUNTY OF \_\_\_\_\_** §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2010 by **TONY PICCHIONI**.

\_\_\_\_\_  
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 \_\_\_\_\_, 2010 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

**City of Plano**  
**Contractor Insurance Requirements and Agreement**  
 Requirements

Contractors performing work on City property or public right-of-way for the City of Plano shall provide the City a certificate of insurance evidencing the coverages and coverage provisions identified herein. Contractors shall provide the City evidence that all subcontractors performing work on the project have the same types and amounts of coverages as required herein or that the subcontractors are included under the contractor's policy. The City, at its own discretion, may require a certified copy of the policy.

**All insurance companies and coverages must be authorized by the Texas Department of Insurance to transact business in the State of Texas and must be acceptable to the City of Plano.**

Listed below are the types and amounts of insurance required. The City reserves the right to amend or require additional types and amounts of coverages or provisions depending on the nature of the work.

Type of Insurance	Amount of Insurance	Provisions
1. Commercial General (Public) Liability to include coverage for: a) Premises/Operations b) Products/Completed Operations c) Independent Contractors d) Personal Injury e) Contractual Liability	\$500,000 each occurrence, \$1,000,000 general aggregate;  Or  \$1,000,000 combined single limits	City to be listed as additional insured and provided 30-day notice of cancellation or material change in coverage.  City prefers that insurer be rated B+VI or higher by A.M.Best or A or higher by Standard & Poors
2. Business Auto Liability	As required by State of Texas	
3. Workers' Compensation & Employers' Liability	Statutory Limits \$100,000 each accident	City to be provided a waiver of subrogation

**Questions regarding this insurance should be directed to the City of Plano Purchasing Department (972) 941-7557.**

*This form must be signed and returned with your quotation to verify that you can and will meet the insurance requirements listed herein should you be selected to perform work for the City, and will provide the certificates of insurance acceptable to the City. **A PURCHASE ORDER WILL NOT BE ISSUED WITHOUT EVIDENCE OF INSURANCE.***

**CITY OF PLANO, TEXAS  
SOLE PROPRIETOR AFFIDAVIT  
(Must be signed and Notarized by Contractor)**

STATE OF TEXAS       §  
                                  §  
COUNTY OF COLLIN   §

I, **TONY PICCHIONI**, being over twenty-one years of age and qualified in every respect to make this affidavit, do hereby swear as follows:

My name is **TONY PICCHIONI** and I am Sole Proprietor. I am an Independent Contractor pursuant to Section 406.097(c) and Section 406.097(a) of the Texas Workers' Compensation Act. I do not have any employees. In the event I have to hire an employee, I will provide to such employee or employees Workers' Compensation coverage as is required by law. I assume the responsibilities of an independent contractor in the performance of the work that I will perform professional consultant services for the City of Plano.

Signed By: \_\_\_\_\_  
**TONY PICCHIONI**  
\_\_\_\_\_  
Printed Name

SIGNED AND SWORN to before me on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

My commission expires:  
\_\_\_\_\_

**AFFIDAVIT OF NO PROHIBITED INTEREST**

I, the undersigned declare and affirm that **TONY PICCHIONI** (herein "Contractor") is not employed by the City of Plano nor is an elected official of the City of Plano and who has a financial interest, direct or indirect, in any contract with the City of Plano or has a financial interest, directly or indirectly, in the sale to the City of Plano of any land, or rights or interest in any land, materials, supplies or service. As per Section 11.02 of the Plano City Charter, interest represented by ownership of stock by a City of Plano employee or official is permitted if the ownership amounts to less than one (1) per cent of the corporation stock.

I further understand and acknowledge that the existence of a prohibited interest at any time during the term of this contract will render the contract voidable.

By: \_\_\_\_\_  
**TONY PICCHIONI**  
\_\_\_\_\_  
Print Name  
\_\_\_\_\_  
Title  
\_\_\_\_\_  
Date

STATE OF TEXAS           §  
                                     §  
COUNTY OF COLLIN      §

**SUBSCRIBED AND SWORN TO** before me this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

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

EXHIBIT   C    
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