

PLANO CITY COUNCIL

WILL CONVENE INTO EXECUTIVE SESSION AT 5:00 P.M. ON MARCH 9, 2009, FOLLOWED BY PRELIMINARY OPEN MEETING IN THE PLANO MUNICIPAL BUILDING, 1520 K AVENUE, IN COMPLIANCE WITH VERNON'S TEXAS CODES ANNOTATED, GOVERNMENT CODE CHAPTER 551 (OPEN MEETINGS ACT), AS FOLLOWS:

Mission Statement: The mission of the City of Plano is to provide outstanding services and facilities, through cooperative efforts with our citizens, that contribute to the quality of life in our community.

EXECUTIVE SESSION

- | | | | |
|------|--|-------------|---------|
| I. | Legal Advice | Wetherbee | 10 min. |
| | A. Respond to questions and receive legal advice on agenda items | | |
| II. | Personnel Appointments | | |
| | A. Arts of Collin County Commission Board of Directors | Council | 5 min. |
| III. | Economic Development | Muehlenbeck | 15 min. |
| | A. Discuss a financial offer or other incentive to a business prospect to locate, stay, or expand in Plano and consider any commercial and financial information from the business prospect. | | |

PRELIMINARY OPEN MEETING

- | | | | |
|----|--|---------|--------|
| I. | Consideration and action resulting from Executive Session discussion:
Personnel Appointment -
Arts of Collin County Commission
Board of Directors | Council | 5 min. |
|----|--|---------|--------|

II.	Boards and Commissions Appointment Process	Zucco	10 min.
III.	Discussion and Direction on the Planning & Zoning Commission's Recommended Sign Ordinance Amendments	Maggie Armstrong	15 min.
IV.	Council items for discussion/action on future agendas	Council	5 min.
V.	Consent and Regular Agenda	Council	5 min.

In accordance with the provisions of the Open Meetings Act, during Preliminary Open Meetings, agenda items will be discussed and votes may be taken where appropriate.

Municipal Center is wheelchair accessible. A sloped curb entry is available at the main entrance facing Avenue L, with specially marked parking spaces nearby. Access and special parking are also available on the north side of building. The Council Chamber is accessible by elevator to the lower level. Requests for sign interpreters or special services must be received forty-eight (48) hours prior to the meeting time by calling the City Secretary at 972-941-7120.



CITY COUNCIL

1520 AVENUE K

DATE: March 9, 2009

CALL TO ORDER: 7:00 p.m.

INVOCATION: Reverend Stacy Pell, Associate Pastor
St. Andrew United Methodist Church

PLEDGE OF ALLEGIANCE: Brownie Troop 1861
Dooley Elementary & McCall Elementary

ITEM NO.	EXPLANATION	ACTION TAKEN
	<p>THE MISSION OF THE CITY OF PLANO IS TO PROVIDE OUTSTANDING SERVICES AND FACILITIES, THROUGH COOPERATIVE EFFORTS WITH OUR CITIZENS THAT CONTRIBUTE TO THE QUALITY OF LIFE IN OUR COMMUNITY.</p> <p>The City Council may convene into Executive Session to discuss posted items in the regular meeting as allowed by law.</p> <p><u>COMMENTS OF PUBLIC INTEREST</u></p> <p><u>This portion of the meeting is to allow up to five (5) minutes per speaker with thirty (30) total minutes on items of interest or concern and not on items that are on the current agenda. The Council may not discuss these items, but may respond with factual or policy information. The Council may choose to place the item on a future agenda.</u></p> <p><u>CONSENT AGENDA</u></p> <p><u>The Consent Agenda will be acted upon in one motion and contains items which are routine and typically noncontroversial. Items may be removed from this agenda for individual discussion by a Council Member, the City Manager or any citizen. Citizens are limited to two (2) items and discussion time of three (3) minutes each.</u></p> <p><u>Approval of Minutes</u></p> <p>(a) February 23, 2009</p> <p><u>Approval of Expenditures</u></p> <p>Award/Rejection of Bid/Proposal: (Purchase of products/services through formal procurement process by this agency)</p> <p>(b) Bid No. 2009-40-C for Traffic Markers to Ennis Paint Company in the estimated annual amount of \$7,590; BIKO Inc. in the estimated annual amount of \$10,140; Traffic Supply in the estimated annual amount of \$1,460; and Pathmark Traffic Parts of Texas in the estimated annual amount of \$37,892 for a total estimated annual amount of \$57,082. This will establish an annual fixed price contract with three optional renewals.</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
(c)	<p>Bid No. 2009-57-C for Fire Hydrant and Water Line Repair Parts to HD Supply Waterworks in the estimated annual amount of \$114,553; Municipal Water Works Supply in the estimated annual amount of \$5,378; Empire West Inc. in the estimated annual amount of \$11,683 for a total estimated annual amount of \$131,614. This will establish an annual fixed price contract with three optional renewals.</p>	
(d)	<p>Bid No. 2009-38-C for an annual fixed price contract for Temporary Labor Services Waste Collection in the estimated annual amount of \$340,000 to Labor Ready, Lone Staff Staffing and CTJ Maintenance. This contract will be for one year with three City optional one-year renewals.</p>	
	<p>Purchase from an Existing Contract</p>	
(e)	<p>To authorize the purchase of Supply, Material and Installation of Avenue “N” Radio Communications Shelter to GFRC in the amount of \$213,074. CSP #2008-9-B</p>	
(f)	<p>To approve the purchase and installation of Security Software, Hardware and Cameras for Fire Station No. 12/EOC/Fire Logistics Warehouse in the amount of \$67,245 from existing TCPN Contract #4785 with LenSec LLC.</p>	
	<p>Approval of Contract: (Purchase of products/services exempt from State of Texas Competitive Bid Laws)</p>	
(g)	<p>To approve an Engineering Services Contract by and between the City of Plano and Birkhoff, Hendricks & Conway, L.L.P., in the amount of \$83,295, for Custer Ground Storage Tank 1A, and authorizing the City Manager to execute all necessary documents.</p>	
(h)	<p>To approve an Architectural Contract by and between the City of Plano and HPA, LLP, dba hatch & ulland owen architects, in the amount of \$243,655, for repackaging existing design and construction oversight of Oak Point Park Visitor Center, and authorizing the City Manager to execute all necessary documents.</p>	
(i)	<p>To approve an Architectural Contract by and between the City of Plano and F&S Partners, in the amount of \$789,870, for design and construction oversight of the Carpenter Park Recreation Center Renovation and Expansion, and authorizing the City Manager to execute all necessary documents.</p>	
	<p>Approval of Change Order</p>	
(j)	<p>To Utilitex Construction, LLP, increasing the contract by \$39,630 and 40 working days, for Street Light Improvements Legacy Park – Phase 1 and Street Lighting Willow Bend Drive, Change Order No. 2, (Original Bid No. 2008-74-B). This change order is for adding 11 new light pole foundations with related work on Headquarters Drive from Spring Creek Parkway to approximately 2,200 feet east.</p>	
(k)	<p>To McMahon Contracting, L.P., increasing the contract by \$26,801 for the 2007-2008 Arterial Concrete Pavement Rehabilitation Project, Parker Road, Pleasant Valley and Country Place Drive, Project No. 5867, Change Order No. 2. Bid No. 2008-156-B. This change order is for final concrete street pavement repair quantities on Parker Road between Coit Road and Preston Road.</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
	<p><u>Adoption of Resolutions</u></p> <p>(l) To amend a Communication Facilities License Agreement approved by Plano City Council on November 9, 1998, by and between the City of Plano, Texas and AT&T Mobility Texas LLC, a Delaware limited liability company, to install, and operate telecommunications ground equipment in certain specific premises; authorizing its execution by the City Manager; and providing an effective date.</p> <p>(m) To approve the terms and conditions of an Agreement by and between LegacyTexas Bank and the City of Plano, Texas for bank depository services; authorizing its execution by the City Manager; and providing an effective date.</p> <p>(n) To approve the terms and conditions of a Safekeeping Agreement by and between LegacyTexas Bank, TIB – The Independent Bankers Bank, and the City of Plano, Texas; authorizing its execution by the City Manager; and providing an effective date.</p> <p>(o) To approve the dedication of a 417.9 square foot tract of land owned by the City of Plano, Texas for dedication as a drainage easement for Assured 14th Addition, Lot 1, Block A, said parcel situated in the M.R. Foster Survey, Abstract No. 332 in the City of Plano, Collin County, Texas, and providing an effective date.</p> <p>(p) To approve and grant an Electric Easement to Oncor Electric Service Company on City property located on the west side of Bishop Road, 257.01’ south of Legacy Circle, authorizing its execution by the City Manager, and providing an effective date.</p> <p>(q) To approve the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano and Collin County, Texas, providing for the Widening of Communications Parkway from Parker Road to Spring Creek Parkway; authorizing its execution by the City Manager; and providing an effective date.</p> <p><u>Adoption of Ordinances</u></p> <p>(r) To amend Chapter 11, Licenses and Business Regulations, of the Code of Ordinances of the City of Plano by adding Article XI, Metal Recycling Entities, establishing regulations governing the purchase of copper and other valuable metals by metal recycling entities; providing definitions, licensing and recordkeeping requirements; providing a repealer clause; a severability clause; a penalty clause; a publication clause; and an effective date.</p> <p>(s) To correct a typographical error in Ordinance No. 2009-1-21 providing for the issuance and sale of City of Plano, Texas, General Obligation Refunding and Improvement Bonds, Series 2009; levying a tax in payment thereof; awarding the sale thereof; approving the official statement; and enacting other provisions relating thereto; and providing an effective date.</p> <p><u>Municipal Center is wheelchair accessible. A sloped curb entry is available at the main entrance facing Municipal Avenue, with specially marked parking spaces nearby. Access and special parking are also available on the north side of the building. Training Room A/Building Inspections Training Room are located on the first floor. Requests for sign interpreters or special services must be received forty-eight (48) hours prior to the meeting time by calling the City Secretary at 972-941-7120.</u></p>	



Pat Evans
Mayor

Jean Callison
Mayor Pro Tem

Harry LaRosiliere
Deputy Mayor Pro Tem

Pat Miner
Place 1

Scott Johnson
Place 2

Mabrie Jackson
Place 3

Sally Magnuson
Place 4

Lee Dunlap
Place 8

Thomas H. Muehlenbeck
City Manager

March 5, 2009

Mayor Pat Evans
City Council Members
City of Plano
Plano, TX 75074

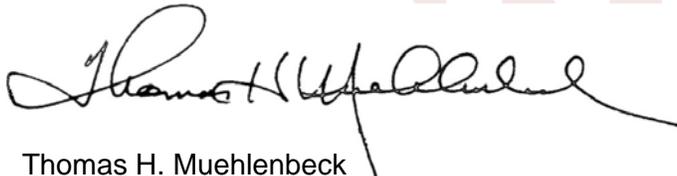
Honorable Mayor and City Council:

We will begin our meeting on Monday in Executive Session where we will receive legal advice from the City Attorney. Under Item II we will consider one personnel appointment. Under Item III, potential economic development prospects may be discussed.

The Preliminary Open Meeting will begin with an update from Di Zucco regarding the Boards and Commissions Appointment Process. Maggie Armstrong, 2nd Vice Chair of the Planning and Zoning Commission, will make a presentation and receive direction regarding amendments to the sign ordinance.

I look forward to seeing you on Monday.

Sincerely yours,



Thomas H. Muehlenbeck



MEMO

DATE: March 5, 2009

TO: Honorable Mayor and City Council
City Manager Muehlenbeck
City Secretary Zucco

FROM: Alice Snyder, Assistant City Secretary

RE: Personnel Appointments – Executive and Worksession Meetings

The following appointments will be considered at the March 9, 2009 Council Meeting.

<u>Executive Session</u>	<u>Worksession Meeting</u>
<u>Appointments:</u> Arts of Collin County Commission Board of Directors	

MEMO

DATE: March 3, 2009

TO: Honorable Mayor and City Council
City Manager Muehlenbeck

FROM: Di Zucco, City Secretary

RE: **Board and Commission Appointment Process**

I am requesting Council consideration of the annual appointment process for 2009. Our office has a limited number of applications, some dating back to 2006-07 and including boards that were sunset in 2008. I recommend revision to the utility insert as follows to save costs and reduce paper flow. The full flyer and application will remain available on the City's web site and we have created an online submittal form at <http://pdf.plano.gov/docs/bcapplication.pdf>.

June City Secretary Staff will determine board members' availability and desire for reappointment and provide recommendations to Council on June 22.

July **Utility bill insert:**
Estimated cost of full-size utility bill insert mailout for the month of July would be \$7,040. The flyer itself lists all boards but specific openings are not available until following Council reappointment decisions.

Recommended alternative to full insert would be a 1/3 page flyer in black ink only on brightly-colored paper at a cost of \$1,335 (basic sample included). The insert would provide our web site address for submission of an application, contact information and a listing of boards/commissions along with reception dates. This would promote the process, provide information to all utility customers in the City, encourage use of the web site, and reduce both costs and amount of paper produced. We will maintain a full brochure onsite, offer to mail an application and promote participation via PTN and the web.

Additionally, the City is initiating a program to migrate utility customers to e-billing for receipt of their invoices. It is estimated that 2,000 people have chosen this method of receipt with numbers expected to grow in the future. Use of an online process for boards/commissions will expand on this movement toward electronic access and supply of information. Monthly utility bills will include a link to the inserts normally included.

Reappointments:

Provide information regarding requests for reappointment to Council on Friday, July 10, and decisions made at the July 27 meeting.

July 31 - Publish board vacancies in the Plano Star Courier and submit information to PTN and web site. The publication will only indicate those boards where openings exist. Utilize web site giving information for contacting appropriate Staff to field questions for potential applicants when considering which board they wish to apply for and for which they might be qualified.

Honorable Mayor and City Council

Page 2

March 3, 2009

August **Receptions** – We propose holding the Saturday reception at Plano Municipal Center on August 22 and the Thursday reception at PSA Star Center on August 27. Once again, the structure of the receptions will be in the job fair format with booths for those boards with openings and a separate table provided for those without openings. (PISD classes resume on August 24)

The proposed application deadline will be Friday, August 28 and information distributed to the Council on September 4. Following this date, we will provide the Council with supplements of additional applications and updated voting sheets.

September Distributing information on September 4 would allow Council time for consideration of applicants before a vote September 28 (in the order considered in 2007 and 2008), with any remaining openings being addressed October 12. New members would be sworn in October 12 and certificates presented October 26.

Thank you for your consideration and direction.

Attachments: Draft Schedule
 Draft of Smaller Utility Insert
 Board & Commission Utility Bill Insert 2009

Board/Commission Appointment Process June 2009

Sun	Mon	Tue	Wed	Thu	Fri	Sat
	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i> <i>Roundtable</i>	<i>5</i>	<i>6</i>
<i>7</i>	<i>8</i> <i>City Council Meeting</i>	<i>9</i>	<i>10</i> <i>City Council Retreat</i>	<i>11</i>	<i>12</i>	<i>13</i>
<i>14</i>	<i>15</i> <i>Letters sent to members whose terms expire in 2009</i>	<i>16</i>	<i>17</i>	<i>18</i>	<i>19</i>	<i>20</i>
<i>21</i>	<i>22</i> <i>City Council Meeting</i> <i>Council receives attendance reports</i>	<i>23</i>	<i>24</i>	<i>25</i>	<i>26</i>	<i>27</i>
<i>28</i>	<i>29</i>	<i>30</i>				

Board/Commission Appointment Process July 2009

Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1 <i>Utility Inserts arrive in homes during the</i>	2	3 4th of July Holiday	4
5	6	7	8	9	10 <i>Reappointment information provided</i>	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27 <i>City Council Meeting</i> <i>Reappointments</i>	28	29 <i>City Council Meeting</i>	30	31 <i>Publish List of Vacancies in newspaper and on Web Site</i>	

Board/Commission Appointment Process August 2009

Sun	Mon	Tue	Wed	Thu	Fri	Sat
						<i>1</i>
<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>	<i>7</i>	<i>8</i>
<i>9</i>	<i>10</i> City Council Meeting	<i>11</i>	<i>12</i>	<i>13</i>	<i>14</i>	<i>15</i> Budget Worksession
<i>16</i>	<i>17</i>	<i>18</i>	<i>19</i>	<i>20</i>	<i>21</i>	<i>22</i> B/C Reception Municipal Ctr—2-3 p.m.
<i>23</i>	<i>24</i> City Council Meeting First Day of School	<i>25</i>	<i>26</i>	<i>27</i> B/C Reception PSA Star Ctr —6-7 p.m.	<i>28</i> Application Deadline	<i>29</i>
<i>30</i>	<i>31</i>					

Board/Commission Appointment Process September 2009

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2	3	4 <i>Applications provided to the Council</i>	5
6	7 <i>Labor Day</i>	8	9	10 <i>Roundtable Updates provided to the Council</i>	11	12
13	14 <i>City Council Meeting</i>	15	16	17	18 <i>Updates provided to the Council</i>	19
20	21	22	23	24 <i>Updates provided to the Council</i>	25	26
27	28 <i>City Council Meeting B/C Appointments</i>	29	30			

Board/Commission Appointment Process October 2009

Sun	Mon	Tue	Wed	Thu	Fri	Sat
				<i>1</i>	<i>2</i>	<i>3</i>
<i>4</i>	<i>5</i>	<i>6</i>	<i>7</i>	<i>8</i>	<i>9</i>	<i>10</i>
<i>11</i>	<i>12</i> City Council Meeting Swearing-in Ceremony	<i>13</i> Orientation Week for Board Members	<i>14</i>	<i>15</i>	<i>16</i>	<i>17</i>
<i>18</i>	<i>19</i>	<i>20</i>	<i>21</i>	<i>22</i>	<i>23</i>	<i>24</i>
<i>25</i>	<i>26</i> City Council Meeting Certificates of Appreciation	<i>27</i>	<i>28</i>	<i>29</i>	<i>30</i>	<i>31</i>

Board/Commission Appointment Process November 2009

Sun	Mon	Tue	Wed	Thu	Fri	Sat
1 <i>B/C Members Take Office</i>	2	3	4	5	6	7
8	9 <i>City Council Meeting</i>	10	11	12	13	14
15	16	17	18	19	20	21
22	23 <i>City Council Meeting</i>	24	25	26 <i>Thanksgiving Holiday</i>	27 <i>Thanksgiving Holiday</i>	28
29	30					

ROUGH DRAFT OF PROPOSED 1/3 PAGE UTILITY FLYER

FRONT

The City of Plano welcomes you to apply to the annual
BOARDS & COMMISSIONS process

Go to the City of Plano website at: www.plano.gov/City_Hall/CityGovernment/Boards_Commissions

Fill out an application and e-mail it to the City Secretary's Office or mail it to:

City Secretary's Office
City of Plano
P.O. Box 860358
Plano, TX 75086-0358

If you would like an application mailed to you or have any questions, please contact the City Secretary's Office at 972-941-7120.

BACK

Boards & Commissions

Animal Shelter Advisory Committee
Arts of Collin County Commission Board
of Directors
Board of Adjustment
Building Standards Commission
Civil Service Commission
Collin County Appraisal District Board*
Community Relations Commission
Cultural Affairs Commission
DART Board of Directors*
Denton County Central Appraisal District *
Heritage Commission
Library Advisory Board
Multicultural Outreach Roundtable
(no application required)
North Texas Municipal Water District Board*
Parks & Recreation Planning Board
Planning & Zoning Commission
Plano Housing Authority
Public Arts Committee
Retirement Security Plan Committee
Self Sufficiency Committee
Senior Citizens Advisory Board
Tax Increment Financing Reinvestment #1*
Tax Increment Financing Reinvestment #2

*Boards/Commissions not being considered at
this time.

We invite you to attend one of the following
receptions:

Thursday, August , 2009
6-7 p.m.
PSA StarCenter
6500 Preston Meadow
or
Saturday, August , 2009
2-3 p.m.
Plano Municipal Center
1520 K Avenue



Mayor's Message

Pat Evans

The City of Plano Boards and Commissions Program is the backbone of our governance process. Each group is made up of dedicated volunteers who share their time and expertise with the community. We encourage caring people to answer the call to take an active role in building a strong and effective municipal government.

I hope you will take a few minutes to read this overview and learn more about the opportunities that await you. The rewards of serving your City are immeasurable, both personally and professionally. If you feel you can contribute, please fill out an application and submit it to the City Secretary's Office.

General Information

The Plano City Council is seeking committed individuals, dedicated to the present and future well-being of Plano, to serve on the City's standing Boards, Commissions and Committees.

All appointees to City Boards, Commissions and Committees must:

- Be residents of the City for at least 12-consecutive months prior to appointment to a board or commission;
- Have a current and valid voter registration;
- Adhere to a Code of Conduct;
- Applicants for final decision-making boards cannot have financial interest in a contract with the City;
- Have no indebtedness to the City (i.e., unpaid taxes, library fines, etc.); and
- **Attend at least 75% of regular meetings.**

In general, it is City Council's policy to appoint persons to a maximum of two terms, however all appointments are made at the discretion of the Council. Please contact the City Secretary's Office or any Council Member for additional information regarding term limitations.

Information and application for Boards & Commissions are available at www.plano.gov/City_Hall/CityGovernment/Boards_Commissions.

Board Descriptions

The following dates and times are regularly scheduled meetings and **do not include additional called meetings**. For additional meeting and eligibility information, call the City Secretary's Office at (972) 941-7120. Basic responsibilities of each Board, Commission and Committee include, but are not limited to:

Animal Shelter Advisory Committee

7 members 2-year terms
Meetings: 4 times per year (Jan., April, July & Oct.)
Plano Animal Shelter, 4028 W. Plano Parkway

Promotes awareness of services, procedures and compliance with state regulations. Recommends programs, services and improvements. Members consist of 1 licensed veterinarian, 1 municipal official, 1 person officiating daily at an animal shelter/serving as the City of Plano Animal Services Manager, 1 rep from an animal welfare organization, and the remainder Plano residents.

Arts of Collin County

7 members 3-year terms
Meetings: 4 p.m., 3rd Thursday
Allen City Hall, 305 Century Parkway, Allen

Membership includes 2 persons each from the cities of Plano, Allen and Frisco and 1 at-large rep for the purpose of financing, constructing, owning, managing and operating approved projects for the establishment and operation of a performing arts center.

Board of Adjustment

5 members, 4 alternates 2-year terms
Meetings: 3 p.m., 2nd & 4th Tuesdays
Plano Municipal Center, 1520 K Ave.

May grant variances to regulations for height, yard, area exterior structure, coverage and parking regulations. May grant variances to the regulation of signs and hear appeals. There shall be 1 member and 1 alternate employed in each of the disciplines of retail/advertising and real estate/development.

Building Standards Commission

5 members, 4 alternates 2-year terms
Meetings: 4 p.m., 3rd Tuesday
Plano Municipal Center, 1520 K Ave.

Hears and determines cases concerning alleged violations of ordinances for the preservation of public safety. Reviews and recommends proposed amendments to the building and fire codes. Hears appeals from decisions of the Building Official or Fire Chief, and serves as a board to review and license electricians. Hears requests to use alternate materials or methods of construction.

Civil Service Commission

3 members 3-year terms
Meetings: At least every January & as needed
Plano Municipal Center, 1520 K Ave.

Appointed by the City Manager and confirmed by City Council. Hears appeals related to promotional and disciplinary actions; approves local civil service rules and regulations; approves eligibility and testing parameters for firefighters and police officers covered under Chapter 143 of the Texas Local Government Code. Must be a resident of Plano for 3 years.

Collin County Appraisal District Board

2-year terms
Meetings: 7 a.m., 4th Thursday
250 W. Eldorado Pkwy., McKinney

Determines Appraisal District's goals. Operates as the decision-making body on appraisal district operations.

Community Relations Commission

8 members 2-year terms
Meetings: As called
Plano Municipal Center, 1520 K Ave.

Serves as a hearing board to address significant issues as directed by Council. Oversees the Community Development Block Grant and the Community Service Grants. Reviews and makes recommendations regarding significant community problems impacting the quality of life.

Cultural Affairs Commission

7 members 2-year terms
Meetings: 6 p.m., 1st Monday
Cox Building, 1517 H Ave.

Receives applications for grants from area cultural agencies and recommends to Council the disposition of grant funds. Receives and recommends to Council the disposition of Special Events grants. No member of the commission shall have served on the board of an affected agency for the previous 12 months.

DART Board

2-year terms
Meetings: 6:30 p.m., 2nd & 4th Tuesdays
1401 Pacific Ave., Dallas

City Council appoints 1 member, and jointly appoints 1 shared member with other Metroplex cities to the DART Board, which is the governing board over the regional transportation system.

Denton County Central Appraisal District

2-year terms
Meetings: 4 p.m., 4th Thursday
3911 Morse Street, Denton

Determines Appraisal District's goals. Operates as the decision-making body on appraisal district operations.

Heritage Commission

7 members 2-year terms
Meetings: 5:30 p.m., 4th Tuesday
Plano Municipal Center, 1520 K Ave.

Recommends buildings for heritage designation. Conducts design review for proposed work to buildings and for new construction. Makes recommendations to City Council regarding grants and tax exemptions. Preferably, appointees should have demonstrated interest, competence and knowledge in historic preservation or other disciplines related to historic preservation.

Library Advisory Board

7 members 2-year terms
Meetings: 7 p.m., 1st Tuesday (Feb., May, Aug., Nov.)

Various Plano Public Library locations
Advises Council on matters relating to the operations of the Library Department. Reviews Board approved library policies. Reviews and approves special requests for the use of library facilities.

Multicultural Outreach Roundtable (MCOR)

Membership varies in size
Meetings: 7 p.m., 2nd Tuesday
Plano Municipal Center, 1520 K Ave.

Partners with the City Council and the diverse citizens of Plano encouraging understanding and participation in the government process and fulfilling the needs and desires of its diverse citizens. No application is required.

North Texas Municipal Water District Board of Directors

2 members 2-year terms
Meetings: 4 p.m., 4th Thursday
NTMWD, 505 E. Brown, Wylie

Governing board overseeing regional water, wastewater and solid waste systems.

Parks and Recreation Planning Board

7 members 2-year terms
Meetings: 6:30 p.m., 1st Tuesday (Jan., April, May, Sept., Nov., Dec.)
Various Parks and Recreation facilities

Makes recommendations regarding park land acquisitions and park master plan, Parks and Recreation Capital Improvement Program, bond referenda, park facility-user fees; and analyzes long range Parks and Recreation facility needs. Reviews and approves master plans for development or improvement of parks and recreation facilities.

Planning and Zoning Commission

8 members 2-year terms
Meetings: 7 p.m., 1st & 3rd Mondays & worksessions
Plano Municipal Center, 1520 K Ave.

Makes recommendations to Council on updates to the City's Comprehensive Plan, and on zoning and rezoning petitions, including amendments to zoning regulations. Hears and takes action on site plans and plats for new development and redevelopment projects.

Plano Housing Authority (PHA)

5 members 2-year terms
Meetings: 6:30 p.m., 4th Tuesday
PHA Office, 1740 G Ave.

Governance and administrative control of low-income housing projects and programs.

Public Art Committee

7 members 2-year terms
Meetings: 7 p.m., 1st Wednesday as needed
Cox Building, 1517 H Ave.

Makes recommendations to Council for annual Public Art Plan. Administers and implements the annual Plan utilizing policies and procedures that address art/artist selection process, commission and placement of art, and maintenance and removal of art. Recommends to Council on selection of artists and artwork.

Retirement Security Plan Committee (RSP)

5 members 2-year terms
Meetings: 4 times per year (Jan., Apr., July & Oct.)
Plano Municipal Center, 1520 K Ave.

City Manager appoints 3 City employees and 2 non-employees who administer/hold fiduciary responsibility for the RSP Trust.

Self Sufficiency Committee

8 members 2-year terms
+1 appointed from Plano Housing Authority
Meetings: 6:30 p.m., 1st Monday
PHA Office, 1740 G Ave.

Works with the Plano Housing Authority to provide oversight for a self sufficiency program for residents of housing administered by the Housing Authority.

Senior Citizens Advisory Board

9 members 2-year terms
Meetings: 5 p.m., 1st Thursday
(Jan., April, July, Oct.)
Various locations

Recommends policies and programs to City Council that will be of benefit to seniors and advises on issues of importance to seniors living in Plano.

Tax Increment Financing Reinvestment Zone No. 1 Board (West TIF)

9 members 2-year terms
Meetings: As called by members
Plano Municipal Center, 1520 K Ave.

Makes recommendations to the City Council concerning the administration of the TIF in the zone.

Tax Increment Financing Reinvestment Zone No. 2 Board (East TIF)

5 to 15 members 2-year terms
Meetings: As called by members
Plano Municipal Center, 1520 K Ave.

See description for Tax Increment Financing Reinvestment Zone No. 1 Board (West TIF) above.

City of Plano Board or Commission Candidate Application

(If additional space is required a resume or separate document may be attached with the application.)

Submit as e-mail attachment to citysecretary@plano.gov; fax to (972) 423-9587; or mail to City of Plano, City Secretary, P.O. Box 860358, Plano, TX 75086-0358.

Name:

(Please print full legal name and your name as you wish it to appear, if different.)

Personal Information

Home Address:
Plano, Texas Zip:
Telephone: Fax:
E-mail:
Plano Resident for years County:
Driver License #:
Voter Registration #:

Occupational Information

Employer Name:
Occupation:
Address:
Telephone: Fax:
E-mail:
Business Owner? Yes: No:

Qualification Statement

By checking the boxes below I affirm that:

- I have been a resident of Plano for the past consecutive 12 months;
- I am qualified to vote;
- I am not indebted to the City of Plano;
- If appointed I will meet or exceed the minimum attendance requirements for my board; and
- I am aware of the City's Code of Conduct.

Please indicate a Board/Commission.

1st Choice:

Qualifications:

2nd Choice:

Qualifications:

3rd Choice:

Qualifications:

Yes, I would be interested in serving on subcommittees that may be formed.

Previous Board, Commission, Civic or Community, or Work Experience that might benefit the City. (A resume or additional information can be attached and submitted with the completed application.)

Organization

Location

Years

List any business or personal relationships with the City, which might create a conflict of interest or affect your ability to serve.

The submission of this application will be treated as the applicant's representation of the information provided. **Applications will remain on file for one year from the date of receipt and may be available to the public upon request.**



March 2, 2009

Dear Mayor Evans and City Council Members:

City Council asked the Planning & Zoning Commission to review the City's sign ordinance to identify any regulations that may unreasonably limit contemporary and innovative advertising and marketing practices. Over the past six weeks, the Commission has conducted a number of meetings on this topic, including:

- Monday, February 2 - During the regular meeting, staff presented background information about the sign ordinance and sign types.
- Tuesday, February 3 - A special work session was held so that the Commission could hear comments from the community (business and residential) on the sign ordinance. Letters were sent to the Plano Homeowners Council, Shopping Center owners and their representatives who had previously raised concerns about the sign ordinance, and to the membership of the Plano Chamber of Commerce.
- Monday, February 16 - During the regular meeting, the Commission reviewed major commercial sign types, and based on information received from the community and staff, identified areas to consider amending.
- Monday, March 2 - During the regular meeting, the Commission further discussed and then finalized the attached recommendations.

At the meetings, the Commission reviewed all of the major commercial sign types in the City's ordinance, as well as some that are not currently included. In considering any changes, we have attempted to balance the needs of the business community with the long term interests of our city. Based on the information received and discussed at these meetings, we are pleased to present these recommendations for your consideration. A copy of the existing sign regulations are attached for your reference.

Sincerely,

James Duggan
Planning & Zoning Commission Chair

Pat Evans
Mayor

Jean Callison
Mayor Pro Tem

Harry LaRosiliere
Deputy Mayor Pro Tem

Pat Miner
Place 1

Scott Johnson
Place 2

Mabrie Jackson
Place 3

Sally Magnuson
Place 4

Lee Dunlap
Place 8

Thomas H. Muehlenbeck
City Manager

SIGN ORDINANCE REVIEW

Recommendations

Horizontal Banners	A temporary sign made of cloth, canvas, or other light fabric. Note: this is currently called “banner”.
Concerns	<ul style="list-style-type: none"> ▪ The length of time that a horizontal banner can be displayed is too short. ▪ There is a need to differentiate this from other types of banner signs. ▪ One banner is not enough, especially when a business has a large façade or faces two streets.
Recommendations	<ul style="list-style-type: none"> ▪ Allow horizontal banners to be displayed up to 3 times/year for six weeks each. ▪ Allow permit periods to be consecutive (so that a sign could be displayed for up to 18 weeks/year total). ▪ Consider allowing two horizontal banners on separate buildings needing three code required exits.

Light Pole Banners	Not currently defined
Concern	<ul style="list-style-type: none"> ▪ Not currently allowed except in a few planned developments.
Recommendations	<ul style="list-style-type: none"> ▪ Establish a definition and regulations for permitting light pole banners. ▪ Allow light pole banners to be displayed year-round. ▪ Allow 2 banners on up to 50% of the existing light standards. ▪ Restrict to non-commercial messages (colors, pictures, holiday themed etc. would be allowed) ▪ Require an annual permit. ▪ Consider allowing/permitting light pole decorations for the holidays.

Wall Signs	Any sign erected flush against an exterior wall, supported by the wall, and having the sign face parallel to the wall or painted directly onto a wall. Neon tubing attached directly to a wall surface shall be considered a “wall sign” when forming a border for the subject matter, when directing attention to the subject matter, or when forming letters, logos, or pictorial designs.
Concerns	<ul style="list-style-type: none"> ▪ “Over tenant space” requirement limits some tenants from having enough wall frontage for signage. ▪ These requirements could inhibit redevelopment/reuse of big box stores. ▪ Businesses commonly want to put their logo or name at or above a canopy or parapet edge. ▪ 3-D signs are not achievable under existing regulations.

Recommendations	<ul style="list-style-type: none"> ▪ Instead of allotting sign space for each tenant, treat shopping centers as one elevation. Allow the land manager/property manager/developer etc. to chose how allowable square footages and width coverage are allotted on each elevation. ▪ Allow non-text signage to extend up to 4' above the parapet. ▪ Allow wall sign copy can project no more than 12" from the wall. ▪ Allow non-text signage up to a 30" depth.
-----------------	---

MSO Wall Signs	Any sign on a building with two or more stories for office use in which the tenant has no direct outside entrance from the tenant space.
Concern	<ul style="list-style-type: none"> ▪ Limit of two signs per elevation is too restrictive and keeps businesses out of Plano.
Recommendations	<ul style="list-style-type: none"> ▪ Consider allowing more than two signs per elevation. ▪ Allow first floor tenants to have signage, regardless of whether they have an exterior entrance.

Digital / Electronic Message Center Signs	Any reader board or electronic message center area of a sign shall not exceed 75% of the allowable square footage for any sign type. Illuminated changeable copy signs shall not change copy more than once every 30 minutes, excluding time and temperature.
Concern	<ul style="list-style-type: none"> ▪ The copy change is limited to every 30 minutes.
Recommendations	<ul style="list-style-type: none"> ▪ Consider allowing a copy change more often, possibly every five minutes. ▪ Consider restricting digital signage to monument and pole signs (no longer allow as a wall sign).

Directional Signs	Any onsite sign to direct the public to entrances, exits, and services relating to the property.
Concerns	<ul style="list-style-type: none"> ▪ Size limitation not adequate for hospitals, etc. (possibly conflicts with State law). ▪ 60 foot separation prevents necessary directional signage.
Recommendations	<ul style="list-style-type: none"> ▪ Reduce separation for directional from other freestanding signs to 30 feet. ▪ Include exclusions for hospitals and other entities that are subject to State of Texas regulations if necessary. ▪ Consider allowing directory signs (for the benefit of pedestrians) in large retail areas.

Monument Signs	Any sign mounted to a solid base support at ground level.
Concerns	<ul style="list-style-type: none"> ▪ Required masonry border in overlay districts is out of date and not accommodating for updated/progressive type signage. ▪ Off premise signage difficult to obtain for tenant that has no choice due to location of property.
Recommendations	<ul style="list-style-type: none"> ▪ Remove requirement for masonry border and copy area. ▪ Allow larger signs in overlay districts.

Institutional Signs	Any sign used to identify schools, churches, hospitals, childcare facilities, and similar public or quasi-public institutions.
Concern	<ul style="list-style-type: none"> ▪ Institutional signs have a smaller size allowance than commercial signs in the overlay and residential districts (but not in other zoning districts).
Recommendation	<ul style="list-style-type: none"> ▪ Apply the same regulations to institutional signage as commercial entities in commercially zoned districts. Note: This is the way they are already regulated in all other commercially zoned areas of the city.

Mural Signs	Noncommercial pictures, which do not depict advertising, logos, or images of a product or service which are sold on the premises, painted on, or attached to the exterior walls.
Concern	<ul style="list-style-type: none"> ▪ Murals with advertising are currently considered to be wall signs and therefore count against the allowed square footage for wall signage.
Recommendations	<ul style="list-style-type: none"> ▪ Allow mural signs to contain advertising as long as they don't contain a specific logo or name of the business. ▪ Consider size requirements.

Human Signs	Not currently defined in the sign ordinance.
Concern	<ul style="list-style-type: none"> ▪ Human signs are regulated in part by the solicitation ordinance which requires a permit and restricts solicitation on public right of way.
Recommendation	<ul style="list-style-type: none"> ▪ Regulate through the sign ordinance as a temporary sign with restrictions similar to banners. Clarify that human signs are not allowed except on the property where the business being advertised is located.

The sign ordinance can be viewed at:
<http://pdf.plano.gov/BI/signs/SignOrdinance.pdf>

Discussion/Action Items for Future Council Agendas

March 5 – District 1 Roundtable, Plano Centre, 7 p.m.

March 6 & 7 – Core Business Matrix Follow-up Worksession, TRA

March 10 – Public Art Dedication, Fire Administration, 4 p.m.

March 14 - 18 - NLC Conference DC

March 23

Mobility Report

DART Report

Comprehensive Monthly Financial Report

Public Hearing: Zoning Case 2009-01 - Request for a Specific Use Permit for Arcade on 2.3± acres located on the south side of Chase Oaks Boulevard, 300± feet west of U.S. Highway 75. Zoned Corridor Commercial. **Applicant: GBRE, LLC**

March 24 – Council Candidate Briefing, TRA, 8 a.m. – 2 p.m.

March 27 – Police Awards Banquet

April 14

April 25 – Fire Department Appreciation Picnic, Bob Woodruff Park, 12 – 5 p.m.

April 27

Mobility Report

DART Report

Comprehensive Monthly Financial Report

May 7 – COP Employee of the Year Rotary Luncheon

May 11

May 18
Canvass

May 25 – Memorial Day Holiday

May 26
ACC Report (Quarterly)
Mobility Report
DART Report
Comprehensive Monthly Financial Report

June 4 – District 3 Roundtable, PSA StarCenter, 7 p.m.

June 8

June 5 – 7, TCMA Conference, Austin

June 10 – City Council Retreat

June 22
Mobility Report
DART Report
Comprehensive Monthly Financial Report

July 3 – City Recognized Holiday for Independence Day

July 27
Mobility Report
DART Report
Comprehensive Monthly Financial Report

July 29
2009-10 Budget Presentation

August 10

August 24
ACC Report (Quarterly)
Mobility Report
DART Report
Comprehensive Monthly Financial Report

September 7 – Labor Day Holiday

September 13 – 17, ICMA Conference, Montreal

September 10 – District 4 Roundtable, PSA StarCenter, 7 p.m.

September 14

September 28

Mobility Report

DART Report

Comprehensive Monthly Financial Report

October 12

October 21-23, TML Conference, Ft. Worth

October 26

Mobility Report

DART Report

Comprehensive Monthly Financial Report

November 9

November 10 – 14, NLC, San Antonio

November 23

ACC Report (Quarterly)

Mobility Report

DART Report

Comprehensive Monthly Financial Report

December 10 – District 2 Roundtable, TMC, 7 p.m.

**PLANO CITY COUNCIL
PRELIMINARY OPEN MEETING
February 23, 2009**

COUNCIL MEMBERS

Pat Evans, Mayor
Jean Callison, Mayor Pro Tem
Harry LaRosiliere, Deputy Mayor Pro Tem
Pat Miner
Scott Johnson
Mabrie Jackson
Sally Magnuson
Lee Dunlap

STAFF

Thomas H. Muehlenbeck, City Manager
Frank Turner, Deputy City Manager
Bruce Glasscock, Deputy City Manager
Rod Hogan, Deputy City Manager
Mark Israelson, Assistant City Manager
LaShon Ross, Assistant City Manager
Diane C. Wetherbee, City Attorney
Diane Zucco, City Secretary

Mayor Evans called the meeting to order at 5:11 p.m., Monday, February 23, 2009, in Training Room A of the Municipal Center, 1520 K Avenue. All Council Members were present with the exception of Council Members Magnuson and Jackson. Mayor Pro Tem Callison arrived at 5:14 p.m. Mayor Evans then stated that the Council would retire into Executive Session in compliance with Chapter 551, Government Code, Vernon's Texas Codes, Annotated, in order to consult with an attorney and receive Legal Advice, Section 551.071, and to discuss Economic Development, Section 551.087 for which a certified agenda will be kept in the office of the City Secretary for a period of two years as required.

Mayor Evans reconvened the meeting back into the Preliminary Open Meeting at 6:04 p.m. in the Council Chambers where the following matters were discussed. All Council Members were present.

Consideration and Action Resulting from Executive Session Discussion:

No items were brought forward.

Arts of Collin County Quarterly Report

Executive Director of the Arts of Collin County Mike Simpson spoke to excitement generated over the last 90 days and revision in the fundraising strategy to accept donations of any size while continuing to solicit large donations. He spoke to raising exposure of the site through a Site Clean-up Youth Volunteer Project scheduled on March 14, 2009 and installation of temporary trails.

Mr. Simpson spoke to \$1.4 million in new donations including \$1 million from AT&T Foundation, \$100,000 from Lantana Educational/Charitable Foundation, \$250,000 from Plano Arts Cultural Endowment (PACE) and individual contributions. He advised that 80% of the funding is complete, the need for \$17+ more, the possibility that costs may come in lower than anticipated and to bidding in 2009. Mr. Simpson spoke to fundraising committees organized in each of the cities, the need for this venue in the area, potential signage along SH 121, the "Imagine Campaign" advertised in local publications, and monies that could be raised through citizen participation. Mr. Simpson responded to Council Member Jackson advising that because the project includes participation by three cities through voter-approved bond funds, it is considered a public project and requires commitment of all funds before groundbreaking. He responded to Mayor Evans that changes in membership on the committee will be addressed by participating cities and Mayor Evans requested an agenda item to move joint representative Bobby Baggett to a position as a City of Plano representative.

Mobility Report

Transportation Engineering Manager Neal spoke to closure of Custer Road northbound at S.H. 121 during repairs and on-site adjustment of traffic signals to accommodate issues. He advised that Parkwood Boulevard from Spring Creek Parkway to Windhaven Parkway is open to traffic and that adjacent intersections will be monitored to address safety and congestion issues. Mr. Neal advised that Frisco ISD has been contacted regarding possible removal of unused school zones, Wesson Drive has received a waiver from the Planning and Zoning Commission for participation in the Safe Streets Program, and 60% completion of the Integrated Corridor Management Project for cities along U.S. 75. He responded to Council Member Dunlap that the North Texas Tollway Authority has just released the final draft for the intersection of the Dallas North Tollway and S.H. 190 (north and southbound) and Staff will be providing comments.

DART Report

Dart Board of Directors Representative Wilkins advised the Council that the Parker Road Station parking expansion is 25% complete and will add 589 new spaces and that the Bush Turnpike Station expansion of 386 new spaces is 35% complete. She advised that the Board will be considering a resolution to support the study of offering premium parking at the Parker Road Station. Ms. Wilkins spoke to service changes effective in February and September service/fare changes with Public Hearings beginning in April 2009. She spoke to sales tax trends below budget, TxDOT's decision not to add more ingress or egress points along US 75 and work to coordinate the replacement of the bridge over US 75 with the Cottonbelt line. Ms. Wilkins spoke to US 75 as a managed lane requiring the use of pillions and Mayor Evans spoke to possible future fees for use of the lanes. Council Member Johnson spoke to Plano residents participating in DART through tax payments while other cities receive benefits. Ms. Wilkins advised that DART includes all forms of mass transit including rail, bus, HOV, shuttle and shared rides and to application for funds from the stimulus package. City Manager Muehlenbeck spoke to continued efforts on routes in the Legacy Town Center area.

Comprehensive Monthly Financial Report

Director of Finance Tacke advised that the January 2009 report indicates that General and Water & Sewer Fund revenues are down slightly as a percentage of the budget but that actual revenues are up. She spoke to higher fund expenses, an increase in unemployment, and a decline in sales tax collection with the cities of Carrollton and Dallas showing increases. Ms. Tacke spoke to a slight increase in housing starts and hotel/motel tax figures showing no significant changes. She spoke to the City's equity in the treasury pool having its largest portion in bond funds, a liquid position with regard to diversification and future purchase of other investments. Ms. Tacke advised that she would look into increases in Dallas sales tax and advised that rating agencies indicate there were 85 foreclosures in the City in calendar year 2008.

Presentation of Fire Department Art Project T-Shirts

Public Art Committee Chair Drotman spoke to installation of the art piece at the Fire Administration building with a dedication scheduled for March 10, 2009. Cultural Programs Coordinator Eubanks described the piece and the process of selection. Assistant Chief Thompson presented t-shirts to the Council and spoke to the credo of the department, "Everyone Goes Home." He and Mr. Drotman thanked the Council for their support.

Council items for discussion/action on future agendas

Mayor Evans requested an item on the next agenda to move Arts of Collin County Committee Member Baggett from a Joint to a Plano representative.

Consent and Regular Agenda

Council Member Jackson requested Consent Agenda Item "H," an ordinance to call a Special Election to be held within the City on May 9, 2009, for the purpose of authorizing General Obligation Bonds and revoking certain prior voted bond authorization be removed for individual consideration.

Nothing further was discussed. Mayor Evans adjourned the Preliminary Meeting at 6:57 p.m.

Pat Evans, MAYOR

ATTEST

Diane Zucco, City Secretary

PLANO CITY COUNCIL
February 23, 2009

COUNCIL MEMBERS

Pat Evans, Mayor
Jean Callison, Mayor Pro Tem
Harry LaRosiliere, Deputy Mayor Pro Tem
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Scott Johnson
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Sally Magnuson
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Rod Hogan, Deputy City Manager
Mark Israelson, Assistant City Manager
LaShon Ross, Assistant City Manager
Diane C. Wetherbee, City Attorney
Diane Zucco, City Secretary

Mayor Evans convened the Council into the Regular Session on Monday, February 23, 2009, at 7:05 p.m. in the Council Chamber of the Plano Municipal Center, 1520 K Avenue. All Council Members were present.

The invocation was led by Pastor Jack Schneider of St. Paul Lutheran Church and The Pledge of Allegiance was led by Brownie Troop 3064 of Wells Elementary School.

Mayor Evans presented a proclamation recognizing 'Larry Kenneth McDavid Day.'

COMMENTS OF PUBLIC INTEREST

No one appeared to speak.

CONSENT AGENDA

Council Member Jackson requested that Consent Agenda Item "H" be removed for individual consideration.

Upon a motion made by Mayor Pro Tem Callison and seconded by Council Member Dunlap, the Council voted 8-0 to approve and adopt all remaining items on the Consent Agenda as recommended and as follows:

Approval of Minutes [Consent Agenda Item (A)]

February 17, 2009

Approval of Expenditures

CSP No. 2009-41-B for total base proposal for the construction of the Animal Shelter Addition in the amount of \$1,640,000 to Hisaw and Associates General Contractors, Inc. [Consent Agenda Item (B)] (See Exhibit "A")

Approval of Contract: (Purchase of products/services exempt from State of Texas Competitive Bid Laws)

To approve a contract made and entered into by and between the City of Plano and the Board of Trustees of the Plano Independent School District and Sharon Rowe, the Elections Administrator of Collin County, Texas, pursuant to the authority in Subchapter D, Section 31.092, of Chapter 31, of the Texas Election Code, regarding the coordination, supervision, and running of the City's May 9, 2009, General and/or Special Election in the estimated amount of \$28,938. [Consent Agenda Item (C)]

To approve a Service Agreement by and between the City of Plano and Verizon to upgrade the existing SONET Ring bandwidth capabilities in the amount of \$117,362 and authorizing the City Manager to execute all necessary documents. (Bid No. B021-03) [Consent Agenda Item (D)]

Approval of Change Order

To Santos Construction Company, Inc., increasing the contract by \$78,528 for the 2008-2009 Arterial Concrete Pavement Rehabilitation Project, Parker Road – Preston Road to Dallas North Toll Road, Project No. 5942, Change Order No. 1, Bid No. 2008-226-B. [Consent Agenda Item (E)]

Adoption of Resolutions

Resolution No. 2009-2-21(R): To appoint William J. Roberts and Scott M. Seidel to serve for two year terms as investigators as required by Section 2-104 of the Code of Conduct of the City of Plano; and providing an effective date. [Consent Agenda Item (F)]

Resolution No. 2009-2-22(R): To approve the settlement of the lawsuit styled American Community Newspapers, LLC d/b/a Star Community Newspapers v. The City of Plano, Cause No. 08-40259 in the United States Court of Appeals for the Fifth Circuit and any other ancillary proceedings related to the appeal; authorizing the City Manager to execute any and all documents necessary to settle such lawsuit; and providing an effective date. [Consent Agenda Item (G)]

Adoption of Ordinances

Ordinance No. 2009-2-23: To amend Section 13-9(b) of Chapter 13 Municipal Court of the Code of Ordinances of the City of Plano providing for a new juvenile case manager fee; providing a repealer clause, a savings clause, a severability clause; and providing an effective date. [Consent Agenda Item (I)]

END OF CONSENT

Ordinance No. 2009-2-24: To call a Special Election to be held within the City on May 9, 2009, for the purpose of authorizing General Obligation Bonds and revoking certain prior voted bond authorization; making provisions for the conduct of the election and other provisions incident and related to the purpose of this ordinance; and providing an effective date. [Consent Agenda Item (H)]

A motion was made by Council Member Johnson and seconded by Council Member Magnuson to call a Special Election to be held within the City on May 9, 2009, for the purpose of authorizing General Obligation Bonds and revoking certain prior voted bond authorization; making provisions for the conduct of the election and other provisions incident and related to the purpose of this ordinance; and providing an effective date; and further to adopt Ordinance No. 2009-2-24. The Council voted 5-3 with Council Members Jackson, Dunlap and Miner voting in opposition. The motion carried.

There being no further discussion, Mayor Evans adjourned the meeting at 7:18 p.m.

Pat Evans, MAYOR

ATTEST:

Diane Zucco, City Secretary



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular	<input type="checkbox"/> Statutory	Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date: 2/23/09		Reviewed by Legal	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable	
Department:	Engineering		Initials	Date	
Department Head	Alan b. Upchurch		Executive Director	<i>[Signature]</i> 2/16/09	
Dept Signature:	<i>[Signature]</i>		City Manager	<i>[Signature]</i> 2/17/09	
Agenda Coordinator (include phone #):		Irene Pegues (7198) <i>[Signature]</i>	Project No. 5703		
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input checked="" type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER					
CAPTION					
Award of competitive sealed proposal to Hisaw and Associates General Contractors, Inc., in the amount of \$1,640,000 for total base proposal for the construction of the Animal Shelter Addition (Bid No. 2009-41-B).					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP					
FISCAL YEAR:	2008-09	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		322,330	1,951,934	0	2,274,264
Encumbered/Expended Amount		-322,330	-188,999	0	-511,329
This Item		0	-1,640,000	0	-1,640,000
BALANCE		0	122,935	0	122,935
FUND(S): ANIMAL CONTROL FACILITIES CIP & CAPITAL RESERVE					
COMMENTS: Funds are included in the 2008-09 Animal Control Facilities CIP and Capital Reserve. This item, in the amount of \$1,640,000, will leave a current year balance of \$122,935 for the Animal Shelter projects. STRATEGIC PLAN GOAL: Additions to the Animal Shelter relate to the City's Goals Premier City in which to Live and Service Excellence.					
SUMMARY OF ITEM					
Staff recommends the Competitive Sealed Proposal of Hisaw and Associates General Contractors, Inc., in the amount of \$1,640,000.00 for the Animal Shelter Addition, be accepted as the best value, and conditioned upon timely execution of any necessary contract documents. Published project range was \$1.4-\$2.0 million.					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		
Competitive Sealed Proposal Recap			N/A		
Location Map					

b1
a-7



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date:	3/9/09	Reviewed by Legal	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
Department:	Purchasing		Initials	Date
Department Head	Mike Ryan	Assistant City Manager	<i>[Signature]</i>	2-23-09
Dept Signature:	<i>[Signature]</i>	Deputy City Manager	<i>[Signature]</i>	2-24-09
		City Manager	<i>[Signature]</i>	2/25/09
Agenda Coordinator (include phone #): Becky Johansen (4396)				
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input checked="" type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
Award/Rejection of Bid/Proposal for Bid No. 2009-40-C for Traffic Markers be awarded to Ennis Paint Company in the estimated annual amount of \$7,590.00; BIKO Inc. in the estimated annual amount of \$10,140.00; Traffic Supply in the estimated annual amount of \$1,460.00; and Pathmark Traffic Parts of Texas in the estimated annual amount of \$37,892.00. Total estimated annual amount is \$57,082.00.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(s): WAREHOUSE FUNDS				
COMMENTS: COMMENTS: This item approves price quotes. Expenditures will be made in the Inventory Control and Asset Disposal within the approved budget appropriations. The estimated annual amount is \$57,082.				
STRATEGIC PLAN GOAL: Funding of Inventory stock items relates to the City's goal of "Premier City in Which to Live."				
SUMMARY OF ITEM				
Staff recommends bids of Ennis Paint Company for items 1 and 2 in the estimated annual amount of \$7,590.00; BIKO Inc. for items 3 and 9 in the estimated annual amount of \$10,140.00; Traffic Supply for items 4 and 5 in the estimated annual amount of \$1,460.00; and Pathmark Traffic Parts of Texas for items 6, 7 and 8 in the estimated annual amount of \$37,892.00 be accepted as the lowest responsive, responsible bids, conditioned upon timely execution of any necessary contract documents. This will establish an annual fixed price contract with three optional renewals in the total estimated annual amount of \$57,082.00. This contract will be for the purchase of Traffic Markers.				

CITY OF PLANO

BID NO. 2009-40-C TRAFFIC MARKERS BID RECAP

Bid Opening Date/Time: January 22, 2009 @ 4:00pm

Number of Vendors Notified: 381

Vendors Submitting "No Bids": 3

Number of Bids Submitted: 5

Pathmark Traffic Products Inc
Biko Inc
Roadrunner Traffic Supply
Traffic Supply
Ennis Paint Inc

Bids Evaluated Non-Responsive to Specification: 0

Recommended Vendor(s): Ennis Paint Company
BIKO Inc.
Traffic Supply
Pathmark Traffic Parts of Texas

Becky Johansen

Becky Johansen, Buyer

February 12, 2009

Date



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular	<input type="checkbox"/> Statutory	Reviewed by Budget <i>C.S.</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date: 03/09/09		Reviewed by Legal	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable	
Department:	Purchasing			Initials	Date
Department Head	Mike Ryan	Assistant City Manager		<i>JR</i>	2-23-09
Dept Signature:	<i>Mike Ryan</i>	Deputy City Manager		<i>[Signature]</i>	2-24-09
		City Manager		<i>[Signature]</i>	2/25/09
Agenda Coordinator (include phone #):		Becky Johansen (4396)			
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT					
<input checked="" type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER					
CAPTION					
Award/Rejection of Bid/Proposal for Bid No. 2009-57-C for Fire Hydrant and Water Line Repair Parts be awarded to HD Supply Waterworks in the estimated annual amount of \$114,552.75; Municipal Water Works Supply in the estimated annual amount of \$5,377.94; Empire West Inc. in the estimated annual amount of \$11,683.33. Total estimated annual amount is \$131,614.02.					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS	
Budget	0	0	0	0	
Encumbered/Expended Amount	0	0	0	0	
This Item	0	0	0	0	
BALANCE	0	0	0	0	
FUND(s): WAREHOUSE FUND					
COMMENTS: This item approves price quotes. Expenditures will be made in the Inventory Control and Asset Disposal within the approved budget appropriations. The estimated annual amount is \$131,614.					
STRATEGIC PLAN GOAL: Funding of Inventory stock items relates to the City's goal of "Premier City in Which to Live."					
SUMMARY OF ITEM					
Staff recommends bids of HD Supply Waterworks for items 1, 2, 3, 4, 5, 9, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 42, 43, 44, 45, 46, 51, 53, 54, 57, 58, 59, 61, 66, 70, 72, 87, 88, 89 and 90 in the estimated annual amount of \$114,552.75; Municipal Water Works Supply for items 6, 7, 8, 10, 11, 41 and 55 in the estimated annual amount of \$5,377.94; Empire West Inc. for items 47, 48, 49, 50, 52, 56, 60, 62, 63, 64, 65, 67, 68, 69, 71, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85 and 86 in the estimated annual amount of \$11,683.33 be accepted as the lowest responsive, responsible bids, conditioned upon timely execution of any necessary contract documents. This will establish an annual fixed price contract with three optional renewals in the total estimated annual amount of \$131,614.02. This contract will be for the purchase of Fire Hydrant and Water Line Repair Parts.					



**CITY OF PLANO
COUNCIL AGENDA ITEM**

List of Supporting Documents: Bid Recap	Other Departments, Boards, Commissions or Agencies

CITY OF PLANO

BID NO. 2009-57-C Fire Hydrant and Water Line Repair Parts BID RECAP

Bid Opening Date/Time: February 5, 2009 @ 4:00pm

Number of Vendors Notified: 1294

Vendors Submitting "No Bids": 5

Number of Bids Submitted: 6

Municipal Water Works Supply Inc
Ferguson Waterworks
HD Supply Waterworks
Hydraflo Inc
Metro Valve Pipe
EmpireWest Inc

Bids Evaluated Non-Responsive to Specification: 2

Recommended Vendor(s): HD Supply Waterworks
Municipal Water Works Supply
Empire West

Becky Johansen

February 13, 2009

Becky Johansen, Buyer

Date

Becky Johansen

From: Bob Karlseng
Sent: Thursday, February 12, 2009 9:47 AM
To: Becky Johansen
Cc: Bob Karlseng; Mike Ryan; Diane Palmer
Subject: Fire Hydrant and Water Line Repair Parts, Solicitation 2009-57-C
Attachments: Fire Hydrant and Water Repair Parts.doc

Make the following awards:

Award to HD Supply Waterworks items: 1, 2, 3, 4, 5, 9, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 42, 43, 44, 45, 46, 51, 53, 54, 57, 58, 59, 61, 66, 70, 72, 87, 88, 89, and 90. Total value of this award is \$ 114,552.75.

Award to Municipal Water Works Supply items: 6, 7, 8, 10, 11, 41, and 55. Total value of this award is \$ 5,377.94

Award to Empire West items: 47, 48, 49, 50, 52, 56, 60, 62, 63, 64, 65, 67, 68, 69, 71, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, and 86. Total value of this award is \$ 11,683.33.

Hydraflo Inc. had the low bid on item 47, however this would have been their only award and the difference of their bid to the next was not significant enough to merit an award.

Total value of all awards is \$ 131,614.02. Financial sheet attached.

C-4

2/12/2009



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular	<input type="checkbox"/> Statutory	Reviewed by Budget <i>C.S.</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date: 3/9/09		Reviewed by Legal	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable	
Department:	Purchasing			Initials	Date
Department Head	Mike Ryan	Assistant City Manager		<i>[Signature]</i>	2-23-09
Dept Signature:	<i>[Signature]</i>	Deputy City Manager		<i>[Signature]</i>	2-24-09
		City Manager		<i>[Signature]</i>	2/25/09
Agenda Coordinator (include phone #):		Sharron Mason x7247			

ACTION REQUESTED: ORDINANCE RESOLUTION CHANGE ORDER AGREEMENT
 APPROVAL OF BID AWARD OF CONTRACT OTHER

CAPTION

Award, rejection of Bids/Proposals, Conditional acceptance of best value Bid/Proposal for an annual fixed price contract for Temporary Labor Services Waste Collection (2009-38-C) in the estimated annual amount of \$340,000. The award recommendation of this contract will be to three (3) vendors as follows: Labor Ready, Lone Staff Staffing, and CTJ Maintenance.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR: 08/09	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0

FUND(S): SUSTAINABILITY & ENVIRONMENTAL SERVICES (045)

COMMENTS: This item approves price quotes in the estimated annual amount of \$340,000. Expenditures will be made in the Sustainability & Environmental Services, Environmental Waste Collections and Compost Marketing and Operations cost centers within approved budget appropriations.

STRATEGIC PLAN GOAL: Temporary Labor Service Waste Collection relates to the City's Goal of "Services Excellence".

SUMMARY OF ITEM

Based on the bid evaluation for 2009-38-C - Temporary Labor Services Waste Collection, the Environmental Waste Services Self Directed Work Team has reviewed the bids and recommends the bid award to the three lowest bidders in the following order: (1) Labor Ready - \$10.14 hourly rate; (2) Lone Star Staffing - \$11.30 hourly rate; and (3) CTJ Maintenance - \$11.48 hourly rate. Total estimated annual expenditure is \$340,000.00.

This will establish three temporary labor contracts for the department to utilize during periods of volume increase or when one contractor cannot meet the number of laborers required on a daily basis. The SDWT [Self Directed Work Team] will monitor the usage of the contracts to ensure the department needs are met on a consistent basis.

This contract award will be for one (1) year with three (3) City optional one (1) year renewals.



**CITY OF PLANO
COUNCIL AGENDA ITEM**

List of Supporting Documents: Recommendation Memo and Bid Recap	Other Departments, Boards, Commissions or Agencies

Memorandum

To: Sharron Mason
Buyer
Purchasing Division

From: Mark Padley
Environmental Waste Services Supervisor

Date: February 10, 2009

Re: Temporary Labor Services Waste Collection –Contracts

Based on the bid evaluation for 2009-38-C - Temporary Labor Services Waste Collection, the Environmental Waste Services' Self Directed Work Team (SDWT) has reviewed the bids and recommends the bid be awarded to the three lowest bidders in the following order:

1. Labor Ready (\$10.14)
2. Lone Star Staffing (\$11.30)
3. CTJ Maintenance (\$11.48)

This will establish three temporary labor contractors for the department to utilize during periods of volume increase or when one contractor cannot meet the number of laborers required on a daily basis. The SDWT will monitor the usage of the contracts to ensure the department needs are met on a consistent basis.

The contract award will be for a one (1) year term with three (3) City optional one (1) year renewals. The total estimated annual expenditure is \$340,000.00.

CITY OF PLANO

BID NO. 2009-38-C

TEMPORARY LABOR SERVICES WASTE COLLECTION

BID RECAP

Bid opening Date/Time: Tuesday, January 6, 2009 @ 3:00 pm

Number of Vendors Notified: 567

Number of Vendors Viewed: 21

Vendor Responding to Bid:

Labor Ready
Lonestar Staffing
CTJ Maintenance, Inc.
Results Staffing
Gonzales Labor Systems

No Bid Vendors:

Radius Staffing
Temps of McKinney
HPI - Hiring Partners, Inc.

Sharron Mason

Sharron Mason, Sr. Buyer

January 8, 2009

Date

SUBMISSION STATEMENT

ALL SUBMISSIONS FOR THE DESIGNATED PROJECT ARE REFLECTED ON THIS RECAP SHEET. HOWEVER, THE LISTING OF A SUBMISSION ON THIS SHEET SHOULD NOT BE CONSTRUED AS A COMMENT ON THE RESPONSIVENESS OF SUCH SUBMISSION OR AS ANY INDICATION THAT THE CITY ACCEPTS SUCH SUBMISSION AS RESPONSIVE. THE CITY WILL MAKE A DETERMINATION AS TO THE RESPONSIVENESS OF SUBMISSIONS SUBMITTED BASED UPON COMPLIANCE WITH ALL APPLICABLE LAWS, CITY OF PLANO PURCHASING GUIDELINES, AND PROJECT DOCUMENTS, INCLUDING BUT NOT LIMITED TO THE PROJECT SPECIFICATIONS AND CONTRACT DOCUMENTS. THE CITY WILL NOTIFY THE SUCCESSFUL VENDOR UPON AWARD OF THE CONTRACT AND, ACCORDING TO LAW, ALL SUBMISSIONS RECEIVED WILL BE AVAILABLE FOR INSPECTION AT THAT TIME.

PURCHASING DIVISION
CITY OF PLANO TEXAS

d-4



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
Council Meeting Date:	3/9/09	Reviewed by Legal <i>fm</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
Department:	Purchasing		Initials	Date	
Department Head	Mike Ryan	Assistant City Manager	<i>[Signature]</i>	2-27-09	
Dept Signature:	<i>[Signature]</i>	Deputy City Manager	<i>[Signature]</i>	03-02-09	
		City Manager	<i>[Signature]</i>	3/2/09	
Agenda Coordinator (include phone #):		Zahid Khan Ext.7376			
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input checked="" type="checkbox"/> OTHER - EXISTING CONTRACT					
CAPTION					
Purchase from Existing Contract to authorize the purchase of Supply, Material and Installation of avenue "N" Radio Communications shelter to GFRC in the amount of \$213,074.00. CSP # 2008-9-B.					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP					
FISCAL YEAR:	2008-09	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		474,176	13,587,935	9,937,889	24,000,000
Encumbered/Expended Amount		-474,176	-225,750	0	-699,926
This Item			-213,074	0	-213,074
BALANCE		0	13,149,111	9,937,889	23,087,000
FUND(S): TECHNOLOGY IMPROVEMENTS (CO'S/TAX NOTES)					
COMMENTS: Funds are available from the 2008 and 2009 sale of Tax Notes. This item, in the amount of \$213,074, will leave a current year allocation of \$13,149,111 for the Radio System Infrastructure Replacement project.					
STRATEGIC PLAN GOAL: Purchase of supplies, materials and installation of a communication shelter for the radio system infrastructure replacement project relates to the City's Goal of Excellence					
SUMMARY OF ITEM					
Competitive Sealed Proposal # CSP 2008-9-B was awarded to GFRC in the original amount of \$213,074.00 for the Ridgeview Shelter. Original bid documents included the option of building an additional Shelter. This agenda item is for the approval of \$213,074.00 as contained in the original proposal, for the building of a 2nd Shelter..					
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies			



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
Council Meeting Date:	3/9/09	Reviewed by Legal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
Department:	Public Works & Engineering	Initials	Date		
Department Head	Alan L. Upchurch	Assistant City Manager			
Dept Signature:	<i>Alan L. Upchurch</i>	Deputy City Manager	<i>[Signature]</i>	03-02-09	
		City Manager	<i>[Signature]</i>	3/2/09	
Agenda Coordinator (include phone #):		Irene Pegues (7198)			
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input checked="" type="checkbox"/> OTHER PURCHASE FROM EXISTING CONTRACT					
CAPTION					
Approve purchase and installation of security software, hardware and cameras for Fire Station No. 12/EOC/Fire Logistics Warehouse in the amount of \$67,245 from existing TCPN Contract #4785 with LenSec LLC.					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP					
FISCAL YEAR:	2008-09	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	1,500,000	0	1,500,000
Encumbered/Expended Amount		0	0	0	0
This Item		0	-67,245	0	-67,245
BALANCE		0	1,432,755	0	1,432,755
FUND(S): TECHNOLOGY FUND (062-62354)					
COMMENTS: Funds are included in the 2008-09 Technology Fund for the purchase and installation of a security system at City facilities. The balance of funds will be used for other items related to the project. STRATEGIC PLAN GOAL: Installation of security systems at new fire and emergency facilities relates to the City's Goal of "Service Excellence".					
SUMMARY OF ITEM					
To approve purchase and installation of security software, hardware and cameras for Fire Station No. 12/EOC/Fire Logistics Warehouse in the amount of \$67,245 from existing TCPN Contract #4785 with LenSec LLC.					
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies			
2/6/09 proposal from LenSec LLC - software and hardware 2/6/09 proposal from LenSec LLC - cameras Location Map		N/A			

LenSec LLC
 1800 Bering Drive, Suite 751, Houston, TX 77057 Tel: 713-395-0800 Fax: 713-395-0597
 Proposal for:
CITY OF PLANO
 Integrated Enterprisewide Security System - IP Video Surveillance & Access Control
 System Design, Supply, Installation and Service
 2/6/2009

Prepared for	Install location(s)	Prepared by		
CITY OF PLANO	CITY OF PLANO IP Video Surveillance System - Part I - 15 cameras (No Server Hardware) LenSec TCPN # 4785	LenSec LLC 1800 Bering Drive, Suite 751 Houston TX 77057 Lisa Polk, Regional Sales Director Cell: 817-366-0822		
Equipment/Service	Description	Units	Unit Price	Total

ENTERPRISEWIDE VIDEO SURVEILLANCE SYSTEM
LenSec Digital Video Servers and Software

LS-IP-SVR-SW-1L	LenSec Digital Video Management Software with user friendly interface for viewing live and recorded video across multiple locations. Licensing fee per camera.	15	\$ 586.00	\$ 8,790.00
LS-IP-SVR-CONFIG	Custom configuration of server - LenSec Software and OS installation, Software configuration, Loading of custom maps and HTML linkage, Testing and Quality Assurance	0	\$ 1,734.00	-

Special Camera Discount (Project Specific)

Network IP Cameras

LS-IP-CAM-AX211	Axis 211 Network Camera with support for video motion detection, DC iris varifocal lens for outdoor use and suitable for power over ethernet. Integration process including camera Setup in the lab, Custom camera functionality adjustment, Integration with LenSec Software, Motion detection adjustment, System optimization, Camera information tracking, Testing and Quality Assurance.	6	\$ 1,144.00	\$ 6,864.00
LS-IP-CAM-AX216FD	Axis 216FD Dome camera with Varifocal DC-iris lens, 1/4" progressive scan CCD, up to VGA 640x480 resolution at 30 fps frame rate, simultaneous Motion JPEG and MPEG-4, Video Motion Detection, I/O for alarm/event handling, two-way audio support with built-in microphone and Power over Ethernet. Integration process including camera Setup in the lab, Custom camera functionality adjustment, Integration with LenSec Software, System optimization, Camera information tracking, Testing and Quality Assurance.	9	\$ 1,301.00	\$ 11,709.00

Special Camera Discount (Project Specific) \$ (3,715.00)

Camera Power Supply

LS-USC-CAM-ILSS	Network Camera Inline Surge Suppressor	0	\$ 30.00	-
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Power over Ethernet POE power provided by the customer

Camera Mounts

LS-IP-CAM-OUT-MT-ENV	Outdoor Environmental Housing - Aluminium body, clear window, hinged, flip-flop opening	6	\$ 128.00	\$ 768.00
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Server Cabinets Server rack space by the customer

Cables Supply Cable supply by the customer

Server Reboot Box

LS-IP-REBOOT-1P	IP addressable one (1) port reboot box	0	\$ 583.00	-
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IP VIDEO SYSTEM - EQUIPMENT & SOFTWARE - TOTAL \$ 24,416.00

INSTALLATION Installation of Cable and Conduit by the customer

Server Installation/Site Configuration: On-site integration with LenSec IP surveillance system includes connecting the server to the cameras and network, access to user maps, configuration of software to allow web control, configuration of software for Remote Diagnostics and end-user training	0	\$1,734.00	\$0.00
Outdoor Network camera placement, aiming, focusing and installation of camera with housing. Installation rate per camera	15	\$478.00	\$7,170.00
Installation of power and switching equipment in locations where camera cables terminate other than where the server is installed.	0	\$911.00	\$0.00
Regular Work Hours (8:00 A.M. - 5:00 P.M. Local Time)	40	\$138.00	\$5,520.00
After Hours		\$204.00	\$0.00
Weekends and Holidays		\$281.00	\$0.00
Turnkey Project Management and installation charges for the equipment covered in the scope. Refer to LenSec terms and conditions for installation and installation standards document for more details.			\$12,690.00

P.2

 LenSec LLC 1800 Bering Drive, Suite 751, Houston, TX 77057 Tel: 713-395-0800 Fax: 713-395-0597 <i>Proposal for:</i> CITY OF PLANO Integrated Enterprisewide Security System - IP Video Surveillance & Access Control System Design, Supply, Installation and Service 2/6/2009				
Prepared for	Install location(s)	Prepared by		
CITY OF PLANO	CITY OF PLANO IP Video Surveillance System - Part I - 15 cameras (No Server Hardware) LenSec TCPN # 4785	LenSec LLC 1800 Bering Drive, Suite 751 Houston TX 77057 Lisa Polk, Regional Sales Director Cell: 817-366-0822		
Equipment/Service	Description	Units	Unit Price	Total
SERVICE				
Tech Support, Maintenance & Software Updates		Year(s)	Service Fee	
Service Fee paid annually that covers for limited equipment warranty by the manufacturer, server maintenance, remote support for server and camera, telephone calls for technical support, and LenSec software update during the service period. Service contract will be valid for one year and service extension can be done based on mutual evaluation and agreement.		1		\$ 2,968.00
SERVICE SUPPORT (1 Year)				\$ 2,968.00
ENTERPRISEWIDE SECURITY SYSTEM - GRAND TOTAL				\$40,074.00

LenSec Terms and Conditions

The pricing above is valid for equipment recommended by LenSec LLC.

Pricing for the equipment manufactured by specific vendor, recommended by the Customer, will be confirmed on case to case basis.

The pricing in the Proposals are valid for 60 days from the proposal date. The price is subjected to change and adequate notice will be provided. Any volume discount offered will be project specific.

Prices do not include sales, use or excise taxes, bonding costs, custom duty, licensing and/or other applicable registration fees.

Exclusions: Equipment not covered in the proposal scope, Server hardware and storage unit, 110V power near LenSec installed equipment at the poles/water tower, troubleshooting and repair of any defects in the existing system, trenching, boring, renting of bucket elevators, permission from the City, and any complexity related to the installation that has not been specifically discussed and quoted. Scope excluded in the proposal can be serviced by LenSec under a separate change order.

Remote Service Support can be provided only if LenSec has "remote access" to customer's network.

Onsite service and maintenance of server, cameras, access control equipment and security system is excluded from LenSec's scope.

Refer to LenSec Service Support Program for more details.

Above price does not include any travel and stay charges for LenSec project manager, and/or engineer.

Hardware is covered by one year limited warranty from the manufacturer. Hardware warranty will begin from the date equipment is received on-site. The supply of equipment is subject to availability. LenSec will pay for one way ground shipping costs. Any expedited shipping costs would be billed to the customer.

Installation quote will be revalidated after doing the site audit and after the receipt of customer approval. Installation pricing is subjected to change based on the complexity of layout and any scope related changes.

Estimated lead time for designing, supplying the equipment, installation, system configuration and testing will be 6-8 weeks from the date of receipt signed contract with purchase order and complete site information. Site information will include electronic copy of the building map, finalized and approved system layout with device locations, network information and readiness of site for installation.

Delivery location is assumed to be at above addressee(s) unless otherwise indicated. Equipment receipt and storage facility will be provided by the customer.

Invoices are due within 30 days of receipt.

Terms of Payment:

50% of contract value will be invoiced upon the receipt of Purchase Order by LenSec

35% of contract value will be invoiced upon the receipt of major equipments at the site

15% of contract value will be invoiced upon customer approval

Terms and Conditions as outlined in LenSec Sales, Installation and Service agreements are applicable. It is recommended that these terms are reviewed before the award of contract.

LenSec Service Support Program:

1- **Service Scope:** Remote telephone support for software, server(s) and cameras, daily review of automated report on servers and cameras, LenSec video management software update, limited on-site support for the server(s) through the manufacturer and limited warranty support from the manufacturers of the equipment supplied by LenSec.

2- **Equipment Warranty:** Network cameras and other equipment supplied by LenSec will have one (1) year warranty from the equipment purchase date. Equipment not covered under warranty can be replaced upon the receipt of purchase order. Supply of parts would be subject to availability.

3- **Remote and On-site Service Support:** Above pricing plan includes remote support during the work hours and on-site support for the server hardware (by the manufacturer) supplied by LenSec. LenSec's remote service support team will make their best efforts to diagnose and resolve technical issues remotely in collaboration with customer's on-site service staff. On-site visits by LenSec service technician would be billed at LenSec's discretion at \$150/hour for service work and \$85/hr for travel time. On-site visits will be billed for minimum two (2) hour plus travel time. All on-site service work would require a PO before service technician is dispatched.

4- **Service Hours:** Weekdays between 6:00 AM CST and 6:00 PM CST. Service support will not be available during weekends and holidays.

5- The start date for the Annual Service Contract for each site will be the next business day from the customer Sign-off (system acceptance) date OR two (2) weeks from the date the IP Video System is completely installed and is operational, whichever is earlier.

6- Remote Support Service can be provided only if LenSec has "remote access" to the IP Video system. If the LenSec service support team is not able to access the IP Video System remotely due to customer related network issues then LenSec service staff can provide service based on on-site service terms described above.

7- Above service pricing is valid for the scope outlined in this proposal. Any change to the scope would change the service pricing.

8- Service payment terms: Billing will be done at the beginning of each service period.

9- LenSec Service Terms and Conditions apply.

LenSec LLC
 1800 Bering Drive, Suite 751, Houston, TX 77057 Tel: 713-395-0800 Fax: 713-395-0597
 Proposal for:
CITY OF PLANO
 Integrated Enterprisewide Security System - IP Video Surveillance & Access Control
 System Design, Supply, Installation and Service
 2/6/2009

Prepared for	Install location(s)	Prepared by	
CITY OF PLANO	CITY OF PLANO IP Video Surveillance System - Part I - 10 cameras (No Server Hardware) LenSec TCPN # 4785	LenSec LLC 1800 Bering Drive, Suite 751 Houston TX 77057 Lisa Polk, Regional Sales Director Cell: 817-366-0822	
Equipment/Service	Description	Units	Unit Price
			Total

ENTERPRISEWIDE VIDEO SURVEILLANCE SYSTEM

LenSec Digital Video Servers and Software

LS-IP-SVR-SW-1L	LenSec Digital Video Management Software with user friendly interface for viewing live and recorded video across multiple locations. Licensing fee per camera.	10	\$ 586.00	\$ 5,860.00
LS-IP-SVR-CONFIG	Custom configuration of server - LenSec Software and OS installation, Software configuration, Loading of custom maps and HTML linkage, Testing and Quality Assurance	1	\$ 1,734.00	\$ 1,734.00

Special Camera Discount (Project Specific)

Network IP Cameras

LS-IP-CAM-AX211	Axis 211 Network Camera with support for video motion detection, DC iris varifocal lens for outdoor use and suitable for power over ethernet. Integration process including camera Setup in the lab, Custom camera functionality adjustment, Integration with LenSec Software, Motion detection adjustment, System optimization, Camera information tracking, Testing and Quality Assurance.	5	\$ 1,144.00	\$ 5,720.00
LS-IP-CAM-AX216FD	Axis 216FD Dome camera with Varifocal DC-iris lens, 1/4" progressive scan CCD, up to VGA 640x480 resolution at 30 fps frame rate, simultaneous Motion JPEG and MPEG-4, Video Motion Detection, I/O for alarm/event handling, two-way audio support with built-in microphone and Power over Ethernet. Integration process including camera Setup in the lab, Custom camera functionality adjustment, Integration with LenSec Software, System optimization, Camera information tracking, Testing and Quality Assurance.	5	\$ 1,301.00	\$ 6,505.00

Special Camera Discount (Project Specific)

\$ (2,445.00)

Camera Power Supply

LS-USC-CAM-ILSS	Network Camera Inline Surge Suppressor	11	\$ 30.00	\$ 330.00
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Power over Ethernet POE power provided by the customer

Camera Mounts

LS-IP-CAM-OUT-MT-ENV	Outdoor Environmental Housing - Aluminium body, clear window, hinged, flip-flop opening	5	\$ 128.00	\$ 640.00
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Server Cabinets Server rack space by the customer

Cables Supply Cable supply by the customer

Server Reboot Box

LS-IP-REBOOT-1P	IP addressable one (1) port reboot box	1	\$ 583.00	\$ 583.00
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IP VIDEO SYSTEM - EQUIPMENT & SOFTWARE - TOTAL

\$ 18,927.00

INSTALLATION Installation of Cable and Conduit by the customer

Server Installation/Site Configuration: On-site integration with LenSec IP surveillance system includes connecting the server to the cameras and network, access to user maps, configuration of software to allow web control, configuration of software for Remote Diagnostics and end-user training	1	\$1,734.00	\$1,734.00
Outdoor Network camera placement, aiming, focusing and installation of camera with housing. Installation rate per camera	10	\$478.00	\$4,780.00
Installation of power and switching equipment in locations where camera cables terminate other than where the server is installed.	1	\$911.00	\$911.00
Regular Work Hours (8:00 A.M. - 5:00 P.M. Local Time)	0	\$138.00	\$0.00
After Hours		\$204.00	\$0.00
Weekends and Holidays		\$281.00	\$0.00
Turnkey Project Management and Installation charges for the equipment covered in the scope. Refer to LenSec terms and conditions for installation and installation standards document for more details.			\$7,425.00

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 LenSec LLC 1800 Bering Drive, Suite 751, Houston, TX 77057 Tel: 713-395-0800 Fax: 713-395-0597 <i>Proposal for:</i> CITY OF PLANO Integrated Enterprisewide Security System - IP Video Surveillance & Access Control System Design, Supply, Installation and Service 2/6/2009			
Prepared for	Install location(s)	Prepared by	
CITY OF PLANO	CITY OF PLANO IP Video Surveillance System - Part I - 10 cameras (No Server Hardware) LenSec TCPN # 4785	LenSec LLC 1800 Bering Drive, Suite 751 Houston TX 77057 Lisa Polk, Regional Sales Director Cell: 817-366-0822	
Equipment/Service	Description	Units	Unit Price
SERVICE		Total	
Tech Support, Maintenance & Software Updates		Year(s)	Service Fee
Service Fee paid annually that covers for limited equipment warranty by the manufacturer, server maintenance, remote support for server and camera, telephone calls for technical support, and LenSec software update during the service period. Service contract will be valid for one year and service extension can be done based on mutual evaluation and agreement.		1	\$ 2,109.00
Service Discount			\$ (1,290.00)
SERVICE SUPPORT (1 Year)			\$ 819.00
ENTERPRISEWIDE SECURITY SYSTEM - GRAND TOTAL			\$27,171.00

LenSec Terms and Conditions

The pricing above is valid for equipment recommended by LenSec LLC.

Pricing for the equipment manufactured by specific vendor, recommended by the Customer, will be confirmed on case to case basis.

The pricing in the Proposals are valid for 60 days from the proposal date. The price is subjected to change and adequate notice will be provided. Any volume discount offered will be project specific.

Prices do not include sales, use or excise taxes, bonding costs, custom duty, licensing and/or other applicable registration fees.

Exclusions: Equipment not covered in the proposal scope, Server hardware and storage unit, 110V power near LenSec installed equipment at the poles/water tower, troubleshooting and repair of any defects in the existing system, trenching, boring, renting of bucket elevators, permission from the City, and any complexity related to the installation that has not been specifically discussed and quoted. Scope excluded in the proposal can be serviced by LenSec under a separate change order.

Remote Service Support can be provided only if LenSec has "remote access" to customer's network.

Onsite service and maintenance of server, cameras, access control equipment and security system is excluded from LenSec's scope.

Refer to LenSec Service Support Program for more details.

Above price does not include any travel and stay charges for LenSec project manager, and/or engineer.

Hardware is covered by one year limited warranty from the manufacturer. Hardware warranty will begin from the date equipment is received on-site. The supply of equipment is subject to availability. LenSec will pay for one way ground shipping costs. Any expedited shipping costs would be billed to the customer.

Installation quote will be reevaluated after doing the site audit and after the receipt of customer approval. Installation pricing is subjected to change based on the complexity of layout and any scope related changes.

Estimated lead time for designing, supplying the equipment, installation, system configuration and testing will be 6-8 weeks from the date of receipt signed contract with purchase order and complete site information. Site information will include electronic copy of the building map, finalized and approved system layout with device locations, network information and readiness of site for installation..

Delivery location is assumed to be at above addressee(s) unless otherwise indicated. Equipment receipt and storage facility will be provided by the customer.

Invoices are due within 30 days of receipt.

Terms of Payment:

50% of contract value will be invoiced upon the receipt of Purchase Order by LenSec

35% of contract value will be invoiced upon the receipt of major equipments at the site

15% of contract value will be invoiced upon customer approval

Terms and Conditions as outlined in LenSec Sales, Installation and Service agreements are applicable. It is recommended that these terms are reviewed before the award of contract.

LenSec Service Support Program:

1- **Service Scope:** Remote telephone support for software, server(s) and cameras, daily review of automated report on servers and cameras, LenSec video management software update, limited on-site support for the server(s) through the manufacturer and limited warranty support from the manufacturers of the equipment supplied by LenSec.

2- **Equipment Warranty:** Network cameras and other equipment supplied by LenSec will have one (1) year warranty from the equipment purchase date. Equipment not covered under warranty can be replaced upon the receipt of purchase order. Supply of parts would be subject to availability.

3- **Remote and On-site Service Support:** Above pricing plan includes remote support during the work hours and on-site support for the server hardware (by the manufacturer) supplied by LenSec. LenSec's remote service support team will make their best efforts to diagnose and resolve technical issues remotely in collaboration with customer's on-site service staff. On-site visits by LenSec service technician would be billed at LenSec's discretion at \$150/hour for service work and \$85/hr for travel time. On-site visits will be billed for minimum two (2) hour plus travel time. All on-site service work would require a PO before service technician is dispatched.

4- **Service Hours:** Weekdays between 6:00 AM CST and 6:00 PM CST. Service support will not be available during weekends and holidays.

5- The start date for the Annual Service Contract for each site will be the next business day from the customer Sign-off (system acceptance) date OR two (2) weeks from the date the IP Video System is completely installed and is operational, whichever is earlier.

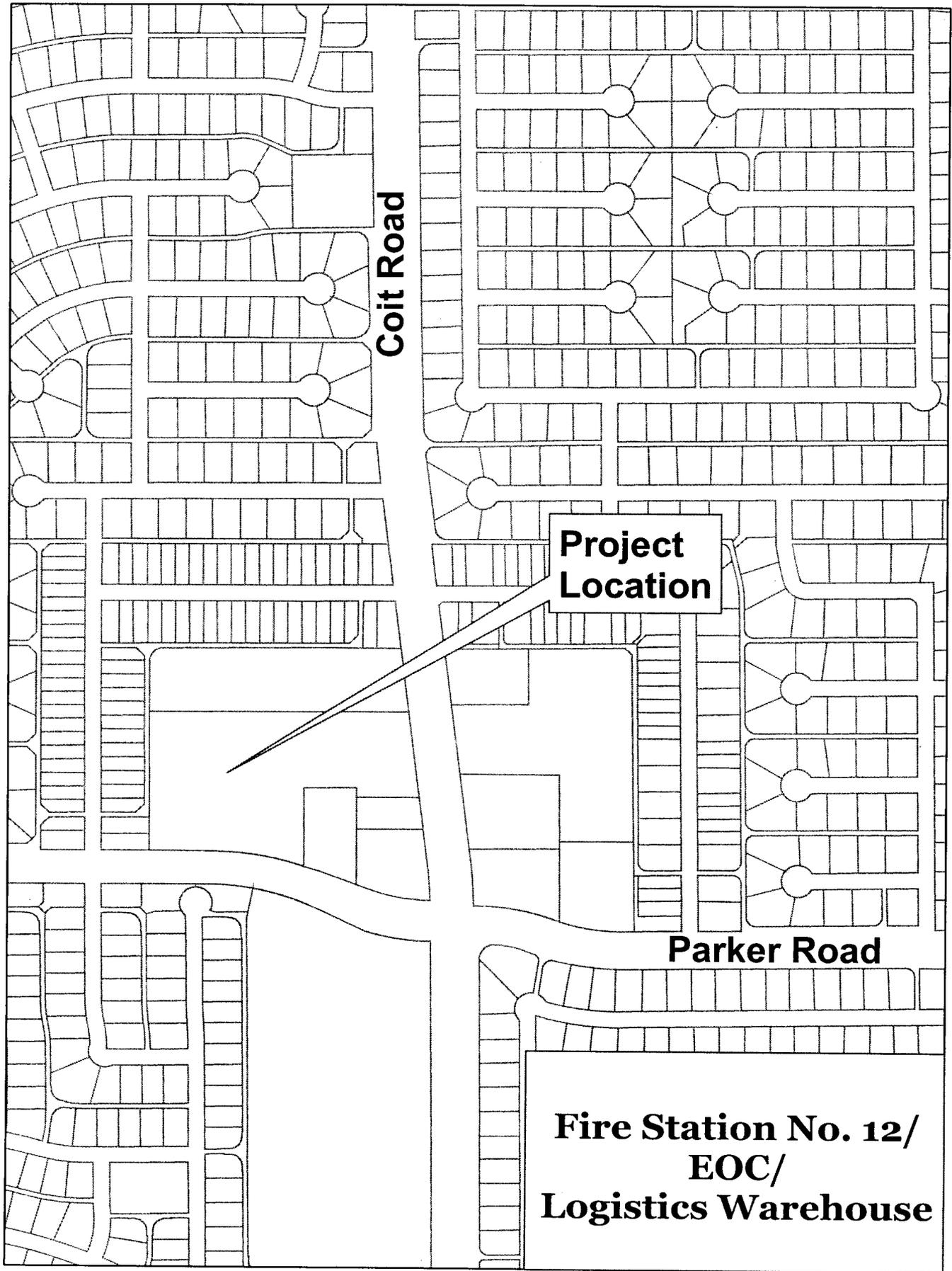
6- Remote Support Service can be provided only if LenSec has "remote access" to the IP Video system. If the LenSec service support team is not able to access the IP Video System remotely due to customer related network issues then LenSec service staff can provide service based on on-site service terms described above.

7- Above service pricing is valid for the scope outlined in this proposal. Any change to the scope would change the service pricing.

8- Service payment terms: Billing will be done at the beginning of each service period.

9- LenSec Service Terms and Conditions apply.

P.S





**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular	<input type="checkbox"/> Statutory	Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date: 3/9/09		Reviewed by Legal <i>JS</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
Department:	Public Works & Engineering		Initials	Date	
Department Head	Alan L. Upchurch		Assistant City Manager		
Dept Signature:	<i>Alan Upchurch</i>		Deputy City Manager	<i>[Signature]</i>	
			City Manager	<i>[Signature]</i>	
Agenda Coordinator (include phone #): Irene Pegues (7198)			Project No. 5973		
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input checked="" type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER					
CAPTION					
Approval of an Engineering Services Contract by and between the City and Birkhoff, Hendricks & Conway, L.L.P., in the amount of \$83,295, for Custer Ground Storage Tank 1A, and authorizing the City Manager or his authorized designee to execute all necessary documents.					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP					
FISCAL YEAR: 2008-09	Prior Year (CIP Only)	Current Year	Future Years	TOTALS	
Budget	7,174	2,250,826	1,750,000	4,008,000	
Encumbered/Expended Amount	-7,174	-2,250,721	0	-2,257,895	
This Item	0	-83,295	0	-83,295	
BALANCE	0	-83,190	1,750,000	1,666,810	
FUND(S): WATER CIP					
COMMENTS: Funds are included in the 2008-09 Water CIP. This item, in the amount of \$83,295, will exceed the current year balance by \$83,190 for the Custer Ground Storage Tank projects. The overage will be funded through savings and reallocation from the Parker Road Estates project.					
STRATEGIC PLAN GOAL: Engineering design services for tank replacement relates to the City's Goal of Livable and Sustainable Community.					
SUMMARY OF ITEM					
This agreement with Birkhoff, Hendricks & Conway, L.L.P., is for engineering design for Custer Ground Storage Tank 1A to include the removal of one 2.5 million gallon steel ground storage tank and the construction of the second 3.75 million gallon concrete ground storage tank.					
The contract fee is for \$83,295 and is detailed as follows:					
Design and Bidding Documents	\$50,000				
Bidding	\$3,500				
Construction	\$9,900				
Quality Control Testing	\$19,895				
TOTAL	\$83,295				



**CITY OF PLANO
COUNCIL AGENDA ITEM**

Funding is available from the Water Community Investment Program. Staff feels the fee is reasonable for this project estimated to cost \$2,000,000.

List of Supporting Documents:
Engineering Services Agreement
Location Map

Other Departments, Boards, Commissions or Agencies
N/A

CUSTER GROUND STORAGE TANK

PROJECT NO. 5973

ENGINEERING SERVICES AGREEMENT

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 **BIRKHOFF, HENDRICKS & CONWAY, LLP**, a **TEXAS** Limited Liability Partnership, hereinafter referred to as "Engineer", to be effective from and after the date as provided herein.

WITNESSETH:

WHEREAS, the City desires to engage the services of the Engineer to prepare construction plans, specifications, details and special provisions and to perform other related engineering services in connection with the **CUSTER GROUND STORAGE TANK** project located in the City of Plano, Collin County, Texas, hereinafter referred to as the "Project"; and

WHEREAS, the Engineer desires to render such engineering services for the City upon the terms and conditions provided herein.

NOW, THEREFORE, for and in consideration of the covenants contained herein, and for the mutual benefits to be obtained hereby, the parties hereto agree as follows:

I. Employment of the Engineer

The City hereby agrees to retain the Engineer to perform professional engineering services in connection with the Project. Engineer agrees to perform such services in accordance with the terms and conditions of this Agreement.

II. Scope of Services

The parties agree that Engineer shall perform such services as are set forth and described in Exhibit "A", which is attached hereto and thereby made a part of this Agreement. The parties understand and agree that deviations or modifications in the form of written contract modifications may be authorized from time to time by the City.

III. Schedule of Work

The Engineer agrees to commence work immediately upon execution of this Agreement, and to proceed diligently with said work, except for delays beyond the reasonable control of Engineer, to completion as described in the Completion Schedule, attached hereto as Exhibit "B" and thereby made a part of this Agreement.

IV. Compensation and Method of Payment

The parties agree that Engineer shall be compensated for all services provided pursuant to this Agreement in the amount and manner described and set forth in the Payment Schedule attached hereto and incorporated herein as Exhibit "C". The contract amount specified in Exhibit "C" shall not be exceeded without the written permission of the City.

V. Information to be Provided by the City

The City agrees to furnish, prior to commencement of work, all that information requested by Engineer and available in City's files.

VI. Insurance

Engineer agrees to meet all insurance requirements, and to require all consultants who perform work for Engineer to meet all insurance requirements, as set forth on Exhibit "D", which is attached hereto and thereby made a part of this Agreement.

VII. Indemnity

Engineer shall release, defend, indemnify and hold City and its officers, agents and employees harmless from and against all damages, injuries (including death), claims, property damages (including loss of use), losses, demands, suits, judgments and costs, including reasonable attorney's fees and expenses, in any way arising out of, related to, or resulting from the services provided by Engineer and to the extent caused by the negligent act or omission or intentional wrongful act or omission of Engineer, its officers, agents, employees, subcontractors, licensees, invitees or any other third parties for whom Engineer is legally responsible (hereinafter "Claims"). Engineer is expressly required to defend City against all such Claims.

In its sole discretion, City shall have the right to approve defense counsel to be retained by Engineer in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. 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 Engineer's obligation to

defend City or as a waiver of Engineer's obligation to indemnify City pursuant to this Agreement. Engineer shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If Engineer fails to retain counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Engineer shall be liable for all costs incurred by City.

VIII. Independent Contractor

Engineer covenants and agrees that Engineer is an independent contractor and not an officer, agent, servant or employee of City; that Engineer 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 its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between City and Engineer, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Engineer.

IX. Assignment and Subletting

The Engineer agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of the City. The Engineer further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the Engineer from its full obligations to the City as provided by this Agreement.

X. Audits and Records/Prohibited Interest

The Engineer agrees that at any time during normal business hours and as often as City may deem necessary, Engineer shall make available to representatives of the City for examination all of its records with respect to all matters covered by this Agreement, and will permit such representatives of the City to audit, examine, copy and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement, all for a period of one (1) year from the date of final settlement of this Agreement or for such other or longer period, if any, as may be required by applicable statute or other lawful requirement.

The Engineer agrees that it is aware of the prohibited interest requirements of the City Charter and Code of Conduct and will abide by the same. Further, a lawful representative of Engineer shall execute the affidavit shown in Exhibit "E". Engineer understands and agrees that the existence of a prohibited interest during the term of this contract will render the contract voidable.

XI. Contract Termination

The parties agree that City shall have the right to terminate this Agreement with or without cause upon thirty (30) days written notice to Engineer. In the event of such termination, Engineer shall deliver to City all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items prepared by Engineer in connection with this Agreement. Engineer shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to termination.

XII. Engineer's Opinion of Probable Construction Costs

The parties recognize and agree that any and all opinions of probable construction costs prepared by Engineer in connection with the Project represent the best judgment of Engineer as a design professional familiar with the construction industry, but that the Engineer does not guarantee that any bids solicited or received in connection with the Project will not vary from opinions prepared by Engineer.

XIII. Ownership of Documents

Original drawings and specifications are the property of the Engineer; however, the Project is the property of the City and Engineer may not use the drawings and specifications therefor for any purpose not relating to the Project without City's consent. City shall be furnished with such reproductions of drawings and specifications as City may reasonably require. Upon completion of the work or any earlier termination of this Agreement under Article XI, Engineer will revise drawings to reflect changes made during construction and he will promptly furnish the City with one (1) complete set of reproducible record prints. Prints shall be furnished, as an additional service, at any other time requested by City. All such reproductions shall be the property of the City who may use them without Engineer's permission for any proper purpose including, but not limited to, additions to or completion of the Project. However, use of the documents for other than their intended purpose shall be at the sole risk of the City.

XIV. Complete Contract

This Agreement, including the Exhibits lettered "A" through "E", constitute the entire agreement by and between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous written or oral understandings. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument.

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XV. Mailing of Notices

Unless instructed otherwise in writing, Engineer agrees that all notices or communications to City permitted or required under this Agreement shall be addressed to City at the following address:

City of Plano
Engineering Department
P.O. Box 860358
Plano, TX 75086-0358

City agrees that all notices or communications to Engineer permitted or required under this Agreement shall be addressed to Engineer at the following address:

Birkhoff, Hendricks & Conway, L.L.P.
11910 Greenville Avenue, Suite 600
Dallas, TX 75243
Attn: John Birkhoff, Managing Partner

All notices or communications required to be given in writing by one party or the other shall be considered as having been given to the addressee on the date such notice or communication is posted by the sending party.

XVI. Miscellaneous

A. Paragraph Headings:

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

B. 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.

C. Venue/Governing Law:

The parties agree that the laws of the State of Texas shall govern this Agreement, and that it is performable in Collin County, Texas. Exclusive venue shall lie in Collin County, Texas.

D. Successors and Assigns:

City and Engineer, and their partners, successors, subcontractors, executors, legal representatives, and administrators are hereby bound to the terms and conditions of this Agreement.

E. Severability:

In the event a term, condition, or provision of this Agreement is determined to be void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect.

F. Effective Date:

This Agreement shall be effective from and after execution by both parties hereto.

SIGNED on the date indicated below.

**BIRKHOFF, HENDRICKS & CONWAY,
LLP**
A Texas Limited Liability Partnership

DATE: _____

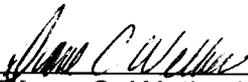
BY: _____
John Birkhoff, P.E.
MANAGING PARTNER

CITY OF PLANO, TEXAS

DATE: _____

BY: _____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM:



Diane C. Wetherbee
CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS §
§
COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of _____, 2009, by **JOHN W. BIRKHOFF, P.E., Managing Partner**, of **Birkhoff, Hendricks & Conway, L.L.P.**, a Texas Limited Liability Partnership, on behalf of said limited liability partnership.

Notary Public, State of Texas

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2009, by **THOMAS H. MUEHLENBECK, City Manager**, of the **City of Plano, Texas**, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

Notary Public, State of Texas

EXHIBIT "A"
ENGINEERING SERVICES
CUSTER GROUND STORAGE TANK 1A

PART I. GROUND STORAGE RESERVOIR

Design Services: Prepare plans and specification for construction of a 3.75 Million Gallon Prestressed Concrete Ground Storage Reservoir at the proposed site.

- A. Specifications based on following standards:
 - ▷ American Water Works Association (AWWA)
 - ▷ American Nation Standards Institute (ANSI)
 - ▷ American Society of Testing Materials (ASTM)
 - ▷ National Sanitation Foundation (NSF)
 - ▷ American Concrete Institute (ACI)

- B. Reservoir Accessories to include the following:
 - ▷ Pipe Connections & Valving
 - ▷ Over Flow & Drain Piping
 - ▷ Connection to Existing SCADA
 - ▷ Reservoir Ladders
 - ▷ Roof Hatches
 - ▷ Level Monitoring
 - ▷ Roof Intrusion Alarm
 - ▷ Electrical System
 - ▷ Exterior Light System
 - ▷ Vent

- C. Complete field surveys to establish site conditions.

- D. The high water level (HWL) shall match that of the existing 3.75 Million Gallon Ground Storage Reservoir 2A.

- E. Complete review of piping to determine line sizes based on hydraulics.

- F. Include existing geotechnical reports and previous confirmation bores.

- G. Complete sampling of existing paint and soils on site for lead.

- H. Prepare specifications for removal and disposal of existing Reservoir. Based on oil sand data from Reservoir Nos. 2 and 3, write specifications to cover cleanup.

- I. Submit five (5) sets of half-scale (11" x 17" sheets) preliminary plans and opinions of probable construction cost to the City of Plano for review.

- J. Utilize previous TCEQ air gap exception for this project.

PART II. FINAL DESIGN

- A. Revise and finalize preliminary plan sheet and Special Conditions, incorporating City comments.
- B. Submit plans to TCEQ for review.
- C. Formulate opinion of probable construction cost based on final plans.
- D. Prepare final bid documents including bid proposal forms, construction plans, specifications and contract documents. Contract documents will be provided by City of Plano.
- E. Submit three sets of final plans, Special Conditions and contract documents to the City.

PART III. BIDDING PHASE

- A. Assist the City of Plano staff in advertising for bids. This will include providing City with Notice to Contractors for their use in publicly advertising project. Birkhoff, Hendricks & Conway L.L.P. will e-mail and/or fax notices to Publishers, and to contractors experienced in tank painting. Each project will be bid separately.
- B. Sell bidding documents to potential bidders, suppliers and other parties.
- C. Provide one copy of bidding documents to City's independent testing lab.
- D. Assist City of Plano during opening of bids and provide bidding tally sheets.
- E. Provide bid tabulation to City and contractors who submit bids.
- F. Obtain the following information from the two low bidders:
 - ▷ Past work history.
 - ▷ Physical resources to produce the project.

Formulate opinion from information received and provide the City a recommendation for award of the construction contract. Include an alternate recommendation if City Council rejects primary recommendation.

- G. After award of contract, furnish thirteen sets of prints of the final plans, specifications and contract documents to the City for construction use by the City and Contractor.
- H. Conduct Pre-Construction Conference at City facilities, including preparing an agenda.

PART IV. CONSTRUCTION PHASE

- A. Attend City's monthly coordination meetings with contractor, quality control personnel, and City representatives to discuss strategy, problem areas, progress, and any required coordination. Prepare a summary of these meetings and distribute them to both the City and contractor. Prior to or immediately after coordination meeting make site visit to project location.
- B. Review shop drawings and other submittal information which the Contractor submits. This review is for the benefit of the Owner and covers only general conformance with information given by the Contract Documents. The contractor is to review and stamp their approval on submittals prior to submitting to the Engineer. Review of shop drawing submissions is solely for their conformance with the design intent and conformance with information given in the construction documents. Birkhoff, Hendricks & Conway L.L.P. shall not be responsible for any aspects of a shop drawing submission that affect or are affected by the means, methods, techniques, sequences and operation of construction, safety precautions and programs incidental thereto, all of which are the Contractors responsibility. Two copies of shop drawings in which no exceptions are taken by Birkhoff, Hendricks & Conway L.L.P. will be provided to the City.
- C. Provide written responses to requests for information or clarification.
- D. Accompany the City during their final inspection of the project.
- E. Recommend acceptance of work based on information from City's on-site representative.
- F. Visit the site at appropriate intervals as construction proceeds to observe progress and formulate opinion as to quality of work as it relates to contract documents.
- G. Review the City's on-site representative's daily reports and independent laboratory's test reports to formulate opinion of progress and attempt to identify potential problems.
- H. Prepare record drawings utilizing City and Contractor construction record information.

PART V. QUALITY CONTROL TESTING

Provide quality control testing during construction, utilizing Henley-Johnston & Associates of Dallas, Texas. Quality control to include earthwork, concrete, shot-crete, reinforcing steel, and backfill.

PART VI. EXCLUSIONS

The intent of this section is to specifically exclude from this contract the following:

- A. Providing an on-site representative.
- B. Environmental impact statements and assessments.
- C. Fees for permits or advertising.
- D. Certification that work is in accordance with plans and specifications.
- E. Environmental cleanup.
- F. Quality control and testing services during construction.
- G. Phasing of Contractors work.
- H. On-site safety precautions, programs and responsibility.

EXHIBIT "B"

COMPLETION SCHEDULE ESTIMATE

Notice to Proceed from City	March 11, 2009
Complete Preliminary Plans and Technical Specifications	May 1, 2009
Receive Comments from City	May 22, 2009
Complete Final Plans and Technical Specifications	June 16, 2009
Advertise Project	June 18, 2009
Receive Bids	July 9, 2009
Award Contract	July 20, 2009
Notice to Proceed	August 20, 2009
Construction	October 2009 to May 2010

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EXHIBIT "C"

PAYMENT SCHEDULE

Payment for engineering services described under Parts I, II, III and IV shall be based on a lump sum amount of \$63,400.00.

Payment for engineering services described under Part V shall be on the basis of salary cost times 2.40 with expenses at invoice cost times 1.15, survey crew at \$145.00 per hour.

<u>SUMMARY OF LUMP SUM FEE:</u>	
Preparation of Bidding Documents	\$50,000.00
Bidding	\$3,500.00
Construction	<u>\$9,900.00</u>
Lump Sum Amount:	\$63,400.00
 <u>SUMMARY OF ADDITIONAL SERVICES:</u>	
Quality Control Testing	\$19,895.00
 <u>FEE SCHEDULE</u>	
Principal Engineer	\$200.00/hr.
Staff Engineer	\$125.00/hr.
Geologist	\$100.00/hr.
Laboratory Supervisor	\$110.00/hr.
Engineering Technician Concrete	\$55.00/hr.
Engineering Technician Steel	\$65.00/hr.
Atterberg Limits	\$45.00/ea.
M/D Relationship	\$175.00/ea.
Flex Base M/D Relationship	\$375.00/each
Concrete Cylinder	\$15.00/ea.
Concrete Coring	\$135.00/hr. + \$5.00/inch

Total fee not to exceed \$83,295.00 unless authorized by the City.

EXHIBIT "D"
ENGINEERING

INSURANCE

INSURANCE: (Review this section carefully with your insurance agent prior to bid or proposal submission. See "Insurance Checklist" on the last page or specific coverages applicable to this contract).

1. General Insurance Requirements:

- 1.1 The Engineer (hereinafter called "Engineer") shall not start work under this contract until the Engineer has obtained at his own expense all of the insurance called for here under and such insurance has been approved by the City. Approval of insurance required of the Engineer will be granted only after submission to the Purchasing Agent of original, signed certificates of insurance or, alternately, at the City's request, certified copies of the required insurance policies.
- 1.2 All insurance policies required hereunder shall be endorsed to include the following provision: "It is agreed that this policy is not subject to cancellation, non-renewal, material change, or reduction in coverage without first providing the Risk Manager, City of Plano, at least ten (10) days prior written notice."

NOTE: The words "endeavor to" and "but failure to mail such notice shall impose no obligation to liability of any kind upon the company, its agents or representatives" are to be eliminated from the cancellation provision of standard ACORD certificates of insurance.

- 1.3 No acceptance and/or approval of any insurance by the City shall be construed as relieving or excusing the Engineer from any liability or obligation imposed upon the provisions of the Contract.
- 1.4 The City of Plano (including its elected and appointed officials, agents, volunteers, and employees) is to be named as an additional insured under Engineer's General Liability Policy, and the certificate of insurance, or the certified policy, if requested, must so state. Coverage afforded under this paragraph shall be primary as respects the City, its elected and appointed officials, agents and employees.
 - 1.4.1 The following definition of the term "City" applies to all policies issued under the contract:

The City Council of the City of Plano and any affiliated or subsidiary Board, Commission Authority, Committee, or Independent Agency (including those newly constituted), provided that such affiliated or subsidiary Board Commission, Authority, Committee, or Independent Agency is either a Body Politic created by the City Council of the City of Plano, or one in which controlling interest is vested in the City of Plano; and City of Plano Constitutional Officers.
- 1.5 The Engineer shall provide insurance as specified in the "Insurance Checklist" (Checklist) found on the last page of the bid or proposal form. Full limits of insurance required in the Checklist of this agreement shall be available for claims arising out of this agreement with the City of Plano.

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- 1.6 Engineer agrees to defend and indemnify the City of Plano, its officers, agents and employees as provided in Paragraph VII. of this contract.
- 1.7 Insurance coverage required in these specifications shall be in force throughout the Contract Term. Should the Engineer fail to provide acceptable evidence of current insurance within seven (7) days of written notice at any time during the Contract Term, the City shall have the absolute right to terminate the Contract without any further obligation to the Engineer, and the Engineer shall be liable to the City for the entire additional cost of procuring performance and the cost of performing the incomplete portion of the Contract at time of termination.
- 1.8 Written requests for consideration of alternate coverages must be received by the City Purchasing Manager at least ten (10) working days prior to the date set for receipt of bids or proposals. If the City denies the request for alternative coverages, the specified coverages will be required to be submitted.
- 1.9 All required insurance coverages must be acquired from insurers authorized to do business in the State of Texas and acceptable to the City. The City prefers that all insurers also have a policyholder's rating of "A-" or better, and a financial size of "Class VI" or better in the latest edition of A.M. Best, or A or better by Standard and Poors, unless the City grants specific approval for an exception.
- 1.10 Any deductibles shall be disclosed in the Checklist and all deductibles will be assumed by the Engineer. Engineer may be required to provide proof of financial ability to cover deductibles, or may be required to post a bond to cover deductibles.

2. Engineer's Insurance - "Occurrence" Basis:

- 2.1 The Engineer shall purchase the following insurance coverages, including the terms, provisions and limits shown in the Checklist.
 - 2.1.1 Commercial General Liability - Such Commercial General Liability policy shall include any or all of the following as indicated on the Checklist:
 - i. General aggregate limit is to apply per project;
 - ii. Premises/Operations;
 - iii. Actions of Independent Contractors;
 - iv. Contractual Liability including protection for the Engineer from claims arising out of liability assumed under this contract;
 - v. Personal Injury Liability including coverage for offenses related to employment;
 - vi. Explosion, Collapse, or Underground (XCU) hazards; if applicable. This coverage required for any and all work involving drilling, excavation, etc.
 - 2.1.2 Business Automobile Liability including coverage for any owned, hired, or non-owned motor vehicles and automobile contractual liability.

2.1.3 Workers' Compensation - statutory benefits as required by the State of Texas, or other laws as required by labor union agreements, including Employers' Liability coverage.

2.2 Professional Errors and Omissions

The Engineer shall carry Professional Liability insurance which will pay for injuries arising out of negligent errors or omissions in the rendering, or failure to render professional services under the contract, for the term of the Contract and up to three years after the contract is completed in the amount shown in the Checklist.

Professional Errors and Omissions, Limit \$1,000,000
per claim and aggregate

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ENGINEERING

City of Plano - Insurance Checklist

("X" means the coverage is required.)

Coverages Required

Limits (Figures Denote Minimums)

- | | |
|---|--|
| <input checked="" type="checkbox"/> 1. Workers' Compensation & Employers' Liability | Statutory limits of State of Texas
\$100,000 accident \$100,000 disease
\$500,000 policy limit disease |
| <input type="checkbox"/> 2. For Future Use | |
| <input type="checkbox"/> 3. City Approved Alternative Workers' Comp. Program | \$150,000 medical, safety program |
| <input checked="" type="checkbox"/> 4. General Liability | Complete entry No. 26
Minimum \$500,000 each occurrence
\$1,000,000 general aggregate |
| <input checked="" type="checkbox"/> 5. General aggregate applies per project (CGL) | |
| <input checked="" type="checkbox"/> 6. Premises/Operations | (Items No. 3-10 & 12 require) |
| <input checked="" type="checkbox"/> 7. Independent Contractors | <u>\$500,000</u> combined single limit
for bodily injury and property damage |
| <input type="checkbox"/> 8. Products | damage each occurrence with |
| <input type="checkbox"/> 9. Completed Operations | \$1,000,000 general aggregate that
applies to project under contract |
| <input checked="" type="checkbox"/> 10. Contractual Liability | |
| <input checked="" type="checkbox"/> 11. Personal Injury Liability | \$500,000 each offense & aggregate |
| <input type="checkbox"/> 12. XCU Coverages | |
| <input checked="" type="checkbox"/> 13. Automobile Liability | \$500,000 Bodily Injury & Property |
| <input checked="" type="checkbox"/> 14. Owned, Hired & Non-owned | Damage each accident |
| <input type="checkbox"/> 15. Motor Carrier Act Endorsement | |
| <input checked="" type="checkbox"/> 16. Professional Liability | \$1,000,000 each claim and aggregate |
| <input type="checkbox"/> 17. Garage Liability | \$_____ BI & PD each occurrence |

EXHIBIT "E"

AFFIDAVIT OF NO PROHIBITED INTEREST

I, the undersigned declare and affirm that no person or officer of **BIRKHOFF, HENDRICKS & CONWAY, L.L.P.**, (herein "Contractor") is either employed by the City of Plano or 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.

Name of Consultant

By: _____

Signature

Print Name

Title

Date

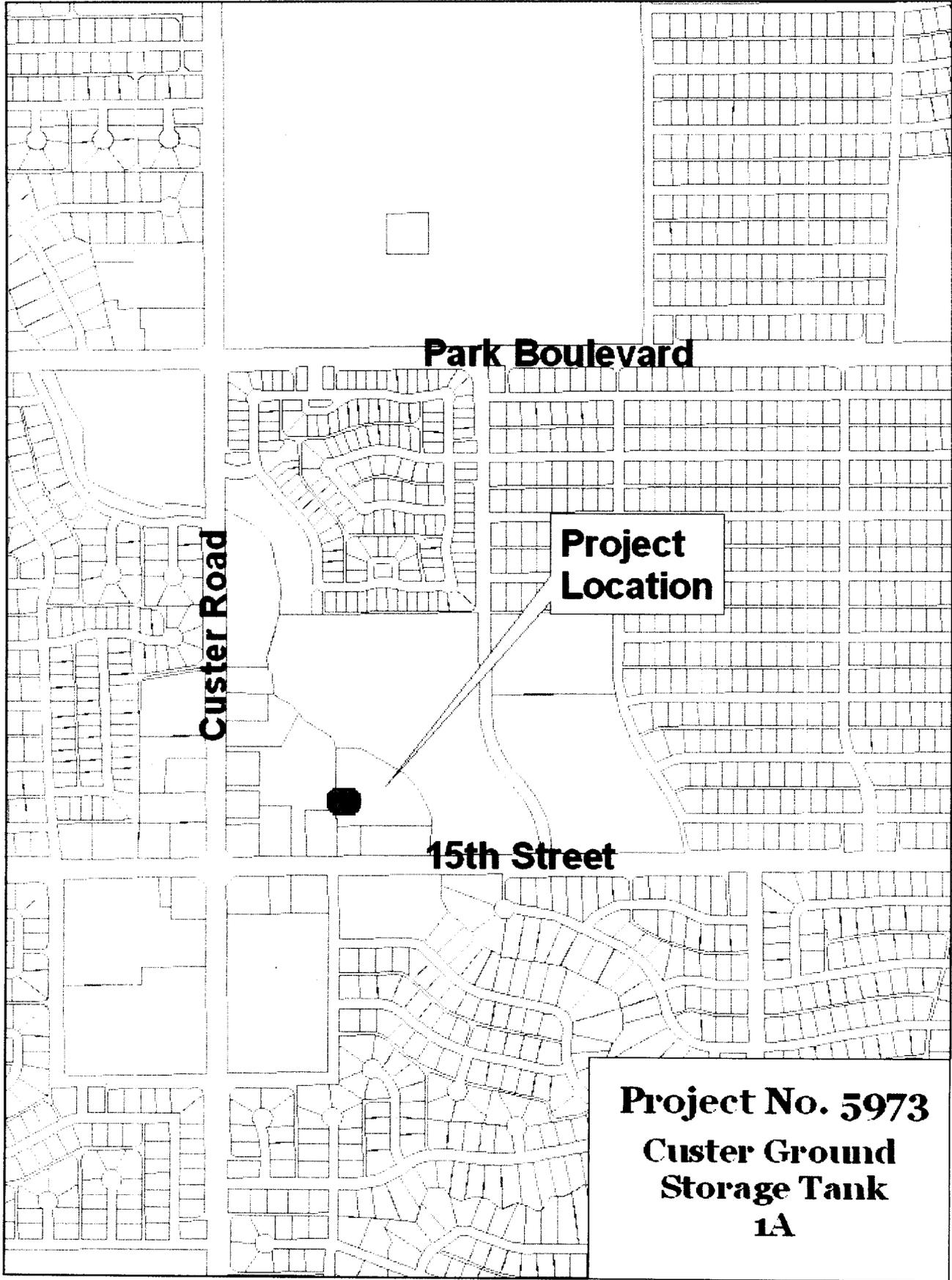
STATE OF TEXAS §

 §

COUNTY OF DALLAS §

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2009.

Notary Public, State of Texas



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**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date: 3/9/09		Reviewed by Legal <i>WS</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Public Works & Engineering		Initials	Date
Department Head	Alan L. Upchurch		Assistant City Manager	
Dept Signature:	<i>Alan Upchurch</i>		Deputy City Manager	<i>[Signature]</i>
			City Manager	<i>[Signature]</i>
Agenda Coordinator (include phone #): Irene Pegues (7198) <i>[Signature]</i>			Project No. 5971	
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input checked="" type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
Approval of Architectural contract by and between the City and HPA, LLP, dba hatch & ulland owen architects, in the amount of \$243,655, for repackaging existing design and construction oversight of Oak Point Park Visitor Center, and authorizing the City Manager or his authorized designee to execute all necessary documents.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: 2008-09	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	150,219	11,772,781	0	11,923,000
Encumbered/Expended Amount	-150,219	-6,310,575	0	-6,460,794
This Item	0	-243,655	0	-243,655
BALANCE	0	5,218,551	0	5,218,551
FUND(S): PARK IMPROVEMENT				
COMMENTS: Funds for this project are included in the 2008-09 Park Improvement CIP. This item, in the amount of \$243,655, will leave a current year balance of \$5,218,551 for the Oak Point Park Development project.				
STRATEGIC PLAN GOAL: Design and construction oversight for park development relates to the City's Goal of Premier City in Which to Live.				
SUMMARY OF ITEM				
This agreement with HPA, LLP, dba hatch & ulland owen architects is for architectural design for Oak Point Park Visitor Center to include repackaging existing design for bid, LEED documentation and construction oversight. The contract fee is for \$243,655 and is detailed as follows:				
Construction Documentation (including LEED)		\$13,200		
Bidding & Negotiating/Permitting		\$8,800		
Construction Observation (including LEED)		\$62,480		
Civil Engineering, Landscape, Irrigation Fees		\$20,500		
Structural Engineering Fees		\$14,500		
MEP Engineering Fees		\$47,975		
LEED Consulting Fees		\$35,000		
Commissioning Agent Fees		\$41,200		
PROFESSIONAL DESIGN FEES TOTAL		\$243,655		



**CITY OF PLANO
COUNCIL AGENDA ITEM**

Funding is available from the Park Improvement Community Investment Program. Staff feels the fee is reasonable for this project estimated to cost \$5M.

List of Supporting Documents:

Architectural Services Agreement, Location Map

Other Departments, Boards, Commissions or Agencies

N/A

OAK POINT PARK VISITOR CENTER

PROJECT NO. 5971

PROFESSIONAL SERVICES AGREEMENT

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 **HPA, LLP, dba HATCH & ULLAND OWEN ARCHITECTS**, a **TEXAS** Limited Liability Partnership, hereinafter referred to as "Consultant", to be effective from and after the date as provided herein.

WITNESSETH:

WHEREAS, the City desires to engage the services of the Consultant to prepare construction plans, specifications, details and special provisions and to perform other related consulting services in connection with the **OAK POINT PARK VISITOR CENTER** located in the City of Plano, Collin County, Texas, hereinafter referred to as the "Project"; and

WHEREAS, the Consultant desires to render such consulting services for the City upon the terms and conditions provided herein.

NOW, THEREFORE, for and in consideration of the covenants contained herein, and for the mutual benefits to be obtained hereby, the parties hereto agree as follows:

I. Employment of the Consultant

The City hereby agrees to retain the Consultant to perform professional consulting services in connection with the Project. Consultant agrees to perform such services in accordance with the terms and conditions of this Agreement.

II. Scope of Services

The parties agree that Consultant shall perform such services as are set forth and described in Exhibit "A", which is attached hereto and thereby made a part of this Agreement. The parties understand and agree that deviations or modifications in the form of written contract modifications may be authorized from time to time by the City.

III. Schedule of Work

The Consultant agrees to commence work immediately upon execution of this Agreement, and to proceed diligently with said work, except for delays beyond the

reasonable control of Consultant, to completion as described in the Completion Schedule, attached hereto as Exhibit "B" and thereby made a part of this Agreement.

IV. Compensation and Method of Payment

The parties agree that Consultant shall be compensated for all services provided pursuant to this Agreement in the amount and manner described and set forth in the Payment Schedule attached hereto and incorporated herein as Exhibit "C". The contract amount specified in Exhibit "C" shall not be exceeded without the written permission of the City.

V. Information to be Provided by the City

The City agrees to furnish, prior to commencement of work, all that information requested by Consultant and available in City's files.

VI. Insurance

Consultant agrees to meet all insurance requirements, and to require all consultants who perform work for Consultant to meet all insurance requirements, as set forth on Exhibit "D", which is attached hereto and thereby made a part of this Agreement.

VII. Indemnity

Consultant shall release, defend, indemnify and hold the City and its officers, agents and employees harmless from and against all damages, injuries (including death), claims, property damages (including loss of use), losses, demands, suits, judgments and costs, including reasonable attorney's fees and expenses, in any way arising out of, related to, or resulting from the services provided by Consultant and to the extent caused by the negligent act or omission or intentional wrongful act or omission of Consultant, its officers, agents, employees, subcontractors, licensees, invitees or any other third parties for whom Consultant is legally responsible (hereinafter "Claims"). Consultant is expressly required to defend City against all such Claims.

In its sole discretion, City shall have the right to approve defense counsel to be retained by Consultant in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. 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 Consultant's obligation to defend City or as a waiver of Consultant's obligation to indemnify City pursuant to this Agreement. Consultant shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If Consultant fails to retain counsel within such time period, City

shall have the right to retain defense counsel on its own behalf, and Consultant shall be liable for all costs incurred by City.

VIII. Independent Contractor

Consultant covenants and agrees that Consultant is an independent contractor and not an officer, agent, servant or employee of City; that Consultant 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 its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between City and Consultant, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Consultant.

IX. Assignment and Subletting

The Consultant agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of the City. The Consultant further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the Consultant from its full obligations to the City as provided by this Agreement.

X. Audits and Records/Prohibited Interest

The Consultant agrees that at any time during normal business hours and as often as City may deem necessary, Consultant shall make available to representatives of the City for examination all of its records with respect to all matters covered by this Agreement, and will permit such representatives of the City to audit, examine, copy and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement, all for a period of one (1) year from the date of final settlement of this Agreement or for such other or longer period, if any, as may be required by applicable statute or other lawful requirement.

The Consultant agrees that it is aware of the prohibited interest requirements of the City Charter and Code of Conduct and will abide by the same. Further, a lawful representative of Consultant shall execute the affidavit shown in Exhibit "E". Consultant understands and agrees that the existence of a prohibited interest during the term of this contract will render the contract voidable.

XI. Contract Termination

The parties agree that City shall have the right to terminate this Agreement with or without cause upon thirty (30) days written notice to Consultant. In the event of such

termination, Consultant shall deliver to City all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items prepared by Consultant in connection with this Agreement. Consultant shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to termination.

XII. Consultant's Opinion of Probable Construction Costs

The parties recognize and agree that any and all opinions of probable construction costs prepared by Consultant in connection with the Project represent the best judgment of Consultant as a design professional familiar with the construction industry, but that the Consultant does not guarantee that any bids solicited or received in connection with the Project will not vary from opinions prepared by Consultant.

XIII. Ownership of Documents

Original drawings and specifications are the property of the Consultant; however, the Project is the property of the City and Consultant may not use the drawings and specifications therefor for any purpose not relating to the Project without City's consent. City shall be furnished with such reproductions of drawings and specifications as City may reasonably require. Upon completion of the work or any earlier termination of this Agreement under Article XI, Consultant will revise drawings to reflect changes made during construction and he will promptly furnish the City with one (1) complete set of reproducible record prints. Prints shall be furnished, as an additional service, at any other time requested by City. All such reproductions shall be the property of the City who may use them without Consultant's permission for any proper purpose including, but not limited to, additions to or completion of the Project. However, use of the documents for other than their intended purpose shall be at the sole risk of the City.

XIV. Complete Contract

This Agreement, including the Exhibits lettered "A" through "E", constitute the entire agreement by and between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous written or oral understandings. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument.

XV. Mailing of Notices

Unless instructed otherwise in writing, Consultant agrees that all notices or communications to City permitted or required under this Agreement shall be addressed to City at the following address:

**Professional Services Agreement
Oak Point Park Visitor Center
Project No. 5971**

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City of Plano
Engineering Department
P.O. Box 860358
Plano, TX 75086-0358

City agrees that all notices or communications to Consultant permitted or required under this Agreement shall be addressed to Consultant at the following address:

HPA, LLP
dba hatch & ulland owen architects
702 San Antonio Street
Austin, Texas 78701
Attn: Randall Owen, Partner

All notices or communications required to be given in writing by one party or the other shall be considered as having been given to the addressee on the date such notice or communication is posted by the sending party.

XVI. Miscellaneous

A. Paragraph Headings:

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

B. 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.

C. Venue/Governing Law:

The parties agree that the laws of the State of Texas shall govern this Agreement, and that it is performable in Collin County, Texas. Exclusive venue shall lie in Collin County, Texas.

D. Successors and Assigns:

City and Consultant, and their partners, successors, subcontractors, executors, legal representatives, and administrators are hereby bound to the terms and conditions of this Agreement.

E. Severability:

In the event a term, condition, or provision of this Agreement is determined to be void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect.

F. Effective Date:

This Agreement shall be effective from and after execution by both parties hereto.

SIGNED on the date indicated below.

**HPA, LLP, dba HATCH & ULLAND
OWEN ARCHITECTS**
A Texas Limited Liability Partnership

DATE: _____

BY: _____
Randall Owen, PARTNER

CITY OF PLANO, TEXAS

DATE: _____

BY: _____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee
CITY ATTORNEY

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ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the _____ day of _____, 2009, by **RANDALL OWEN, President of hatch & ulland owen architects**, a Texas corporation, on behalf of said corporation.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2009, by **THOMAS H. MUEHLENBECK, City Manager of the City of Plano, Texas**, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

Notary Public, State of Texas

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EXHIBIT "A"

Scope of Services

Construction Documentation Phase

Upon receiving your written notice to proceed, h+uo and the design team will proceed with the repackaging of the documents necessary for bidding, for permitting and for construction of the project. These documents include:

- Repackaging of the Construction Documents: Limited Civil Engineering, Architectural, Structural Engineering, MEP Engineering, Landscape Architecture and Irrigation. Overall Civil Engineering and Site Utilities already executed under separate contract and under construction, therefore, not included in this proposal.
- Modification of the Technical Specifications including all City of Plano front end documents and bid forms.
- LEED documentation and submittals/paperwork for the Design Submittal to United States Green Building Council (USGBC) (required for Enhanced Commissioning), revise Basis of Design (BOD) and Owner's Project Requirements (OPR) documents due to change of scope and boundary as related to LEED strategy.

The design professionals involved in this project will provide the Owner with electronic files of the Construction Documents, both PDF and CAD files, for the Owners use, after the execution of a CAD Liability Release Form, to be executed at a later date. It is further understood that the design, the copyright and ownership of the documents remains with hatch + ulland owen architects.

Bidding & Negotiation/Permitting Phase

huo will provide assistance to your Construction Project Manager, during the process of bidding and negotiation in selecting a General Contractor. It includes time for the issuance of addenda or ASI's and for responding to RFI's. It also includes time for meeting(s) and/or correspondence time to review with you and your Construction Project Manager the information presented to you by contractors and for their questions during the bidding period.

Also included is the coordination of the submission of the project for T.A.S. (Texas Accessibility Standards) review. This is required of all commercial buildings of this scope in the state of Texas. This is to insure that the project is in compliance with the state accessibility requirements. The actual cost for the review by a Registered Accessibility Specialist and the cost to submit the project to Texas Department of Licensing and Regulation will be reimbursable expenses.

A total of 80 hours has been allotted for this phase. This includes one pre-bid meeting of 8 hours (due to travel time).

Construction Observation Phase

huo will provide assistance throughout the duration of the construction phase. We will monitor the progress of the construction and assess whether the project is being completed in accordance with the construction documents. Our services will include: attending job-site meetings; responding to all Owner, contractor, sub-contractor and inspector questions and requests for information during construction; reviewing submittals from the contractor; review and processing of contractor requests for payment; and visits to the construction site as appropriate for the stage of the work.

Our services will include 10 site visits/construction meetings (including one pre-construction meeting) at approximately 8 hours each (due to travel time) plus 8 hours of follow-up time per meeting. Also, 288 hours of submittal review and meetings and/or correspondence time with you and/or the General

Contractor is included in this phase. This allows for 32 hours per month during a 9 month construction schedule. This number will need to be revisited if the construction schedule is estimated to be longer than 9 months.

We will also be overseeing the LEED documentation and submittal process and working with the General Contractor to make sure all construction phase submittals are submitted. A total of 120 hours is included in this phase for this specific purpose.

Consulting Engineering Services

- Limited Civil Engineering, Landscape Architecture and Irrigation services will be required and are included in this proposal. These services will be performed by Jacobs Consultancy of Dallas, Texas.
- Structural Engineering services will be required and are included in this proposal. These services will be performed by Architectural Engineers Collaborative of Austin, Texas.
- MEP engineering services will be required and are included in this proposal. These services will be performed by Blum Consulting Engineers, Inc. of Dallas, Texas.
- LEED Consulting services will be required and are included in this proposal. These services will be performed by the Center for Maximum Potential Building Systems of Austin, Texas.
- Enhanced commissioning services will be required and are included in this proposal. These services will be performed by Command Commissioning of Irving, Texas.

Additional Services

During phases in which architectural services are provided on a fixed fee basis, if we provide services beyond those identified as being included within the fixed fee, those services will be considered "Additional Services," and billed on an hourly rate basis, using the hourly fee schedule set forth below. Additional Services could include, but are not limited to:

- Client-Requested Changes – Time spent making changes to already completed and accepted designs, drawings, and documents will be considered Additional Services if those changes were necessitated by a change in the Building Program (as set forth above) or a change to designs already approved by the Owner. These revisions would include changes to documents due to budget constraints.
- Regulatory Services -- Services relating to regulatory processes, including services specifically related to zoning, and permitting, and inspection. The professional design services included in the Basic Services outlined in this proposal include the preparation of documents and information that will be used for submitting for the required permits for the project. It is understood that the services of a local expeditor will be used to obtain these permits and the cost of the expeditor and the costs for any and all permits will be paid for by the Owner and are not included in this proposal.
- Illustrative Graphic Materials -- Time spent preparing renderings, perspective drawings, or models would be treated as Additional Services.
- Engineering Additional Services – The provision of any of the following services would be considered Additional Services: sump pump system design; fire sprinkler and alarm system design; security system design; telephone system design; cable TV system design; fiber optic system design; etc.

- Unknown Conditions -- Services resulting from the discovery of conditions (with respect to the site, to government permitting, or otherwise) that could not reasonably have been anticipated prior to the commencement of work, will be considered Additional Services. Upon discovery of such conditions, huo would notify the Owner immediately prior to performing any Additional Services relating to such conditions.

(end of Exhibit "A")

**Professional Services Agreement
Oak Point Park Visitor Center
Project No. 5971**

Exhibit A – Page 3

N:ENGSVCON.DOC (REV. 01/00) LS\FORMS:AG – PSA-Consult (BM) (LS-12-09-04)
LS\LEGAL2009:09C-BM-OakPtPkVisitorCtr-HUO1-5971

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EXHIBIT "B"

Completion Schedule

Through the Bidding Process

Moving forward from this point up to the start of construction, several things will need to happen. The chain of events is outlined below:

- 9 March 2009: AE Fee Proposal on Council Agenda; Award/execution of design team contract(s).
- 10 March 2009-3 April 2009: Revisit the commissioning agent's comments of their Back Check review of the Owner's Project Requirements (OPR) & Basis of Design (BOD) documents and the DD package, and make modifications with the removal of the Retreat Center (future) and the Pavilion and Restroom Building (under construction). Address comments as required and make changes to the CD package.
- 16 March 2009-17 April 2009: Prepare LEED submittals as required for the design submittals (as part of enhanced commissioning).
- 10 March 2009-17 April 2009: Remove Retreat Building (future) and the Pavilion and Restroom Building (under construction) from the bid package/contract documents; from the CD drawings and from the written specifications.
- 30 March 2009-17 April 2009: City of Plano & h+uo to finalize front end specifications.
- 17 April 2009: Deadline for all 100% CD drawings and specifications.
- 20 April 2009-21 April 2009: Colate all drawings and specifications into Original set of contract documents.
- 22 April 2009-24 April 2009: Reproduction of bid sets.
- 27 April 2009-15 May 2009: Three weeks of bid advertising.
- 30 April 2009: Pre-Bid Conference in Plano, Texas.
- 19 May 2009: Competitive Sealed Proposal Bids due at 3:00pm CDT.
- 20 May 2009-10 June 2009: Full evaluation/qualification of bids and finalize decision on most qualified bid and notify winning bidder.
- 11 June 2009-30 June 2009: Two-and-a-half weeks to get awarded contract on Council agenda.
- 1 July 2009: Mobilization/Ground-Breaking.

(end of Exhibit "B")

EXHIBIT "C"

Payment Schedule

Architectural Fees by Phase:

• Construction Documentation (including LEED*):	\$13,200 (set fee)
• Bidding & Negotiation/Permitting:	\$8,800 (set fee)
• Construction Observation (including LEED*):	\$62,480 (set fee)

➤ **Architectural Fees Total (including LEED*):** **\$84,480 (set fee)**

Our hourly rates – applicable either for services provided during a phase where services are provided on an hourly rate basis or for services provided as "Additional Services" during a phase where services are provided for a fixed fee -- are as follows:

Senior Partner:	\$130.00/hour
Partner:	\$110.00/hour
Professional Staff I:	\$90.00/hour
Professional Staff II:	\$75.00/hour
Technical Support:	\$45.00/hour
(Rates effective until January 1, 2010)	

Consulting Engineering and Other Consultants Fees:

➤ Civil Engineering, Landscape, Irrigation Fees Total:	\$20,500 (set fee)
➤ Structural Engineering Fees Total:	\$14,500 (set fee)
➤ MEP Engineering Fees Total (including LEED*):	\$47,975 (set fee)
➤ LEED Consulting Fees Total*:	\$35,000 (set fee)
➤ Commissioning Agent Fees Total*:	\$41,200 (set fee)

❖ **Professional Design Fees Total:** **\$243,655 (set fee)**

Professional Design Fees Total by Phase (billed monthly):

➤ Construction Documentation Fees Total: Architecture, Civil, Structural, MEP (including LEED energy modeling), LEED, Commissioning	\$58,700 (set fee)
➤ Bidding & Negotiation/Permitting Fees Total: Architecture, Civil, Structural, MEP, LEED, Commissioning	\$19,450 (set fee)
➤ Construction Observation Fees Total: Architecture, Civil, Structural, MEP (including LEED certification services), LEED (construction mobilization meeting, construction meetings, submittal reviews &	\$134,505 (set fee)

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LEED-NC review meetings), Commissioning

- **Post Construction Fees Total:** **\$28,900 (set fee)**
LEED (prepare/review final LEED submittal, LEED-NC submittal review & clarification), Commissioning (acceptance phase, reports)

- **Post Occupancy Fees Total:** **\$2,100 (set fee)**
Commissioning (warranty walkthrough)

In the event that the project is halted prior to completion, our fee would be based on our hours of work through the date we were notified of a halt to the work.

* The monetary impact that LEED poses on the overall cost of this project, both professional design and consultant fees as well as construction cost, is significant. Below is an itemized list of dollar amounts of the LEED related fees, by discipline and an approximate estimate for the additional amount to the construction cost:

- Architecture: LEED during CD \$6,600
- Architecture: LEED during CA \$4,900
- MEP: LEED Energy Modeling- \$18,750
- MEP: LEED Certification- \$17,500
- LEED Consultant: \$35,000
- Enhanced Commissioning Agent: \$41,200
- **LEED related fees TOTAL:** **\$123,950**

- LEED Project registration- already registered and paid: \$0 moving forward

- LEED Project certification (less than 50,000 SF):
 - Design Review: \$1,250
 - Construction Review: \$500
- **LEED Project Reviews TOTAL:** **\$1,750**

- LEED Credit Interpretation Reviews (CIRs): \$220 each (one or two anticipated)

- LEED Construction Cost Premium: +/- 7% addition to the non-LEED construction cost
 ...or in the neighborhood of: +/- \$200,000

Reimbursable Expenses and Invoices

Expenses incurred by hatch + ulland owen architects in the interest of the project (such as travel outside of Austin [including air fare]), photography, printing, plotting of computer drawings, copying, fax transmissions, long distance telephone service, courier fees, and postage) will be compensated at 1.20 times the actual expense incurred.

hatch + ulland owen architects will provide you with a monthly invoice for services rendered during the prior billing period. In addition, we will enclose with each invoice an explanation of the services that were rendered during the billing period. Payment to hatch + ulland owen architects shall be submitted upon receipt of each invoice. Failure to make payment will, at hatch + ulland owen architects' option, be cause for suspension of services. If hatch + ulland owen architects were to elect to suspend services, then we would provide seven days written notice to the Owners prior to the suspension of services.

(end of Exhibit "C")

EXHIBIT "D"
CONSULTING
INSURANCE

INSURANCE: (Review this section carefully with your insurance agent prior to bid or proposal submission. See "Insurance Checklist" on the last page or specific coverages applicable to this contract).

1. General Insurance Requirements:

- 1.1 The Consultant (hereinafter called "Consultant") shall not start work under this contract until the Consultant has obtained at his own expense all of the insurance called for here under and such insurance has been approved by the City. Approval of insurance required of the Consultant will be granted only after submission to the Purchasing Agent of original, signed certificates of insurance or, alternately, at the City's request, certified copies of the required insurance policies.
- 1.2 All insurance policies required hereunder shall be endorsed to include the following provision: "It is agreed that this policy is not subject to cancellation, non-renewal, material change, or reduction in coverage without first providing the Risk Manager, City of Plano, at least ten (10) days prior written notice."

NOTE: The words "endeavor to" and "but failure to mail such notice shall impose no obligation to liability of any kind upon the company, its agents or representatives" are to be eliminated from the cancellation provision of standard ACORD certificates of insurance.

- 1.3 No acceptance and/or approval of any insurance by the City shall be construed as relieving or excusing the Consultant from any liability or obligation imposed upon the provisions of the Contract.
- 1.4 The City of Plano (including its elected and appointed officials, agents, volunteers, and employees) is to be named as an additional insured under Consultant's General Liability Policy, and the certificate of insurance, or the certified policy, if requested, must so state. Coverage afforded under this paragraph shall be primary as respects the City, its elected and appointed officials, agents and employees.
 - 1.4.1 The following definition of the term "City" applies to all policies issued under the contract:

The City Council of the City of Plano and any affiliated or subsidiary Board, Commission Authority, Committee, or Independent Agency (including those newly constituted), provided that such affiliated or subsidiary Board Commission, Authority, Committee, or Independent Agency is either a Body Politic created by the City Council of the City of Plano, or one in which controlling interest is vested in the City of Plano; and City of Plano Constitutional Officers.
- 1.5 The Consultant shall provide insurance as specified in the "Insurance Checklist" (Checklist) found on the last page of the bid or proposal form. Full limits of insurance

required in the Checklist of this agreement shall be available for claims arising out of this agreement with the City of Plano.

- 1.6 Consultant agrees to defend and indemnify the City of Plano, its officers, agents and employees as provided in Paragraph VII. of this contract.
- 1.7 Insurance coverage required in these specifications shall be in force throughout the Contract Term. Should the Consultant fail to provide acceptable evidence of current insurance within seven (7) days of written notice at any time during the Contract Term, the City shall have the absolute right to terminate the Contract without any further obligation to the Consultant, and the Consultant shall be liable to the City for the entire additional cost of procuring performance and the cost of performing the incomplete portion of the Contract at time of termination.
- 1.8 Written requests for consideration of alternate coverages must be received by the City Purchasing Manager at least ten (10) working days prior to the date set for receipt of bids or proposals. If the City denies the request for alternative coverages, the specified coverages will be required to be submitted.
- 1.9 All required insurance coverages must be acquired from insurers authorized to do business in the State of Texas and acceptable to the City. The City prefers that all insurers also have a policyholder's rating of "A-" or better, and a financial size of "Class VI" or better in the latest edition of A.M. Best, or A or better by Standard and Poors, unless the City grants specific approval for an exception.
- 1.10 Any deductibles shall be disclosed in the Checklist and all deductibles will be assumed by the Consultant. Consultant may be required to provide proof of financial ability to cover deductibles, or may be required to post a bond to cover deductibles.

2. Consultant's Insurance - "Occurrence" Basis:

- 2.1 The Consultant shall purchase the following insurance coverages, including the terms, provisions and limits shown in the Checklist.
 - 2.1.1 Commercial General Liability - Such Commercial General Liability policy shall include any or all of the following as indicated on the Checklist:
 - i. General aggregate limit is to apply per project;
 - ii. Premises/Operations;
 - iii. Actions of Independent Contractors;
 - iv. Contractual Liability including protection for the Consultant from claims arising out of liability assumed under this contract;
 - v. Personal Injury Liability including coverage for offenses related to employment;

h-n

- vi. Explosion, Collapse, or Underground (XCU) hazards; if applicable. This coverage required for any and all work involving drilling, excavation, etc.
- 2.1.2 Business Automobile Liability including coverage for any owned, hired, or non-owned motor vehicles and automobile contractual liability.
- 2.1.3 Workers' Compensation - statutory benefits as required by the State of Texas, or other laws as required by labor union agreements, including Employers' Liability coverage.
- 2.2 Professional Errors and Omissions

The Consultant shall carry Professional Liability insurance which will pay for injuries arising out of negligent errors or omissions in the rendering, or failure to render professional services under the contract, for the term of the Contract and up to three years after the contract is completed in the amount shown in the Checklist.

Professional Errors and Omissions, Limit \$1,000,000
per claim and aggregate

CONSULTING

City of Plano - Insurance Checklist

("X" means the coverage is required.)

<u>Coverages Required</u>	<u>Limits (Figures Denote Minimums)</u>
<input checked="" type="checkbox"/> 1. Workers' Compensation & Employers' Liability	Statutory limits of State of Texas \$100,000 accident \$100,000 disease \$500,000 policy limit disease
<input type="checkbox"/> 2. For Future Use	
<input type="checkbox"/> 3. City Approved Alternative Workers' Comp. Program	\$150,000 medical, safety program
<input checked="" type="checkbox"/> 4. General Liability	Complete entry No. 26 Minimum \$500,000 each occurrence \$1,000,000 general aggregate
<input checked="" type="checkbox"/> 5. General aggregate applies per project (CGL)	
<input checked="" type="checkbox"/> 6. Premises/Operations	(Items No. 3-10 & 12 require)
<input checked="" type="checkbox"/> 7. Independent Contractors	<u>\$500,000</u> combined single limit for bodily injury and property damage
<input type="checkbox"/> 8. Products	damage each occurrence with
<input type="checkbox"/> 9. Completed Operations	\$1,000,000 general aggregate that applies to project under contract
<input checked="" type="checkbox"/> 10. Contractual Liability	
<input checked="" type="checkbox"/> 11. Personal Injury Liability	\$500,000 each offense & aggregate
<input type="checkbox"/> 12. XCU Coverages	
<input checked="" type="checkbox"/> 13. Automobile Liability	\$500,000 Bodily Injury & Property
<input checked="" type="checkbox"/> 14. Owned, Hired & Non-owned	Damage each accident
<input type="checkbox"/> 15. Motor Carrier Act Endorsement	
<input checked="" type="checkbox"/> 16. Professional Liability	\$1,000,000 each claim and aggregate
<input type="checkbox"/> 17. Garage Liability	\$ _____ BI & PD each occurrence

**Professional Services Agreement
Oak Point Park Visitor Center
Project No. 5971**

Exhibit D – Page _____

EXHIBIT "E"

AFFIDAVIT OF NO PROHIBITED INTEREST

I, the undersigned declare and affirm that no person or officer of **HPA, LLP, dba hatch & ulland owen architects** (herein "Contractor") is either employed by the City of Plano or 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.

HPA, LLP, dba hatch & ulland owen architects
Name of Contractor

By: _____
Signature

Randall Owen
Print Name

Partner
Title

Date

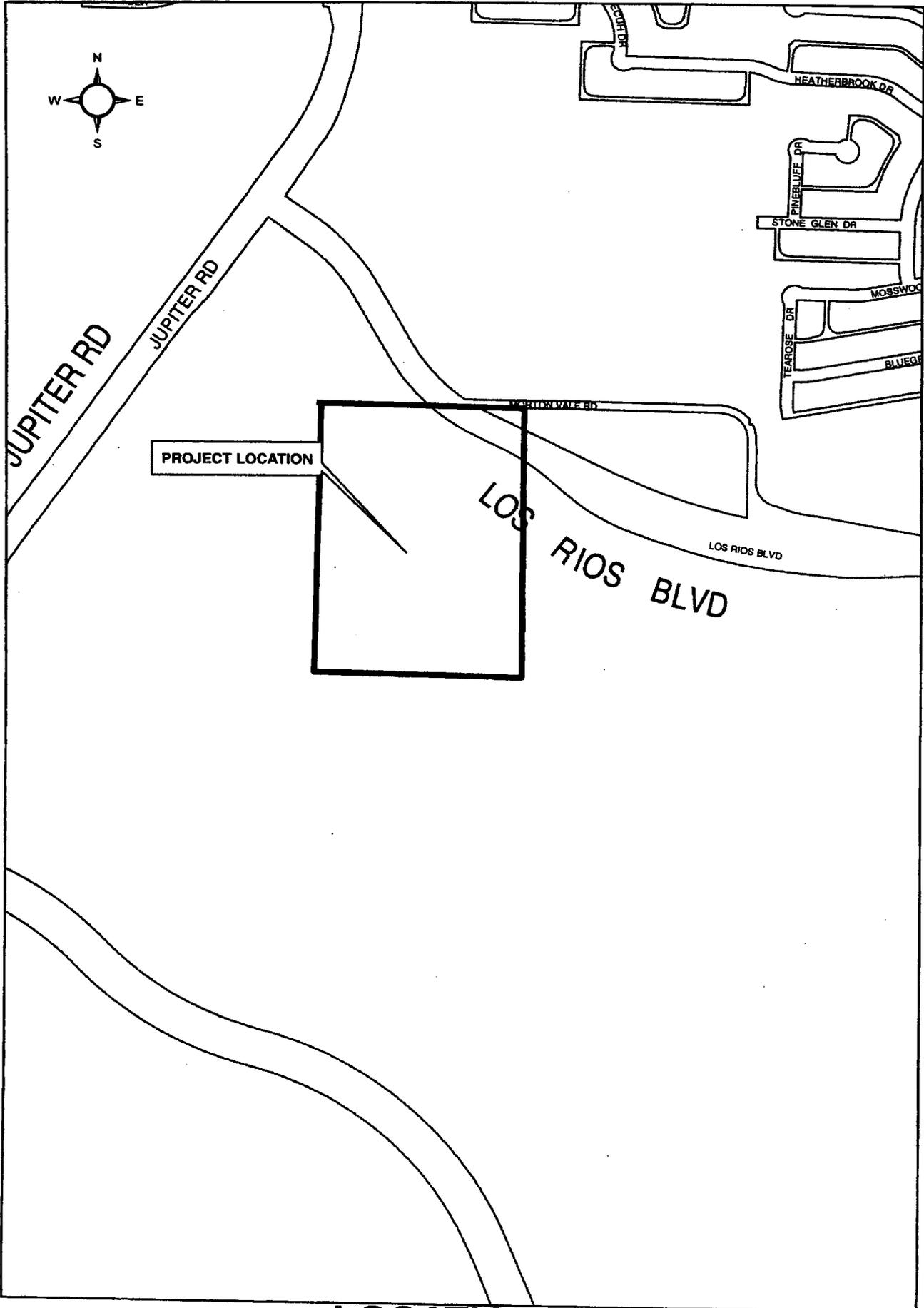
STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2009.

Notary Public, State of Texas

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OAK POINT PARK VISITOR CENTER



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LOCATION MAP

2/27/2009



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date: 3/9/09		Reviewed by Legal <i>WS</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Public Works & Engineering		Initials	Date
Department Head	Alan L. Upchurch		Assistant City Manager	
Dept Signature:	<i>Irene Pegues</i>		Deputy City Manager	<i>[Signature]</i>
			City Manager	<i>[Signature]</i>
Agenda Coordinator (include phone #): Irene Pegues (7198)			Project No. 5970	
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input checked="" type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
Approval of an Architectural contract by and between the City and F&S Partners, in the amount of \$789,870, for design and construction oversight of the Carpenter Park Recreation Center Renovation and Expansion, and authorizing the City Manager or his authorized designee to execute all necessary documents.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: 2008-09	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	66,051	1,133,949	5,400,000	6,600,000
Encumbered/Expended Amount	-66,051	-3,949	0	-70,000
This Item	0	-789,870	0	-789,870
BALANCE	0	340,130	5,400,000	5,740,130
FUND(S): RECREATION CENTER CIP				
COMMENTS: Funds are included in the 2007-08 Recreation Center Facilities CIP. This item, in the amount of \$789,870, will leave a current year balance of \$340,130 for the Carpenter Expansion/Senior Center project.				
STRATEGIC PLAN GOAL: Design and construction oversight for recreation center expansions relates to the City's Goal of Premier City in which to live.				
SUMMARY OF ITEM				
This agreement with F&S Partners is for architectural design for Carpenter Park Recreation Center Renovation and Expansion to include warm water pool and natatorium, new weight and cardio room, renovation of restroom/showers, multipurpose room, repair of roof, skylights, gym and court floors and ADA/fire alarm upgrades.				
The contract fee is for \$789,870.00 and is detailed as follows with \$40,000 as estimated reimbursable expenses:				
	Schematic Design Phase	\$149,974		
	Design Development Phase	\$149,974		
	Construction Document Phase	\$262,454		
	Bid/Negotiate Phase	\$ 37,494		
	Construction Phase	\$149,974		
	Total Fee	\$749,870		



**CITY OF PLANO
COUNCIL AGENDA ITEM**

Funding is available from the Recreation Center Community Investment Program. Staff feels the fee is reasonable for this project estimated to cost \$11,800,000.00.

List of Supporting Documents:

Architectural Services Agreement

Location Map

Other Departments, Boards, Commissions or Agencies

N/A

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**CARPENTER PARK RECREATION CENTER
RENOVATION AND EXPANSION**

PROJECT NO. 5970

ARCHITECTURAL SERVICES AGREEMENT

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 **F&S PARTNERS**, a **TEXAS** Corporation, hereinafter referred to as "Architect", to be effective from and after the date as provided herein.

WITNESSETH:

WHEREAS, the City desires to engage the services of the Architect to prepare construction plans, specifications, details and special provisions and to perform other related architectural services in connection with the **CARPENTER PARK RECREATION CENTER RENOVATION AND EXPANSION** located in the City of Plano, Collin County, Texas, hereinafter referred to as the "Project"; and

WHEREAS, the Architect desires to render such architectural services for the City upon the terms and conditions provided herein.

NOW, THEREFORE, for and in consideration of the covenants contained herein, and for the mutual benefits to be obtained hereby, the parties hereto agree as follows:

I. Employment of the Architect

The City hereby agrees to retain the Architect to perform professional architectural services in connection with the Project. Architect agrees to perform such services in accordance with the terms and conditions of this Agreement.

II. Scope of Services

The parties agree that Architect shall perform such services as are set forth and described in Exhibit "A", which is attached hereto and thereby made a part of this Agreement. The parties understand and agree that deviations or modifications in the form of written contract modifications may be authorized from time to time by the City.

III. Schedule of Work

The Architect agrees to commence work immediately upon execution of this Agreement, and to proceed diligently with said work, except for delays beyond the

reasonable control of Architect, to completion as described in the Completion Schedule, attached hereto as Exhibit "B" and thereby made a part of this Agreement.

IV. Compensation and Method of Payment

The parties agree that Architect shall be compensated for all services provided pursuant to this Agreement in the amount and manner described and set forth in the Payment Schedule attached hereto and incorporated herein as Exhibit "C". The contract amount specified in Exhibit "C" shall not be exceeded without the written permission of the City.

V. Information to be Provided by the City

The City agrees to furnish, prior to commencement of work, all that information requested by Architect and available in City's files.

VI. Insurance

Architect agrees to meet all insurance requirements, and to require all consultants who perform work for Architect to meet all insurance requirements, as set forth on Exhibit "D", which is attached hereto and thereby made a part of this Agreement.

VII. Indemnity

Architect shall release, defend, indemnify and hold the City and its officers, agents and employees harmless from and against all damages, injuries (including death), claims, property damages (including loss of use), losses, demands, suits, judgments and costs, including reasonable attorney's fees and expenses, in any way arising out of, related to, or resulting from the services provided by Architect and to the extent caused by the negligent act or omission or intentional wrongful act or omission of Architect, its officers, agents, employees, subcontractors, licensees, invitees or any other third parties for whom Architect is legally responsible (hereinafter "Claims"). Architect is expressly required to defend City against all such Claims.

In its sole discretion, City shall have the right to approve defense counsel to be retained by Architect in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. 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 Architect's obligation to defend City or as a waiver of Architect's obligation to indemnify City pursuant to this Agreement. Architect shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If Architect fails to retain counsel within such time period, City

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shall have the right to retain defense counsel on its own behalf, and Architect shall be liable for all costs incurred by City.

VIII. Independent Contractor

Architect covenants and agrees that Architect is an independent contractor and not an officer, agent, servant or employee of City; that Architect 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 its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between City and Architect, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Architect.

IX. Assignment and Subletting

The Architect agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of the City. The Architect further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the Architect from its full obligations to the City as provided by this Agreement.

X. Audits and Records/Prohibited Interest

The Architect agrees that at any time during normal business hours and as often as City may deem necessary, Architect shall make available to representatives of the City for examination all of its records with respect to all matters covered by this Agreement, and will permit such representatives of the City to audit, examine, copy and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement, all for a period of one (1) year from the date of final settlement of this Agreement or for such other or longer period, if any, as may be required by applicable statute or other lawful requirement.

The Architect agrees that it is aware of the prohibited interest requirements of the City Charter and Code of Conduct and will abide by the same. Further, a lawful representative of Architect shall execute the affidavit shown in Exhibit "E". Architect understands and agrees that the existence of a prohibited interest during the term of this contract will render the contract voidable.

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XI. Contract Termination

The parties agree that City shall have the right to terminate this Agreement with or without cause upon thirty (30) days written notice to Architect. In the event of such termination, Architect shall deliver to City all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items prepared by Architect in connection with this Agreement. Architect shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to termination.

XII. Architect's Opinion of Probable Construction Costs

The parties recognize and agree that any and all opinions of probable construction costs prepared by Architect in connection with the Project represent the best judgment of Architect as a design professional familiar with the construction industry, but that the Architect does not guarantee that any bids solicited or received in connection with the Project will not vary from opinions prepared by Architect.

XIII. Ownership of Documents

Original drawings and specifications are the property of the Architect; however, the Project is the property of the City and Architect may not use the drawings and specifications therefor for any purpose not relating to the Project without City's consent. City shall be furnished with such reproductions of drawings and specifications as City may reasonably require. Upon completion of the work or any earlier termination of this Agreement under Article XI, Architect will revise drawings to reflect changes made during construction and he will promptly furnish the City with one (1) complete set of reproducible record prints. Prints shall be furnished, as an additional service, at any other time requested by City. All such reproductions shall be the property of the City who may use them without Architect's permission for any proper purpose including, but not limited to, additions to or completion of the Project. However, use of the documents for other than their intended purpose shall be at the sole risk of the City.

XIV. Complete Contract

This Agreement, including the Exhibits lettered "A" through "E", constitute the entire agreement by and between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous written or oral understandings. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument.

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XV. Mailing of Notices

Unless instructed otherwise in writing, Architect agrees that all notices or communications to City permitted or required under this Agreement shall be addressed to City at the following address:

City of Plano
Engineering Department
P.O. Box 860358
Plano, TX 75086-0358

City agrees that all notices or communications to Architect permitted or required under this Agreement shall be addressed to Architect at the following address:

F&S Partners
8350 North Central Expressway, Suite 500
Dallas, Texas 75206
Attn: Robert L. Shaw, President

All notices or communications required to be given in writing by one party or the other shall be considered as having been given to the addressee on the date such notice or communication is posted by the sending party.

XVI. Miscellaneous

A. Paragraph Headings:

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

B. 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.

C. Venue/Governing Law:

The parties agree that the laws of the State of Texas shall govern this Agreement, and that it is performable in Collin County, Texas. Exclusive venue shall lie in Collin County, Texas.

D. Successors and Assigns:

City and Architect, and their partners, successors, subcontractors, executors, legal representatives, and administrators are hereby bound to the terms and conditions of this Agreement.

E. Severability:

In the event a term, condition, or provision of this Agreement is determined to be void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect.

F. Effective Date:

This Agreement shall be effective from and after execution by both parties hereto.

SIGNED on the date indicated below.

F&S PARTNERS
A Texas Corporation

DATE: _____

BY: _____
Robert L. Shaw, PRESIDENT

CITY OF PLANO, TEXAS

DATE: _____

BY: _____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM:



Diane C. Wetherbee
CITY ATTORNEY

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ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of _____, 2009, by **ROBERT L. SHAW, President of F&S Partners, a Texas corporation**, on behalf of said corporation.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2009, by **THOMAS H. MUEHLENBECK, City Manager of the City of Plano, Texas**, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

Notary Public, State of Texas

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F&S PARTNERS

ARCHITECTURE
INTERIOR DESIGN
PLANNING

January 15, 2009
Revised February 5, 2009

Exhibit A

RONALD J. SHAW, AIA
ROBERT L. SHAW, JR., AIA
G. ALLEN ATKINSON, JR., AIA
ANITA PICOZZI MORAN, AIA

Mr. Jim Razinha
Facilities Manager
City of Plano
Park Planning Department
1409 K Avenue, P.O. Box 860358
Plano, Texas 75086-0358

ASSOCIATE PRINCIPALS

JERRY D. TIMS, AIA
ANNE M. ROGERS, CPA
DAVID J. MILLS, AIA
E. KIP JAMESON, AIA
MICHAEL D. VOIT, AIA, LEED AP

Re: Carpenter Park Renovation and Expansion
FS 2009-02-000

Dear Mr. Razinha:

We are pleased to submit a revised proposal for Architectural and Engineering services for the above project. Based on our understanding of the project, F&S Partners shall provide the following:

Scope of Work

The basis for Professional Services are as described in the Program Study FS #2008-04, dated November, 2008 with an estimated construction cost of \$8,604,820.

Scope of Services

Professional Services will be per the City of Plano standard agreement and shall include the following consultants as Basic Architectural Services:

- **Project Management, Architectural, Interior Design and Furnishings:** F&S Partners Incorporated
- **Mechanical, Electrical, Plumbing and Fire Protection Engineers:** Blum Consulting Engineers
- **Survey, Civil and Structural Engineers:** Brockette/Davis/Drake
- **Landscape Architecture and Irrigation System Design:** Kendall Landscape Architecture
- **Aquatics Design:** Counsilman/Hunsaker
- **Roofing Consultant:** Arnold and Associates
- **Accessibility Review:** ARS
- **Construction Cost Estimating:** Apex
- **Commissioning – AIR Engineering and Testing**

8350 NORTH CENTRAL EXPRESSWAY
SUITE 500
DALLAS, TEXAS 75206
214-559-4851
FAX 214-526-7237
www.f&sarchitects.com

**Architectural Services Agreement
Carpenter Park Recreation Center Renovation and Expansion
Project No. 5970**

Exhibit A – Page 1

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Carpenter Park Recreation Center Renovation and Addition
January 15, 2009
Revised February 5, 2009
Page 2

Basic Architectural Services shall be per the AIA-B151 and generally consist of the following:

1. Schematic Design

- Refine the Design from single line diagrams to schematic design level.
- Establish area standards for the required spaces and provide documentation in a format approved by Owner.
- Prepare and submit for the Owner's approval a written estimated project construction cost in a format approved by the Owner for this phase of design.
- Submission, for Owner's review and approval, is required before next phase begins.

2. Design Development

- Prepare the design development documents to include architectural, structural, and electrical plans and distribution systems, sections and other required drawings; and the outline specifications in sufficient detail to describe the size, character, and quality as to kinds and locations of materials and the types and sizes of structural, mechanical, and electrical systems for the entire project.
- Refine equipment layout.
- *Design review for commissioning requirements.*
- Prepare and submit for the Owner's approval a written estimated project construction cost in a format approved by the Owner for this phase of design.
- Submission, for Owner's review and approval, is required before next phase begins.

3. Construction Documents

- Prepare the construction Contract documents in accordance with the design schedule for approval by the Owner to include and consist of the standard documents and the final working drawings and technical specification that set forth in detail all the requirements for construction of the entire project. Prepare final drawings and specifications in full compliance with applicable building codes, laws or ordinances, and other regulatory authorities.
- *Integration of the commissioning requirements into the contract plans and specifications.*
- Submit for the Owner's review and approval when documents reach the 50% and 95% completion point. Updated cost estimates will be required at each review stage.
- TDLR plan review.

4. Competitive Sealed Proposals (CSP)

- Assist the Owner in Competitive Sealed Proposals (CSP) and negotiation.
- Provide reference check on potential offerors.
- Review bid documents for compliance with construction documents.

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Carpenter Park Recreation Center Renovation and Addition
January 15, 2009
Revised February 5, 2009
Page 3

5. Construction Observation

- Provide administrative services as described and required in the Professional Services Contract and as required by the Construction Documents. Visit the site 2 times per month.
- Review submittals for commissioning and operations facilitation.
- *Observation and verification of construction and installation. Assistance in coordination of building systems and preparation of final commissioning plan functional testing.*
- *Observation and verification of start up and initial checkout.*
- *Functional and performance testing of HVAC systems and documentation.*
- *TDLR site inspection at 95% construction.*
- *TDLR post construction site inspection.*

Deliverables during each Phase:

1. Design

- a. Schematic Design (Including two public meetings, construction cost estimate, and two computer generated renderings)
- b. Design Development (Including two public meetings and construction cost estimate)
- c. Construction Documents (includes construction cost estimate)

2. Contract Administration

- a. Assist the Owner in bid and negotiation.
- b. All submittals (except samples) and RFI's will be made electronically using either email or F&S' FTP site. All submittals will be reviewed and redistributed electronically.
- c. F&S will provide a maximum of 30 site visits. This is approximately twice monthly.
- d. A CD(s) of the reviewed submittals will be provided to the City at the close of the project.
- e. *F&S will provide a final commissioning report.*

3. Facility Operation Services

- a. *F&S will provide a CD of the record drawings in AutoCAD format drafted using Contractor mark ups.*
- b. F&S will provide a report post construction (at substantial completion)
- c. F&S will provide a report (Warranty Review) one year after substantial completion.

Owner's Responsibilities

1. Designate a single Project Representative to act on the Owner's behalf.
2. Provide full information regarding project program, schedule, and budget.
3. Furnish all construction materials testing.
4. Exercise review/approval function in accordance with the agreed project schedule.
5. Furnish record drawings and specifications of the existing building.

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Carpenter Park Recreation Center Renovation and Addition
January 15, 2009
Revised February 5, 2009
Page 4

6. Provide all survey and removal of hazardous materials.

Indemnity

Inasmuch as design within an existing building requires that certain assumptions be made regarding existing conditions, and because some of these assumptions may not be verifiable without expending additional sums of money, or destroying otherwise adequate or serviceable portions of the building, the Owner agrees that, except for negligence on the part of the Architect, the Architect will not be responsible for damages with respect to those assumptions.

Exclusions

F&S excludes any work related to the identification of and/or design of removal of any asbestos containing material. It is understood that the Owner is responsible for identification and removal of any hazardous or asbestos containing materials found in the building.

The structural design of the pool shell is not included in our fee. This will be the responsibility of the pool subcontractor.

This proposal represents the summary of proposals secured from all consultant firms. I would be pleased to meet with you to review this proposal and/or the consultant proposals to answer any questions that you might have.

In signing this proposal, the City of Plano recognizes that they have agreed in principle to retain F&S Partners Incorporated (Architect) to provide Basic Architectural services for the referenced project. Concurrent with this assignment and in conjunction with the Planning and Evaluation Phase, Owner and Architect agree to enter into a contract based on the AIA B151- 1997, Architect-Owner Agreement or other mutually acceptable agreement. If this proposal meets with your approval, please indicate your authorization by signing and returning one copy to our office.

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Carpenter Park Recreation Center Renovation and Addition
January 15, 2009
Revised February 5, 2009

Schedule

Exhibit B

Basic Architectural Services

F&S Partners proposes to furnish the referenced Services as follows:

Schematic Design Phase	<u>8</u>	weeks
Design Development Phase	<u>8</u>	weeks
Construction Document Phase	<u>10</u>	weeks
Bid/Negotiate Phase	<u>6</u>	weeks
Construction Phase	Up to <u>52</u>	weeks

Carpenter Park Recreation Center Renovation and Addition
January 15, 2009
Revised February 5, 2009

Fees

Exhibit C

The fee information contained in any proposal submitted by the Architect as to this project, or in this Agreement or any addendum thereto, is to be considered confidential and proprietary, and shall not be released or otherwise made available to any third party without the express written consent of the Architect.

F&S Partners proposes to furnish the referenced Services for a lump sum fee of \$749,870.

Progress payments for lump sum fees shall be based on the following percentages of the total fees payable:

Schematic Design Phase	<u>20%</u>	\$149,974
Design Development Phase	<u>20%</u>	\$149,974
Construction Document Phase	<u>35%</u>	\$262,454
Bid/Negotiate Phase	<u>5%</u>	\$37,494
<u>Construction Phase</u>	<u>20%</u>	<u>\$149,974</u>
Total Fee	100%	\$749,870

Payments shall be made monthly and, where applicable, shall be in proportion to services performed within each phase of service. Payment is due within thirty (30) days of the invoice date.

Reimbursable Expenses

Reimbursable expenses are in addition to the fees proposed above, and will be billed at 1.10 x cost to F&S. Reimbursable expenses are estimated to be in the range of \$40,000 for this project.

Additional Services

1. Services proposed to the Owner are fully described by this proposal.
2. Services and/or the work of consultants not specifically described in this proposal shall be considered Additional Services, shall be performed only if authorized or confirmed in writing by the Owner, and shall be provided on an hourly basis or for a lump sum fee as mutually agreed by the Owner and the Architect.
3. Additional Services include modifications or revisions to work which are inconsistent with previous approvals or instructions given by the Owner.
4. IT, A/V and security systems design are not included but may be required. These services may be provided as Additional Services once the scope is determined.
5. In the event the natatorium portion of the building needs to be removed from the Contract Documents there will be an Additional Service of \$30,000. This includes the work of the Architect and all consultants.

1:15

EXHIBIT "D"

ARCHITECTURE

INSURANCE

INSURANCE: (Review this section carefully with your insurance agent prior to bid or proposal submission. See "Insurance Checklist" on the last page or specific coverages applicable to this contract).

1. General Insurance Requirements:

- 1.1 The Architect (hereinafter called "Architect") shall not start work under this contract until the Architect has obtained at his own expense all of the insurance called for here under and such insurance has been approved by the City. Approval of insurance required of the Architect will be granted only after submission to the Purchasing Agent of original, signed certificates of insurance or, alternately, at the City's request, certified copies of the required insurance policies.
- 1.2 All insurance policies required hereunder shall be endorsed to include the following provision: "It is agreed that this policy is not subject to cancellation, non-renewal, material change, or reduction in coverage without first providing the Risk Manager, City of Plano, at least ten (10) days prior written notice."

NOTE: The words "endeavor to" and "but failure to mail such notice shall impose no obligation to liability of any kind upon the company, its agents or representatives" are to be eliminated from the cancellation provision of standard ACORD certificates of insurance.

- 1.3 No acceptance and/or approval of any insurance by the City shall be construed as relieving or excusing the Architect from any liability or obligation imposed upon the provisions of the Contract.
- 1.4 The City of Plano (including its elected and appointed officials, agents, volunteers, and employees) is to be named as an additional insured under Architect's General Liability Policy, and the certificate of insurance, or the certified policy, if requested, must so state. Coverage afforded under this paragraph shall be primary as respects the City, its elected and appointed officials, agents and employees.
 - 1.4.1 The following definition of the term "City" applies to all policies issued under the contract:

The City Council of the City of Plano and any affiliated or subsidiary Board, Commission Authority, Committee, or Independent Agency (including those newly constituted), provided that such affiliated or subsidiary Board Commission, Authority, Committee, or Independent Agency is either a Body Politic created by the City Council of the City of Plano, or one in which controlling interest is vested in the City of Plano; and City of Plano Constitutional Officers.

- 1.5 The Architect shall provide insurance as specified in the "Insurance Checklist" (Checklist) found on the last page of the bid or proposal form. Full limits of insurance required in the Checklist of this agreement shall be available for claims arising out of this agreement with the City of Plano.
- 1.6 Architect agrees to defend and indemnify the City of Plano, its officers, agents and employees as provided in Paragraph VII. of this contract.
- 1.7 Insurance coverage required in these specifications shall be in force throughout the Contract Term. Should the Architect fail to provide acceptable evidence of current insurance within seven (7) days of written notice at any time during the Contract Term, the City shall have the absolute right to terminate the Contract without any further obligation to the Architect, and the Architect shall be liable to the City for the entire additional cost of procuring performance and the cost of performing the incomplete portion of the Contract at time of termination.
- 1.8 Written requests for consideration of alternate coverages must be received by the City Purchasing Manager at least ten (10) working days prior to the date set for receipt of bids or proposals. If the City denies the request for alternative coverages, the specified coverages will be required to be submitted.
- 1.9 All required insurance coverages must be acquired from insurers authorized to do business in the State of Texas and acceptable to the City. The City prefers that all insurers also have a policyholder's rating of "A-" or better, and a financial size of "Class VI" or better in the latest edition of A.M. Best, or A or better by Standard and Poors, unless the City grants specific approval for an exception.
- 1.10 Any deductibles shall be disclosed in the Checklist and all deductibles will be assumed by the Architect. Architect may be required to provide proof of financial ability to cover deductibles, or may be required to post a bond to cover deductibles.

2. Architect's Insurance - "Occurrence" Basis:

- 2.1 The Architect shall purchase the following insurance coverages, including the terms, provisions and limits shown in the Checklist.
 - 2.1.1 Commercial General Liability - Such Commercial General Liability policy shall include any or all of the following as indicated on the Checklist:
 - i. General aggregate limit is to apply per project;
 - ii. Premises/Operations;
 - iii. Actions of Independent Contractors;
 - iv. Contractual Liability including protection for the Architect from claims arising out of liability assumed under this contract;
 - v. Personal Injury Liability including coverage for offenses related to employment;

- vi. Explosion, Collapse, or Underground (XCU) hazards; if applicable. This coverage required for any and all work involving drilling, excavation, etc.
- 2.1.2 Business Automobile Liability including coverage for any owned, hired, or non-owned motor vehicles and automobile contractual liability.
- 2.1.3 Workers' Compensation - statutory benefits as required by the State of Texas, or other laws as required by labor union agreements, including Employers' Liability coverage.
- 2.2 Professional Errors and Omissions

The Architect shall carry Professional Liability insurance which will pay for injuries arising out of negligent errors or omissions in the rendering, or failure to render professional services under the contract, for the term of the Contract and up to three years after the contract is completed in the amount shown in the Checklist.

Professional Errors and Omissions, Limit \$1,000,000
per claim and aggregate

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ARCHITECTURE

City of Plano - Insurance Checklist

("X" means the coverage is required.)

Coverages Required

Limits (Figures Denote Minimums)

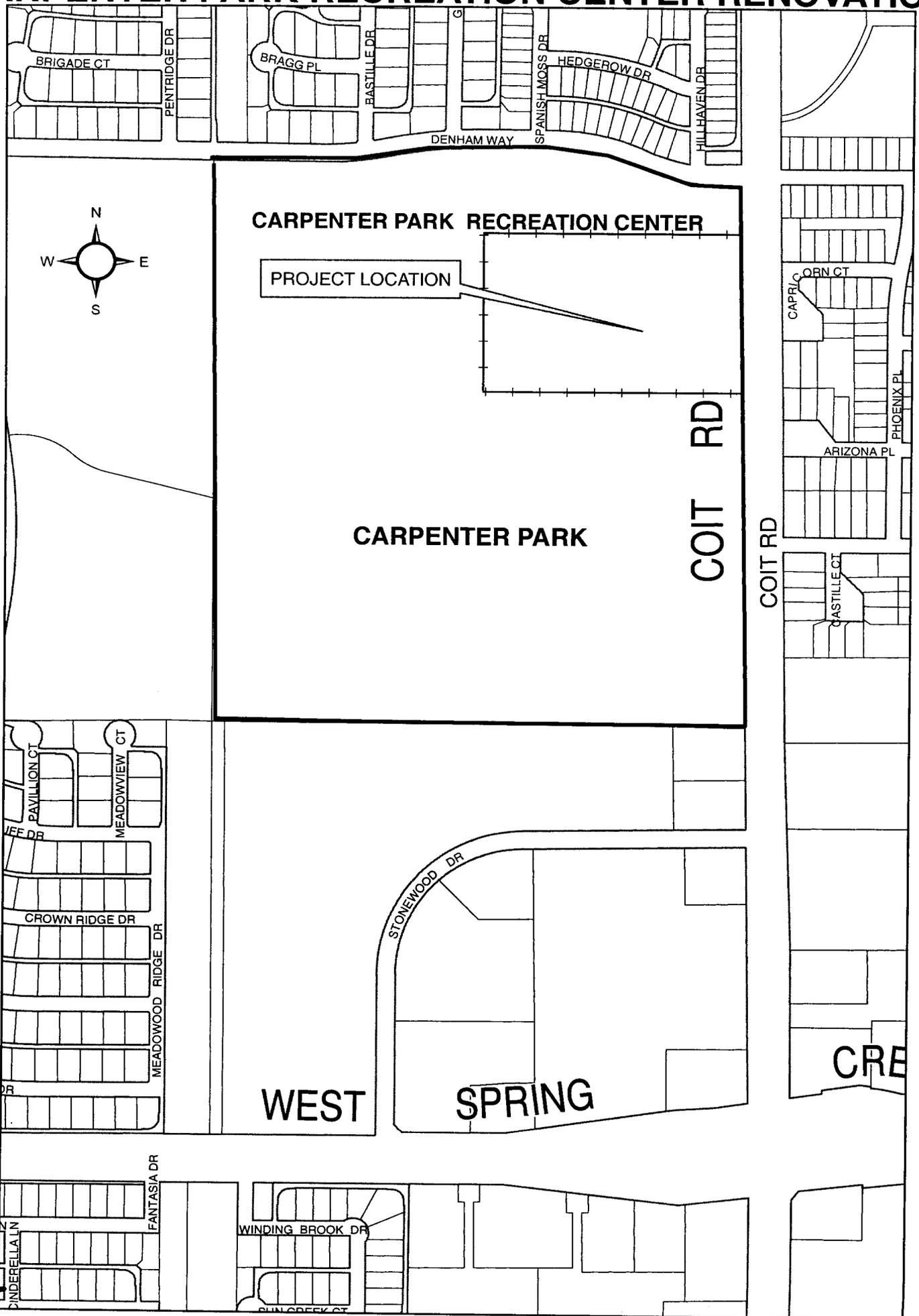
- 1. Workers' Compensation & Employers' Liability
Statutory limits of State of Texas
\$100,000 accident \$100,000 disease
\$500,000 policy limit disease
- 2. For Future Use
- 3. City Approved Alternative Workers' Comp. Program
\$150,000 medical, safety program
- 4. General Liability
Complete entry No. 26
Minimum \$500,000 each occurrence
\$1,000,000 general aggregate
- 5. General aggregate applies per project (CGL)
- 6. Premises/Operations
(Items No. 3-10 & 12 require)
- 7. Independent Contractors
\$500,000 combined single limit
for bodily injury and property damage
- 8. Products
damage each occurrence with
- 9. Completed Operations
\$1,000,000 general aggregate that
applies to project under contract
- 10. Contractual Liability
- 11. Personal Injury Liability
\$500,000 each offense & aggregate
- 12. XCU Coverages
- 13. Automobile Liability
\$500,000 Bodily Injury & Property
- 14. Owned, Hired & Non-owned
Damage each accident
- 15. Motor Carrier Act Endorsement
- 16. Professional Liability
\$1,000,000 each claim and aggregate
- 17. Garage Liability
\$ _____ BI & PD each occurrence

**Architectural Services Agreement
Carpenter Park Recreation Center Renovation and Expansion
Project No. 5970**

Exhibit D – Page _____

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CARPENTER PARK RECREATION CENTER RENOVATION



LOCATION MAP

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**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget <i>CS</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
Council Meeting Date:	03/09/09	Reviewed by Legal	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable	
Department:	Public Works & Engineering		Initials	Date	
Department Head	Alan D. Upchurch	Assistant City Manager			
Dept Signature:	<i>Alan D. Upchurch</i>	Deputy City Manager	<i>[Signature]</i>	<i>02-27-09</i>	
		City Manager <i>[Signature]</i>			
Agenda Coordinator (include phone #):		Irene Peques (7198)	Project No. 5632 & 5878		
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input checked="" type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER					
CAPTION					
To Utilitex Construction, LLP, increasing the contract by \$39,630 and 40 working days, for Street Light Improvements Legacy Park - Phase 1 and Street Lighting Willow Bend Drive, Change Order No. 2. (Original Bid No. 2008-74-B)					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP					
FISCAL YEAR:	2008-09	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		103,072	784,928	0	888,000
Encumbered/Expended Amount		-103,072	-421,179	0	-524,251
This Item		0	-39,630	0	-39,630
BALANCE		0	324,119	0	324,119
FUND(S): STREET IMPROVEMENT CIP					
COMMENTS: Funds are included in the 2008-09 Street Improvement CIP. This change order, in the amount of \$39,630, will leave a current year balance of \$324,119 for the Street Lighting – Legacy Park I & Willow Bend project.					
STRATEGIC PLAN GOAL: Street lighting project relate to the City's Goals of Safe, efficient Travel and Premier City in Which to Live.					
SUMMARY OF ITEM					
This change order is for adding 11 new light pole foundations with related work on Headquarters Drive from Spring Creek Parkway to approximately 2200 feet east. The current contract, which is near completion, included installation of light pole foundations on Tennyson Parkway, Parkwood Boulevard, Hedgcoxe Road and Willow Bend Drive.					
Staff recommends approval of Change Order No. 2. The contract total will be \$380,291.29, which includes change orders of 15.35% of the original contract amount of \$329,684.28, and working days increase to a total of 215 working days, which includes a 26.47% increase over the original contract amount of 170 working days.					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		
Change Order No. 2			N/A		
Location Map					

CHANGE ORDER NO. 2

**STREET LIGHTING
LEGACY PARK – PHASE I & STREET LIGHTING WILLOW BEND DRIVE
PROJECT NO. 5632 & 5878
PURCHASE ORDER NO. 103499
CIP NO. 37759
BID NO. 2008-74-B**

A. INTENT OF CHANGE ORDER

The intent of this change order is to modify the provisions of the contract entered into by the **CITY OF PLANO, TEXAS**, and **UTILITEX CONSTRUCTION, LLP**, for the **STREET LIGHTING LEGACY PARK – PHASE I & STREET LIGHTING WILLOW BEND DRIVE PROJECT**, dated **MARCH 25, 2008**.

B. DESCRIPTION OF CHANGE

The change order is for addition of 11 new reinforced concrete street light bases with related 2" PVC Conduit and reinforced concrete mow pads on Headquarters Drive from Spring Creek Parkway to approximately 2200' east. Installation shall be according to plans provided by the City of Plano.

C. EFFECT OF CHANGE

This change order will have the following effect on the cost of this project:

<i>ITEM NO.</i>	<i>ITEM DESCRIPTION</i>	<i>ORIGINAL QUANTITY</i>	<i>REVISED QUANTITY</i>	<i>UNIT</i>	<i>UNIT PRICE</i>	<i>AMOUNT OF CHANGE</i>
105	R.C. Light Base	128	139	EA	\$561.88	\$6,180.68
108	R.C. Mow Pads	128	139	EA	\$99.00	\$1,089.00
113	Traffic Control	0	1	LS	\$1,750.00	\$1,750.00
114	2" PVC (Trench)	0	1,940	LF	\$9.70	\$18,818.00
115	Erosion Control	0	1	LS	\$2,500.00	\$2,500.00
116	1' Wide Sod Strip	0	219	SY	\$4.10	\$897.90
117	Site Clean Up / Restore	0	1	LS	\$2,000.00	\$2,000.00
118	Tie PVC to Exist. Hand Hold	0	7	EA	\$175.00	\$1,225.00
119	Overhead / Profit	0	1	LS	\$5,169.09	\$5,169.09
	TOTAL:					\$39,629.67

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Original Contract Amount	\$ 329,684.28
Contract Amount (Including Previous Change Orders)	\$ 340,661.62
Amount, Change Order No. 2	\$ 39,629.67
Revised Contract Amount	\$ 380,291.29
Total Percent Increase Including Previous Change Orders	15.35%

D. EFFECT OF CHANGE ON CONTRACT TIME

The work required under this change order will add **40** day(s) to this project:

Original Contract Time	170 working days
Amount (Including Previous Change Orders)	175 working days
Amount, Change Order No. 2	40 working days
Revised Contract Time	215 working days
Total Percent Increase Including Previous Change Orders	26.47%

CONTINUED ON NEXT PAGE

E. AGREEMENT

By the signatures below, duly authorized agents of the **CITY OF PLANO, TEXAS**, and **UTILITEX CONSTRUCTION, LLP**, do hereby agree to append this Change Order No. 2 to the original contract between themselves, dated **MARCH 25, 2008**.

OWNER: CITY OF PLANO

**CONTRACTOR: UTILITEX
CONSTRUCTION, LLP**

By: _____
(signature)

By: _____
(signature)

Print
Name: Thomas H. Muehlenbeck

Print
Name: David Harris

Print
Title: City Manager

Print
Title: Managing Partner

Date: _____

Date: _____

APPROVED AS TO FORM:

By: _____
Diane C. Wetherbee, City Attorney

J.4

ACKNOWLEDGMENTS

STATE OF TEXAS §
§
COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of _____, 2009, by **DAVID HARRIS, MANAGING PARTNER**, of **UTILITEX CONSTRUCTION, LLP**, a **Texas General Partnership**, on behalf of said partnership.

Notary Public, State of Texas

STATE OF TEXAS §
§
COUNTY OF COLLIN §

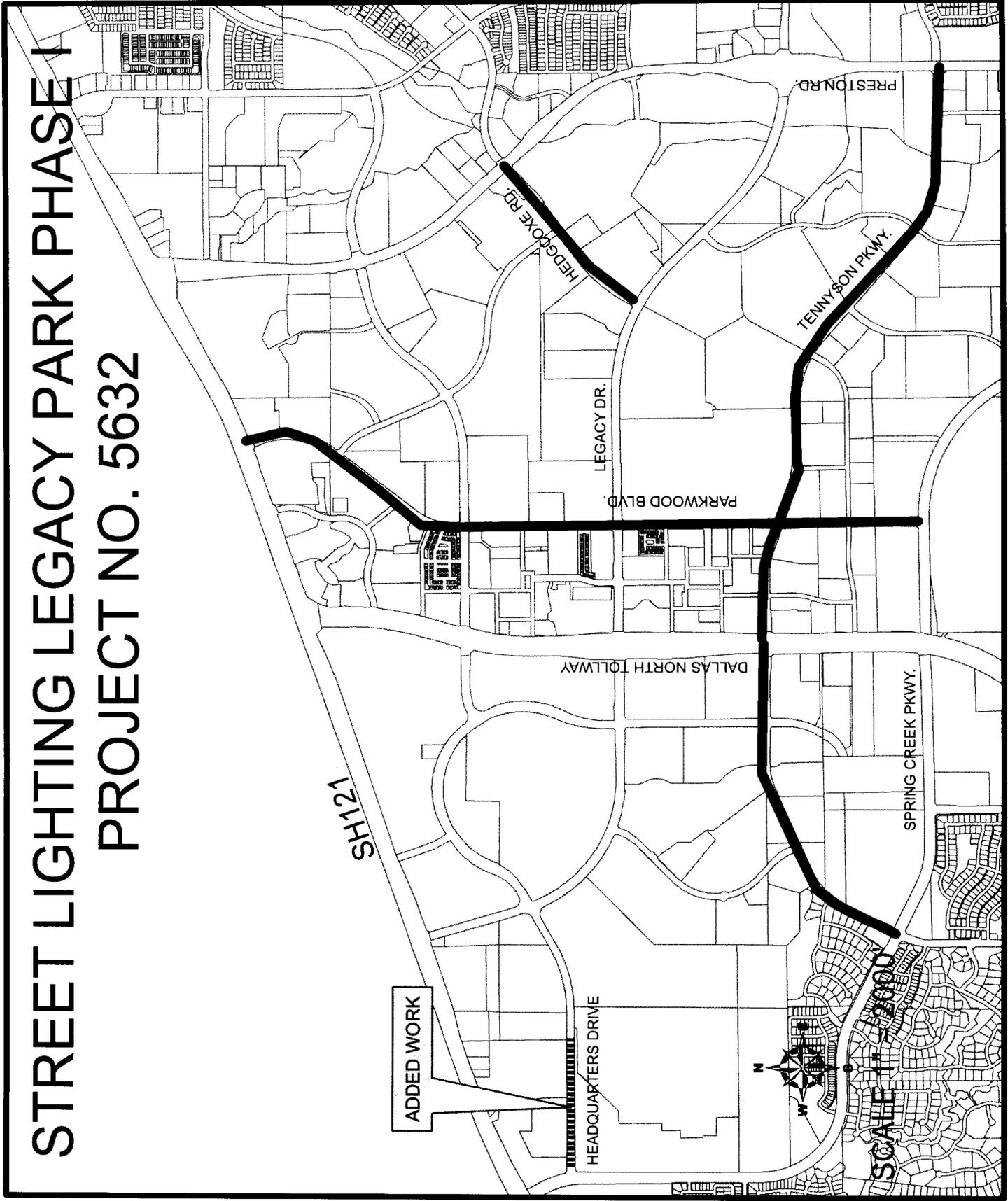
This instrument was acknowledged before me on the _____ day of _____, 2009, by **THOMAS H. MUEHLENBECK, CITY MANAGER**, of the **City of Plano, Texas**, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

Notary Public, State of Texas

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9.6

STREET LIGHTING LEGACY PARK PHASE 1 PROJECT NO. 5632





**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date:	3/9/09	Reviewed by Legal	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
Department:	Public Works Administration - David Falls		Initials	Date
Department Head	Alan Upchurch	Assistant City Manager		
Dept Signature:	<i>Alan Upchurch</i>	Deputy City Manager	<i>[Signature]</i>	03-02-09
		City Manager	<i>[Signature]</i>	3/2/09
Agenda Coordinator (include phone #): Margie Stephens (X4104)				
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input checked="" type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
<i>To McMahon Contracting, L.P. , increasing the contract by \$26,800.64 for the 2007 - 2008 Arterial Concrete Pavement Rehabilitation Project, Parker Road, Pleasant Valley and Country Place Drive, Project No. 5867, Change Order No. 2, Bid No. 2008-156 - B.</i>				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR:	2008-09	Prior Year (CIP Only)	Current Year	Future Years
Budget		2,506,850	4,314,150	2,300,000
Encumbered/Expended Amount		-2,506,850	-1,970,787	0
This Item		0	-26,801	0
BALANCE		0	2,316,562	2,300,000
FUND(s): CAPITAL RESERVE				
COMMENTS: Funds are included in the 2008-09 Capital Reserve. This change order, in the amount of \$26,801, will leave a current year balance of \$2,316,562 for the Arterial Concrete Repair project. STRATEGIC PLAN GOAL: Arterial concrete repair relates to the City's Goals of Safe, Efficient Travel and Premier City in which to Live.				
SUMMARY OF ITEM				
This change order is for final concrete street pavement repair quantities on Parker Road between Coit Road and Preston Road. As work progressed, additional quantities of deteriorated pavement were found that were not in the original scope of the contract. Staff recommends approval of Change Order No. 2. The total Contract will be \$1,004,346.62, which is a 22.85% increase of the original contract amount of \$817,564.80.				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Change Order No. 2				

CHANGE ORDER NO. 2

**2007- 2008 ARTERIAL CONCRETE PAVEMENT REHAB
PARKER RD., PLEASANT VALLEY & COUNTRY PLACE**

PROJECT NO. 5867

PURCHASE ORDER NO. 103531

CIP NO. 35-51131

BID NO. 2008-156- B

A. INTENT OF CHANGE ORDER

The intent of this change order is to modify the provisions of the contract entered into by the **CITY OF PLANO, TEXAS**, and **MCMAHON CONTRACTING, L.P.**, for the **2007-08 ARTERIAL CONCRETE PAVEMENT REHAB PROJECT – PARKER RD., PLEASANT VALLEY AND COUNTRY PLACE**, dated **June 23, 2008**.

B. DESCRIPTION OF CHANGE

The change order is for final quantities on the project. As work progressed additional areas of pavement were identified as needing repair while we were working in the area.

C. EFFECT OF CHANGE

This change order will have the following effect on the cost of this project:

ITEM NO.	ITEM DESCRIPTION	ORIGINAL QUANTITY	REVISED QUANTITY	UNIT	UNIT PRICE	AMOUNT OF CHANGE
100	Full Depth Saw Cut	11,456	13871.25		\$2.00	\$4,830.50
101	Longitudinal and Transverse BJ	11,456	13,871.25		\$2.80	\$6,762.70
102	R/D Existing Concrete Paving	13,107	13,622.79		\$5.50	\$2,836.85
103	F/I 10" Reinf Concrete Paving	4,971	6,570.40		\$50.00	\$79,970.00
104	F/I 8" Reinf Concrete Paving	8,136	7,052.39		\$45.00	-\$48,762.45
105	F/I 6" Monolithic Curb	7,594	6,667.10		\$1.10	-\$1,019.59
106	F/I Monolithic Median Nose	1	0.00		\$1,500.00	-\$1,500.00
107	F/I Type I Buttons	300	300.00		\$5.00	\$0.00
108	F/I Type II Buttons	750	750.00		\$3.50	\$0.00
109	F/I Extra Width Crack Seal	7,000	7,000.00		\$1.15	\$0.00
112	F/I Median Pave Stone	50	0.00		\$10.00	-\$500.00
113	F/I Conc. Median Paving	50	0.00		\$5.00	-\$250.00
115	Full Depth Saw Cut	5,000	3,621.10		\$2.00	-\$2,757.80
116	F/I Longitudinal and Transverse Bj	5,000	3,621.10		\$2.80	-\$3,860.92
117	R/D Existing Concrete Paving	3,320	3,015.16		\$5.50	-\$1,676.62
118	F/I 8" Reinf Concrete Paving	3,320	3,015.16		\$42.00	-\$12,803.28
119	F/I 6" Monolithic Curb	920	971.87		\$1.10	\$57.06
120	F/I Type I Buttons	314	0.00		\$5.00	-\$1,570.00
121	F/I Type II Buttons	314	0.00		\$3.50	-\$1,099.00
125	R/R Reinf. Concrete Sidewalk	1,250	2,285.80		\$4.00	\$4,143.20
126	F/I Type A BFR	1	2.00		\$1,000.00	\$1,000.00
128	F/I Type D BFR	2	6.00		\$750.00	\$3,000.00
	TOTAL:					\$26,800.64

K-2

Original Contract Amount	<u>\$ 817,564.80</u>
Contract Amount (Including Previous Change Orders)	<u>\$ 977,546.50</u>
Amount, Change Order No. 2	<u>\$ 26,800.64</u>
Revised Contract Amount	<u>\$ 1,004,347.14</u>
Total Percent Increase Including Previous Change Orders	<u>22.85%</u>

D. EFFECT OF CHANGE ON CONTRACT TIME

The work required under this change order will add 0 day(s) to this project:

Original Contract Time	<u>120 working days</u>
Amount (Including Previous Change Orders)	<u>150 working days</u>
Amount, Change Order No. 0	<u>0 working days</u>
Revised Contract Time	<u>150 working days</u>
Total Percent Increase Including Previous Change Orders	<u>25.00%</u>

E. AGREEMENT

By the signatures below, duly authorized agents of the **CITY OF PLANO, TEXAS**, and **MCMAHON CONTRACTING, L.P.**, do hereby agree to append this Change Order No. 2 to the original contract between themselves, dated June 23, 2008.

OWNER: CITY OF PLANO

**CONTRACTOR: MCMAHON
CONTRACTING, L.P., A TEXAS LIMITED
PARTNERSHIP
BY: JSM MANAGEMENT COMPANY,
LLC, GENERAL PARTNER
A TEXAS LIMITED PARTNERSHIP**

By: _____
(signature)

By:  _____
(signature)

Print
Name: THOMAS H. MUEHLENBECK

Print
Name: SHAWN MCMAHON

Print
Title:

Print
Title: MANAGING PARTNER, OF JSM
MANAGEMENT COMPANY, LLC,
GENERAL PARTNER OF MCMAHON
CONTRACTING, L.P.

Date: _____

Date: February 19, 2009

APPROVED AS TO FORM:

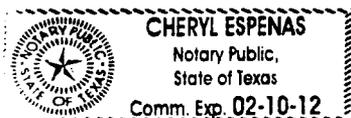
By: _____
Diane C. Wetherbee, City Attorney

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ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the 19th day of February, 2009, by **SHAWN MCMAHON, MANAGING PARTNER, OF JSM MANAGEMENT COMPANY, LLC, GENERAL PARTNER OF MCMAHON CONTRACTING, LP., a TEXAS LIMITED PARTNERSHIP**, on behalf of said partnership.



Cheryl Espenas
Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2009, by **THOMAS H. MUEHLENBECK, CITY MANAGER** of the **City of Plano, Texas**, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

Notary Public, State of Texas



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date: 3/9/09		Reviewed by Legal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Customer and Utility Services			Initials
Department Head	Mark Israelson	Assistant City Manager	<i>[Signature]</i>	2/26/09
Dept Signature:	<i>[Signature]</i>	Deputy City Manager	<i>[Signature]</i>	02-26-09
		City Manager	<i>[Signature]</i>	3/2/09
Agenda Coordinator (include phone #): Nancy Rodriguez X7510				
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input checked="" type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, AMENDING A COMMUNICATION FACILITIES LICENSE AGREEMENT APPROVED BY PLANO CITY COUNCIL ON NOVEMBER 9, 1998, BY AND BETWEEN THE CITY OF PLANO, TEXAS, AND AT&T MOBILITY TEXAS LLC, A DELAWARE LIMITED LIABILITY COMPANY, TO INSTALL, AND OPERATE TELECOMMUNICATIONS GROUND EQUIPMENT IN CERTAIN SPECIFIC PREMISES; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR HIS AUTHORIZED DESIGNEE; AND PROVIDING AN EFFECTIVE DATE.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input checked="" type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2009-10	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	7,200	7,200
BALANCE	0	0	7,200	7,200
FUND(S): WATER & SEWER FUND				
COMMENTS: Approval of this item will result in \$7,200 of additional revenue per year for the Communication Facilities License Agreement between the City of Plano and AT&T Mobility. Revenues received will increase 3% per year on the anniversary date.				
STRATEGIC PLAN GOAL: Communication Facilities License Agreements relate to the City's Goal of "Service Excellence".				
SUMMARY OF ITEM				
This Resolution amends an existing communications facilities license originally approved by Plano City Council on November 9, 1998, modifying rental fees, CPI adjustment, and length of the original lease.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, AMENDING A COMMUNICATION FACILITIES LICENSE AGREEMENT APPROVED BY PLANO CITY COUNCIL ON NOVEMBER 9, 1998, BY AND BETWEEN THE CITY OF PLANO, TEXAS, AND AT&T MOBILITY TEXAS LLC, A DELAWARE LIMITED LIABILITY COMPANY, TO INSTALL, AND OPERATE TELECOMMUNICATIONS GROUND EQUIPMENT IN CERTAIN SPECIFIC PREMISES; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR HIS AUTHORIZED DESIGNEE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council wishes to amend a communications facilities license originally approved on November 9, 1998, and to approve the amendment attached hereto as Exhibit A ("Amendment"); and

WHEREAS, upon full review and consideration of the Amendment 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, in his absence, an Executive Director should be authorized to execute the Amendment on behalf of the City of Plano.

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

Section 1. The terms and conditions of the Amendment, 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 2. The City Manager or his authorized designee is hereby authorized to execute the Amendment 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 Amendment.

Section 3. This Resolution shall become effective immediately upon its passage.

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DULY PASSED AND APPROVED on this the ____ day of _____, 2009.

Pat Evans, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:



Diane C. Wetherbee, CITY ATTORNEY

Cell Site No. DX1038/FA10003666
Market: North Texas
Address: 940 Stewart Avenue, Plano, Texas

FIRST AMENDMENT TO COMMUNICATIONS FACILITIES LICENSE

THIS FIRST AMENDMENT TO COMMUNICATIONS FACILITIES LICENSE AGREEMENT ("Amendment"), dated as of the latter of the signature dates below, is by and between City of Plano, having a mailing address of 4120 West Plano Parkway, Plano, Texas 75093 (hereinafter referred to as "Licensor") and AT&T Mobility Texas LLC, a Delaware limited liability company, successor to Southwestern Bell Wireless, Inc., having a mailing address of 5405 Windward Parkway, Alpharetta, GA 30004 (hereinafter referred to as "Licensee").

WHEREAS, Licensor and Licensee entered into a Communications Facilities License dated December 14, 1998, whereby Licensor licensed to Licensee certain Premises, therein described, that are a portion of the Property located at 940 Stewart Avenue, Plano, Texas ("Agreement"); and

WHEREAS, Licensor and Licensee desire to modify, as set forth herein, the rent payable under the Agreement; and

WHEREAS, Licensee desires to alter and make improvements to the Property or Premises by adding three (3) additional lines of coax cabling and six (6) additional tower mounted amplifiers ("TMA"); all as indicated below and on the site plan attached hereto as Exhibit "A" and incorporated herein by reference; and

WHEREAS, Licensor and Licensee desire to amend the Agreement to modify the notice section thereof; and

WHEREAS, Licensor and Licensee, in their mutual interest, wish to amend the Agreement as set forth below accordingly.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Licensor and Licensee agree as follows:

1. **Rent.** Appendix "B" Payment Terms and Conditions of the Agreement is hereby deleted in its entirety and replaced with the following:

Commencing upon full execution hereof, the Rental Fee shall be increased by Seven Thousand Two Hundred and 00/100 Dollars (\$7,200.00) per annum so that the total annual Rental Fee shall thereafter be in the amount of Twenty Six Thousand Two Hundred Forty-Eight and 86/100 Dollars (\$26,248.86). Such increase represents the compensation for the addition of the new coax cables and TMAs and is subject to future adjustments as provided in the Agreement.

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Beginning on or before the anniversary date of the Effective Date of the Agreement, the Amendment shall be on the same terms and conditions as set forth in the Agreement except that Rental Fees shall be increased each year by three percent (3%) of the previous year's Rental Fee.

2. **Equipment.** Licensor consents to the installation and operation of three (3) additional coax cables and six (6) Tower Mounted Amplifiers bearing model number KRY112 75/1, all in a manner in accordance with the site plan attached hereto as Exhibit "A" and incorporated herein by reference.

3. **Notices.** Section 18 of the Agreement is hereby deleted in its entirety and replaced with the following:

NOTICES. All notices, requests, demands and communications hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties as follows.

If to Licensee: AT&T Mobility Texas LLC (for certified mail)
Attn: Network Real Estate Administration
Re: Cell Site #1038; Cell Site Name: Hwy 190/Jupiter; Fixed Asset #. 10003666
PO Box 1630
Alpharetta, GA 30009

AT&T Mobility Texas LLC (for overnight mail)
Attn: Network Real Estate Administration
Re: Cell Site #1038; Cell Site Name: Hwy 190/Jupiter; Fixed Asset #. 10003666
12555 Cingular Way
Alpharetta, GA 30004

With a copy to: AT&T Mobility Texas LLC
Attn: Legal Department
Re: Cell Site #1038; Cell Site Name: Hwy 190/Jupiter; Fixed Asset #. 10003666
15 East Midland Ave.
Paramus, NJ 07652

If to Licensor: City of Plano
Public Works Department
Attn: Margie Stephens
4120 West Plano Parkway, Plano, Texas 75093

Either party hereto may change the place for the giving of notice to it by thirty (30) days prior written notice to the other as provided herein.

4. **Memorandum of License.** Either party will, at any time upon fifteen (15) days prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum of License substantially in the form of the Attachment 1. Either party may record this memorandum at any time, in its absolute discretion.

5. **Other Terms and Conditions Remain.** In the event of any inconsistencies between the Agreement and this Amendment, the terms of this Amendment shall control. Except as expressly set forth in this Amendment, the Agreement otherwise is unmodified and remains in

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full force and effect. Each reference in the Agreement to itself shall be deemed also to refer to this Amendment.

6. **Capitalized Terms.** All capitalized terms used but not defined herein shall have the same meanings as defined in the Agreement.

IN WITNESS WHEREOF, the parties have caused their properly authorized representatives to execute and seal this Amendment on the dates set forth below.

CITY OF PLANO, TEXAS

By: _____
Thomas H. Muehlenbeck
CITY MANAGER
1520 Avenue K
PO Box 860358
Plano, TX 75086-0358

APPROVED AS TO FORM:

BY: _____
Diane C. Wetherbee, CITY ATTORNEY

Date: _____

By Authority of Resolution No. _____

AT&T Mobility Texas LLC,
a Delaware limited liability company,
by AT&T Mobility Corporation, its Manager

By: _____
Name: Kevin J. Haynes
Title: Executive Director, North Texas
Network Operations
Date: _____

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LICENSOR ACKNOWLEDGEMENT

STATE OF TEXAS

COUNTY OF COLLIN

BEFORE ME, the undersigned authority, A Notary Public in and for the State of Texas, on this day personally appeared _____ known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for and as the act of the CITY OF PLANO, of the State of Texas, Collin County, Texas, and as the _____ thereof, and for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this _____ day of _____, 2009.

Notary Public in and for the State of Texas

My Commission Expires _____

LICENSEE ACKNOWLEDGEMENT

STATE OF TEXAS

COUNTY OF DALLAS

BEFORE ME, the undersigned authority, on this day personally appeared Kevin J. Haynes, Executive Director, North Texas Network Operations of AT&T MOBILITY TEXAS LLC, a Delaware limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said AT&T Mobility Texas LLC, and that he executed the same as the act of such Limited Liability Company for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this _____ day of _____, 2009.

Notary Public in and for the State of Texas

My Commission Expires _____

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CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget <i>C.S.</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date: 3/9/09		Reviewed by Legal <i>M.S.</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Finance			Initials Date
Department Head	Denise Tacke <i>mc for DT</i>	Assistant City Manager	<i>[Signature]</i>	3-2-09
Dept Signature:		Deputy City Manager	<i>[Signature]</i>	03-02-09
		City Manager	<i>[Signature]</i>	3/2/09
Agenda Coordinator (include phone #): Katherine Crumbley - 7479 <i>K.C.</i>				
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input checked="" type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN AGREEMENT BY AND BETWEEN LEGACYTEXAS BANK AND THE CITY OF PLANO, TEXAS FOR BANK DEPOSITORY SERVICES; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR HIS AUTHORIZED DESIGNEE; AND PROVIDING AN EFFECTIVE DATE.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2009-10	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(s):				
COMMENTS:				
SUMMARY OF ITEM				
Along with the new depository contract, a Safekeeping Agreement for the City of Plano is required to be in compliance with the City's Investment Policy. This agreement states that the City and the Depository Bank (LegacyTexas Bank) agree that the Depository Bank will place any securities pledged to the City with a third party Custodian Bank, TIB- The Independent Bankers Bank. City Council action is required to approve the award of the contract.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
Bank Depository Contract				

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN AGREEMENT BY AND BETWEEN LEGACYTEXAS BANK AND THE CITY OF PLANO, TEXAS FOR BANK DEPOSITORY SERVICES; 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 bank depository services between LegacyTexas Bank and the City of Plano, Texas, 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, in his absence, an Executive Director, 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 ____ day of _____, 2009.

Pat Evans, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

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BANK DEPOSITORY CONTRACT

This BANK DEPOSITORY CONTRACT, hereinafter called "Depository Contract", is made and entered into on the date last herein written by and between the CITY OF PLANO, a political subdivision of the State of Texas, hereinafter called "City" and LEGACYTEXAS BANK, organized under the law of the United States and authorized by law to do banking business in the State of Texas, hereinafter called "Bank", and provides as follows:

1. **Designation of Depository.** City, through action of the City Council, its governing body, hereby designates Bank as a depository bank for the period beginning January 1, 2009, and continuing through December 31, 2009, with the option for one one-year extension under the same terms and conditions.

2. **General.** All services rendered to City by Bank under this Depository Contract shall be performed in accordance with accepted commercial banking standards for public fund organizations and under the overall direction and instructions of City pursuant to Bank's standard operations, policies, and procedures.

3. **Scope of Services.** Bank agrees to provide those services as described in the Bank's Response to City's Bank Services RFP incorporated herein by reference. Bank acknowledges that all such services shall be performed by Bank subject to the approval of City.

4. **City Representatives.** During the term of this Depository Contract, the City will, through appropriate action of its City Council, designate the officer, or officers, who singly or jointly will be authorized to represent and act on behalf of the City in any and all matters of every kind arising under this Depository Contract and to (a) appoint and designate, from time to time, a person or persons who may request withdrawals, orders for payment or transfer on behalf of the City in accordance with the electronic funds or funds transfer agreement and addenda, and (b) make withdrawals or transfer by written instrument.

5. **Entire Agreement.** The entire agreement between Bank and City shall consist of this Depository Contract, City's Bank Services RFP, Bank's Response to City's Bank Services RFP, Depository Pledge Agreement, and Safekeeping Agreement (each incorporated by reference) listed in governing order of precedence in the event of conflict among any of the documents. This Depository Contract supercedes any and all prior representations, statements, and agreements, whether written or oral. The terms and provisions of this Depository Contract may not be amended, altered, or waived except by mutual agreement evidenced by a written instrument signed by duly authorized representatives of both parties.

6. **Documents.** The contract and agreement documents incorporated by reference herein, and any other agreements for specific bank services that have been or may be executed between the City and Bank, are or will be on file as permanent records in the City's Finance Department and available for public inspection during regular business hours.

7. **Interest on Deposits.** City may arrange for time deposits and Bank may accept and shall hold such deposits subject to payment in accordance with the terms of the deposit. Interest shall be calculated at the rates which Bank has proposed for the particular denomination and time period of said deposits, or negotiated at the time of placement of said deposits. Any time deposits that mature beyond the expiration of this Depository Contract will be at the interest rates negotiated at the time of purchase.

8. **Custodian.** City and Bank, by execution of this Depository Contract, hereby designate the TIB-Independent Bankers Bank, hereinafter called the "Custodian Bank", to hold in trust, according to

the terms and conditions of this Depository Contract and the Safekeeping Agreement, the collateral described and pledged by the Bank in accordance with the provisions of this Depository Contract.

9. **Custodian Fees.** Any and all fees associated with the Custodian Bank's holding of collateral for the benefit of City will be paid by Bank and the City will have no liability therefore.

10. **Collateralization.** All funds on deposit with the Bank to the credit of the City shall be secured by collateral as provided for the Public Funds Collateral Act (Chapter 2257 of the Texas Government Code), the City's Investment Policy, and the Bank's Response to the City's Bank Depository Request For Proposal as accepted by the City. With the exception of deposits secured with irrevocable letters of credit at 100% of amount, the total market value of the collateral (which includes accrued interest or income to the extent it is not included in the market price) securing such deposits shall be in an amount at least equal to one hundred two percent (102%) of the amount of such deposits, plus the amount of any accrued interest thereon, less the amount that such deposits are insured by an agency or instrumentality of the United States government. The market value with respect to any securities (collateral) as of any date and priced on such date will be obtained from a non-affiliated information source acceptable to the City. The Bank will work with the City to establish an appropriated cushion to cover normal deposit fluctuations and City will notify Bank of significant changes in its balances. Bank will be liable for the monitoring and maintaining the required collateral margins and levels at all times.

Bank has heretofore, or will immediately hereafter, deliver to Custodian Bank collateral of the kind and character above mentioned of sufficient amount and market value to provide adequate collateral for the funds of City deposited with Bank. Said collateral or substitute collateral, as hereinafter provided for, shall be kept and retained by the Custodian Bank in trust so long as the depository relationship between City and Bank shall exist hereunder, and thereafter so long as deposits made by City and Bank hereunder, or any portion thereof, shall have not been properly paid out by Bank to City or on its order. Bank hereby grants a security interest in such collateral to City.

The Custodian Bank will accept said collateral and hold the same in trust for the purposes herein stated.

11. **Default.** Should Bank fail at any time pay and satisfy, when due, any check, draft, or voucher lawfully drawn against any deposits and the interest on such deposits or in any manner breach its contract with City, City shall give written notice of such failure or breach to the Bank, and the Bank shall have three (3) business days to cure such failure or breach. In the event Bank shall fail to cure any such failure or breach within three (3) business days or should the Bank be declared insolvent by a Federal banking regulatory agency, it shall be the duty of the Custodian Bank, upon demand of City (supported by proper evidence of any of the above listed circumstances), to surrender the above described collateral, in an amount equal to the current balance of City's deposits and accrued interest less agency or instrumentality of the United States government insurance, to City. City may sell any part of such collateral and out of the proceeds thereof, pay City all damages and losses sustained by it, together with all expenses of any and every kind incurred by it on account of such failure or insolvency, or sale, and account to Bank for the remainder, if any, of said proceeds or collateral remaining unsold.

12. **Sale of Collateral.** Any sale of such collateral, or any part thereof, made by City hereunder may be either at public or private sale, provided, however, it shall give both the Custodian Bank and Bank two (2) hours notice of the time and place where such sale shall take place, and such sale shall be to the highest bidder therefore for cash. City and Bank shall have the right to bid at such sale.

13. **Substitution of Collateral.** If Bank shall desire to sell or otherwise dispose of any one or more of said collateral securities so deposited with the Custodian Bank, with the advance written approval of City, it may substitute for any one or more of such securities other securities of the same market value and character of the character authorized herein. Such right of substitution shall remain in full force and

may be exercised by Bank as often as it may desire; provided, however, that the aggregate market value of all collateral pledged hereunder, shall be at least equal to the amount of collateral required hereunder and meet the requirements of the law. If at any time, the aggregate market value of such collateral so deposited with the Custodian Bank is less than one hundred two percent (102%) of the City's funds on deposit with the Bank, Bank immediately shall deposit with the Custodian Bank such additional collateral as may be necessary to cause the market value of such collateral to equal the total amount of required collateral. Bank shall be entitled to income on securities held by the Custodian Bank for the collateral required hereunder, and the Custodian Bank may dispose of such income as directed by Bank without approval of City.

14. **Trust Receipts.** Bank shall promptly forward to City copies of safekeeping or trust receipts covering all such collateral held for Bank, including substitute collateral as provided for herein.

15. **Withdrawal of Collateral.** If at any time the collateral in the hands of the Custodian Bank shall have a market value in excess of one hundred two percent (102%) of the balances due City by Bank, City shall authorize the withdrawal of a specific amount of collateral. The Custodian Bank shall deliver this amount of collateral (and no more) to Bank, taking its receipt therefore, and the Custodian Bank shall have no further liability for collateral so redelivered to Bank.

16. **Successors.** This Depository Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Whenever a reference is made herein to either party, such reference shall include the party's successors and assigns.

17. **Release of Collateral.** When the relationship of City and Bank shall have ceased to exist between City and Bank, and when Bank shall have properly paid out all deposits of City, it shall be the duty of City to give the Custodian Bank notice to that effect; whereupon the Custodian Bank shall, with the approval of City, redeliver to Bank all collateral then in its possession belonging to Bank, taking its receipt therefore. An order in writing to the Custodian Bank by City and a receipt for such collateral by Bank shall be a full and final release of the Custodian Bank of all duties and obligations undertaken by it by virtue of these presents.

18. **Governing Law and Venue.** This Depository Contract shall be governed by the laws of the State of Texas. Collin County will be the venue for any lawsuit arising out of this Depository Contract.

19. **Notices.** Except as may otherwise be specified in the applicable service-level agreements and/or set-up forms, any demand, notice, request, instruction, designation, or other communication(s) required in writing under this Depository Contract shall be personally delivered or sent certified mail, return receipt requested, to the other party as follows:

Bank: Stacey L. Moore, Vice President
LegacyTexas Bank
1301 Custer Road, Suite 616
Plano, TX 75075
972.461.1476

City: Denise M. Tacke, Finance Director
City of Plano
1520 K Avenue
Plano, TX 75074
972.941.5233

Changes to notice information may be made by either party with written notification to the other party.

20. **Severability.** If any provision of this Depository Contract is held to be illegal, invalid, or unenforceable by a court of competent jurisdiction, the parties, shall, if possible, agree on a legal, valid, and enforceable substitute provision that is as similar in effect to the illegal, invalid, or unenforceable provision as possible. The remaining portion of the Depository Contract not declared illegal, invalid, or unenforceable shall remain valid and in full force and effect for the term remaining.

21. **Binding Commitment.** Bank hereby acknowledges itself duly and firmly bound for the faithful performance of all the duties and obligations required by applicable law, including the Texas Government Code and Texas Local Government Code, such that all funds deposited with it as depository shall be faithfully kept by it and accounted for according to law.

22. **Continuation.** Unless this Depository Contract is terminated sooner, Bank's designation as the City Depository will remain continuously in effect for a period not to exceed 60 days after December 31, 2009, subject to execution of the extension option.

IN WITNESS Whereof, the duly authorized officers of the parties have this day executed this Depository Contract:

LEGACYTEXAS BANK

BY: _____
NAME: _____
TITLE: _____
Date: _____

CITY OF PLANO

BY: _____
NAME: Thomas H. Muhlenbeck
TITLE: City Manager
Date: _____

APPROVED AS TO FORM

Diane C. Wetherbee, CITY ATTORNEY

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CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date: 3/9/09		Reviewed by Legal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Finance		Initials	Date
Department Head	Denise Tacke <i>MC for DT</i>	Assistant City Manager	<i>[Signature]</i>	3-2-09
Dept Signature:		Deputy City Manager	<i>[Signature]</i>	03-02-09
		City Manager	<i>[Signature]</i>	3/2/09
Agenda Coordinator (include phone #): Katherine Crumbley - 7479 <i>VAC</i>				
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input checked="" type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A SAFEKEEPING AGREEMENT BY AND BETWEEN LEGACYTEXAS BANK, TIB – THE INDEPENDENT BANKERS BANK, AND THE CITY OF PLANO, TEXAS; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR HIS AUTHORIZED DESIGNEE; AND PROVIDING AN EFFECTIVE DATE.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	2009-10	Prior Year (CIP Only)	Current Year	Future Years
Budget		0	0	0
Encumbered/Expended Amount		0	0	0
This Item		0	0	0
BALANCE		0	0	0
FUND(S):				
COMMENTS:				
SUMMARY OF ITEM				
Along with the new depository contract, a Safekeeping Agreement for the City of Plano is required to be in compliance with the City's Investment Policy. This agreement states that the City and the Depository Bank (LegacyTexas Bank) agree that the Depository Bank will place any securities pledged to the City with a third party Custodian Bank, TIB- The Independent Bankers Bank. City Council action is required to approve the award of the contract.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
Safekeeping Agreement with the City of Plano				

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RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A SAFEKEEPING AGREEMENT BY AND BETWEEN LEGACYTEXAS BANK, TIB – THE INDEPENDENT BANKERS BANK, AND THE CITY OF PLANO, TEXAS; 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 Safekeeping Agreement between LegacyTexas Bank, TIB – The Independent Bankers Bank, and the City of Plano, Texas, a substantial copy of which is attached hereto as Exhibit “A” and incorporated herein by reference (hereinafter called “Safekeeping Agreement”); and,

WHEREAS, upon full review and consideration of the Safekeeping 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, in his absence, an Executive Director, 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 Safekeeping 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 Safekeeping 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 Safekeeping Agreement.

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

DULY PASSED AND APPROVED this the ____ day of _____, 2009.

Pat Evans, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

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SAFEKEEPING AGREEMENT FOR CITY OF PLANO, TEXAS

This Agreement is made and entered into on this ___ day of _____ 200 , by and between the City of Plano, Texas (Public Fund), and LegacyTexas Bank (Depository Bank), and TIB-The Independent Bankers Bank (Custodian Bank).

WITNESSETH:

WHEREAS, the City of Plano, Texas and Depository Bank have entered into a Depository Contract; and

WHEREAS, under the provisions of law and the Depository Contract, the Depository Bank must secure the deposits of the City of Plano, Texas by pledging investment securities or by pledging irrevocable letters of credit to the City of Plano, Texas; and

WHEREAS, the securities pledged by Depository Bank under the Depository Contract must be transferred to and held by a bank selected for such safekeeping thereof; and

WHEREAS, the City of Plano, Texas and Depository Bank have mutually agreed and selected TIB-The Independent Bankers Bank as the Safekeeping/Custodian Bank hereinafter referred to as Custodian Bank.

NOW, THEREFORE, the parties agree hereto as follows:

1. The Depository Bank hereby places with Custodian Bank certain investment securities owned by the Depository Bank, which are pledged to the City of Plano, Texas as security for its deposits with the Depository Bank.
2. In accordance with the Depository Contract, the Depository Bank may from time to time place with the Custodian Bank additional securities pledged to the City of Plano, Texas. Whenever securities pledged to the City of Plano, Texas are pledged by the Depository Bank with the Custodian Bank, the Custodian Bank shall issue original safekeeping receipts directly to the City of Plano, Texas with copies to the Depository Bank. These securities will be surrendered only upon a release signed by proper officials of the City of Plano, Texas and bearing the certificate of an officer of the Depository Bank, to the effect that the persons signing are the proper authorized officials to sign release of securities held by Custodian Bank. Additionally, the Custodian Bank shall issue a monthly statement directly to the City of Plano, Texas detailing the securities held on the City's behalf at month end.
3. The Depository Bank agrees to faithfully perform all of the duties it is responsible for under the Depository Contract and indemnifies the City of Plano, Texas against all loss, cost or expense, including reasonable attorney's fees, arising out of or relating to the failure to perform the duties imposed on it by this Safekeeping Agreement.
4. Custodian Bank agrees to faithfully perform all of the duties hereof.
5. Depository Bank agrees to pay all costs or charges imposed by Custodian Bank for the performance of the services it provides under the terms of this Safekeeping Agreement.
6. In the event said Depository Bank shall at any time default in the payments of any funds of City of Plano, Texas deposited with it, or should default in the performance of any obligation upon it by the law of the depository of said City of Plano, Texas, then the Custodian Bank, at the request of City of Plano, Texas, shall sell for the account of City of Plano, Texas securities deposited with it to make good such default, and shall deliver the proceeds to such sale in the amount of said default to City of Plano, Texas.

7. Any suit arising out of or in any way connected with this Agreement shall be brought in a court of proper jurisdiction in Collin County, Texas.

EXECUTED on this __ day of _____, 200__.

Depository Bank

By: Name in Print

Signature

Title

City of Plano

(Public Fund)

By: Name in Print

Signature

Title

TIB – The Independent Bankers Bank

Custodian Bank

By: Name in Print

Signature

Vice President

Title

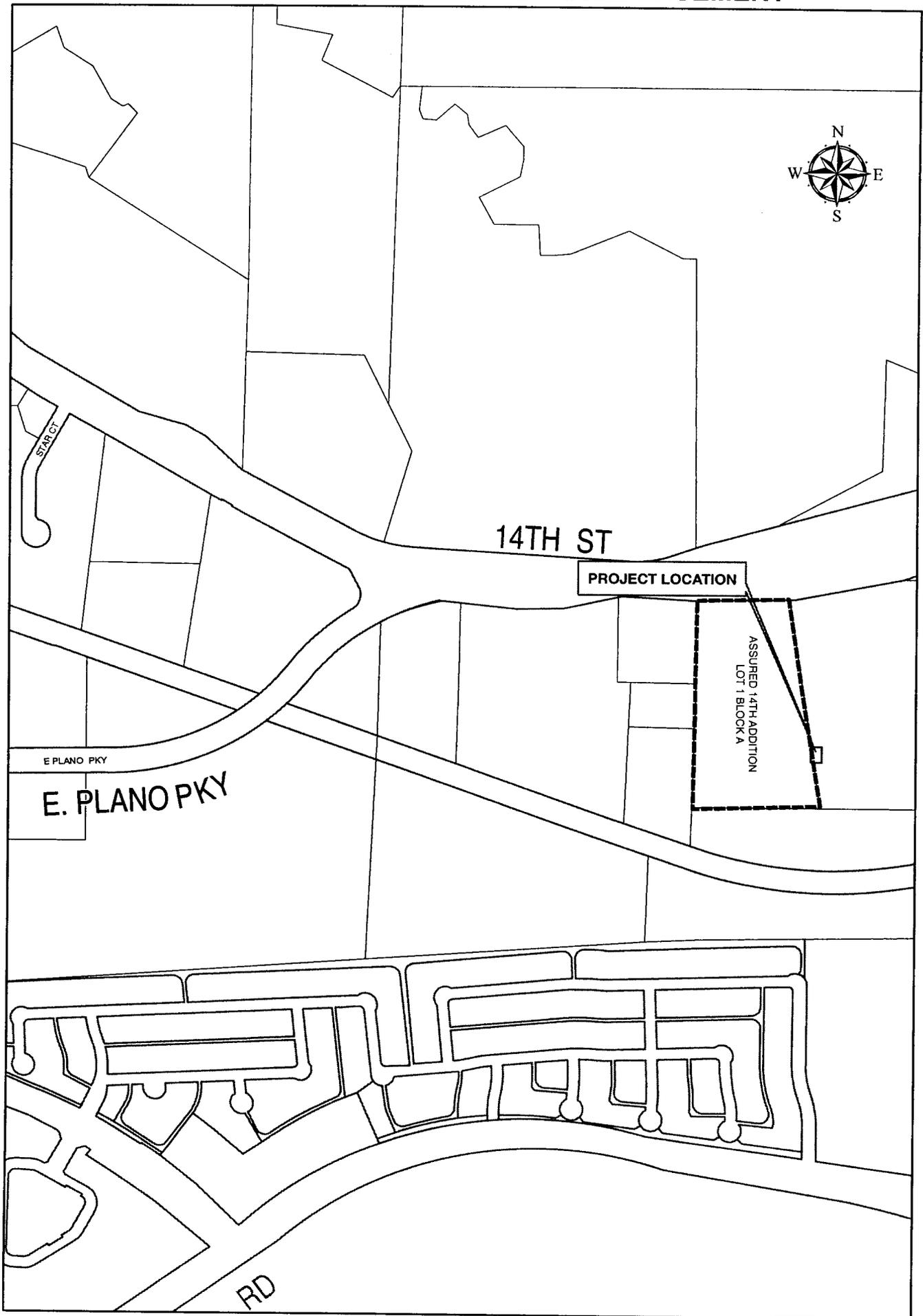
77.4



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
Council Meeting Date:	3/9/09	Reviewed by Legal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Public Works & Engineering		Initials	Date
Department Head	Alan Upchurch	Assistant City Manager		
Dept Signature:	<i>Alan Upchurch</i>	Deputy City Manager	<i>[Signature]</i>	2/25/09
		City Manager	<i>[Signature]</i>	1/25/09
Agenda Coordinator (include phone #):		Irene Pegues X-7198		
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input checked="" type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
A resolution of the City Council of the City of Plano, Texas approving the dedication of a 417.9 square foot tract of land owned by the City of Plano, Texas for dedication as a drainage easement for Assured 14 th Addition, Lot 1, Block A, said parcel situated in the M.R. Foster Survey, Abstract No. 332 in the City of Plano, Collin County, Texas, and providing an effective date.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(s):				
COMMENTS:				
SUMMARY OF ITEM				
The drainage easement is required to serve the Assured 14 th Addition, Lot 1, Block A. Both Engineering and Parks Departments recommend approval of this dedication.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
Location Map				

ASSURED 14TH ADDITION DRAINAGE EASEMENT



0-2

LOCATION MAP

2/18/2009

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE DEDICATION OF A 417.9 SQUARE FOOT TRACT OF LAND OWNED BY THE CITY OF PLANO, TEXAS FOR DEDICATION AS A DRAINAGE EASEMENT FOR ASSURED 14TH ADDITION, LOT 1, BLOCK A, SAID PARCEL SITUATED IN THE M.R. FOSTER SURVEY, ABSTRACT NO. 332 IN THE CITY OF PLANO, COLLIN COUNTY, TEXAS, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, a drainage easement is needed to serve Assured 14th Addition, Lot 1, Block A in the City of Plano, Texas; and

WHEREAS, said drainage easement is described in the field notes and shown on the drawings attached hereto and incorporated herein as Exhibit "A"; and

WHEREAS, upon full review and consideration of this Resolution, and all matters attendant and related thereto, the City Council is of the opinion that the 417.9 square foot tract of land should be dedicated as drainage easement to serve Assured 14th Addition, Lot 1, Block A, and the City Manager or his authorized designee, shall be authorized to record this Resolution in the Real Property Records of Collin County, Texas to evidence this dedication.

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

Section I. The City Council hereby authorizes the dedication of the drainage easement to serve Assured 14th Addition,, Lot 1, Block A and determines that the dedication is acceptable and is hereby in all things approved.

Section II. The City Manager or his authorized designee is hereby authorized to record this Resolution in the Real Property Records of Collin County, Texas to evidence this dedication.

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

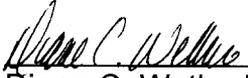
DULY PASSED AND APPROVED this ____ day of _____, 2009.

Pat Evans, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

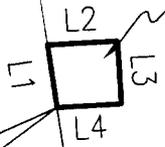
APPROVED AS TO FORM:



Diane C. Wetherbee, CITY ATTORNEY

0-4

417.9 Sq.Ft.
0.0096 Ac.



POINT OF BEGINNING

LINE	BEARING	DISTANCE
L1	N 09°06'45" W	20.08'
L2	N 86°00'38" E	21.79'
L3	S 03°59'22" E	20.00'
L4	S 86°00'38" W	20.00'

M.R. Foster Survey, Abstract No. 332

City of Plano, 16.896 Acres
Vol. 3257, Pg. 382, CCLR

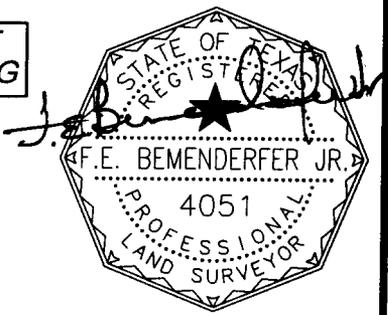
9.445 Ac. Tr.
CC# 20080918001125070 C.C.L.R.

N09°06'45" W

317.83'

Legend
CM controlling monument
P property line
IRF Iron Rod Found

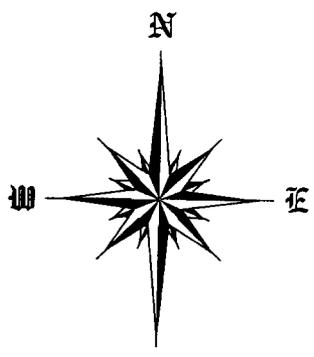
POINT OF COMMENCING
1/2" IRF (CM)



M&M Joint Venture, 16.249 Acres
Vol. 5921, Pg. 2037, CCLR

Drainage Easement
Part of City of Plano 16.896 Ac. Tr.
M.R. Foster Survey, Abstract No. 332
City of Plano, Collin County, Texas
February 2009

P:/AC/2009Q1/AC83924.DWG



Scale: 1" = 60'

Roome Land Surveying, Inc.

2000 Avenue G, Suite 810
Plano, Texas 75074
Phone (972) 423-4372 / Fax (972) 423-7523
www.roomesurveying.com

0.5

Drainage Easement
417.9 Sq. Ft. or 0.0096 Ac.

SITUATED in the State of Texas, County of Collin, City of Plano, being part of the M.R. Foster Survey, Abstract No. 332, being part of a City of Plano 16.896 acre tract of land as recorded in Volume 3257, Page 382 of the Collin County Land Records with said premises being more particularly described as follows:

COMMENCING at a ½" iron rod found marking the southwest corner of said 16.896 acre tract, the southeast corner of a 9.445 acre tract as recorded under County Clerk No. 20080918001125070 of the Collin County Land Records, and being in the north line of a 16.249 acre tract as recorded in Volume 5921, Page 2037 of the Collin County Land Records;

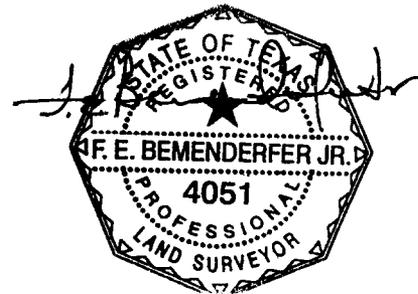
THENCE with the west line of said 16.896 acre tract and the east line of said 9.445 acre tract, North 09°06'45" West, 317.83 feet to the POINT OF BEGINNING and southwest corner of the herein described premises;

THENCE continuing with the west line of said 16.896 acre tract, the east line of said 9.445 acre tract and the west line of said premises, North 09°06'45" West, 20.08 feet to a point marking the northwest corner of said premises;

THENCE with the north line of said premises, North 86°00'38" East, 21.79 feet to a point marking the northeast corner of said premises;

THENCE with the east line of said premises, South 03°59'22" East, 20.00 feet to a point marking the southeast corner of said premises;

THENCE with the south line of said premises, South 86°00'38" West, 20.00 feet to the point of beginning and containing 417.9 square feet or 0.0096 acre of land.



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**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
Council Meeting Date:	03/09/09	Reviewed by Legal <i>SP</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Public Works & Engineering		Initials	Date
Department Head	Alan L. Upchurch	Assistant City Manager		
Dept Signature:	<i>Alan Upchurch</i>	Deputy City Manager	<i>[Signature]</i>	2/25/09
		City Manager	<i>[Signature]</i>	2/25/09
Agenda Coordinator (include phone #):		Irene Pegues (7198) <i>SP</i>		
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input checked="" type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
A Resolution of the City Council of the City of Plano, Texas, approving and granting an electric easement to Oncor Electric Service Company on City property located on the west side of Bishop Road, 257.01' south of Legacy Circle, authorizing its execution by the City Manager or his authorized designee, and providing an effective date.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S):				
COMMENTS:				
SUMMARY OF ITEM				
The proposed electric easement along Bishop Road is to allow for existing electric equipment serving Legacy Town Center North.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
Location Map		n/a		

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING AND GRANTING AN ELECTRIC EASEMENT TO ONCOR ELECTRIC SERVICE COMPANY ON CITY PROPERTY LOCATED ON THE WEST SIDE OF BISHOP ROAD, 257.01' SOUTH OF LEGACY CIRCLE, AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR HIS AUTHORIZED DESIGNEE, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the proposed electric easement along Bishop Road is to allow for existing electric equipment serving Legacy Town Center North, copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter the "Easement"); and,

WHEREAS, upon full review and consideration of the Easement, 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 the Easement 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 City Council hereby authorizes the granting of the Easement and determines that the Easement is acceptable and is hereby in all things approved.

Section II. The City Manager or his authorized designee, is hereby authorized to execute the Easement and all other documents in connection with said Easement on behalf of the City of Plano.

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

DULY PASSED AND APPROVED this the 9th day of March, 2009.

Pat Evans, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

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**ELECTRIC EASEMENT
LEGACY TOWN CENTER NORTH; LOT 3, BLOCK C**

**THE STATE OF TEXAS §
 §
COUNTY OF COLLIN §**

KNOW ALL MEN BY THESE PRESENTS:

THAT, THE CITY OF PLANO, TEXAS, a home-rule municipal corporation, hereinafter called "Grantor," for and in consideration of the sum of **TEN DOLLARS (\$10.00)** and other good and valuable consideration to Grantor in hand paid by **ONCOR ELECTRIC SERVICE COMPANY**, a Texas corporation, hereinafter called "Grantee," the receipt and sufficiency of which is hereby acknowledged, does hereby GIVE, GRANT, and CONVEY to the Grantee, its successors and assigns, the right to construct, reconstruct and perpetually maintain electrical facilities (the "Facilities"), together with all incidental improvements and all necessary laterals in, upon and across the real property located in the City of Plano, Collin County, Texas, as more particularly described in Exhibit "A" which is attached hereto and incorporated herein by reference as if fully set forth herein (the "Easement Property").

TO HAVE AND TO HOLD the same perpetually unto the Grantee, its successors and assigns, together with the right and privilege at all times to enter the Easement Property, or any part thereof, with the right of access across Grantor's adjacent property, for the purpose of constructing, reconstructing and maintaining said Facilities, and all incidental improvements and for making connections therewith. The Grantee, its successors and assigns, shall have the right to construct, reconstruct and perpetually maintain additional Facilities at all times in the future, within the Easement Property.

This easement may be assigned in whole or in part.

CITY OF PLANO, TEXAS

By: _____

Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, City Attorney

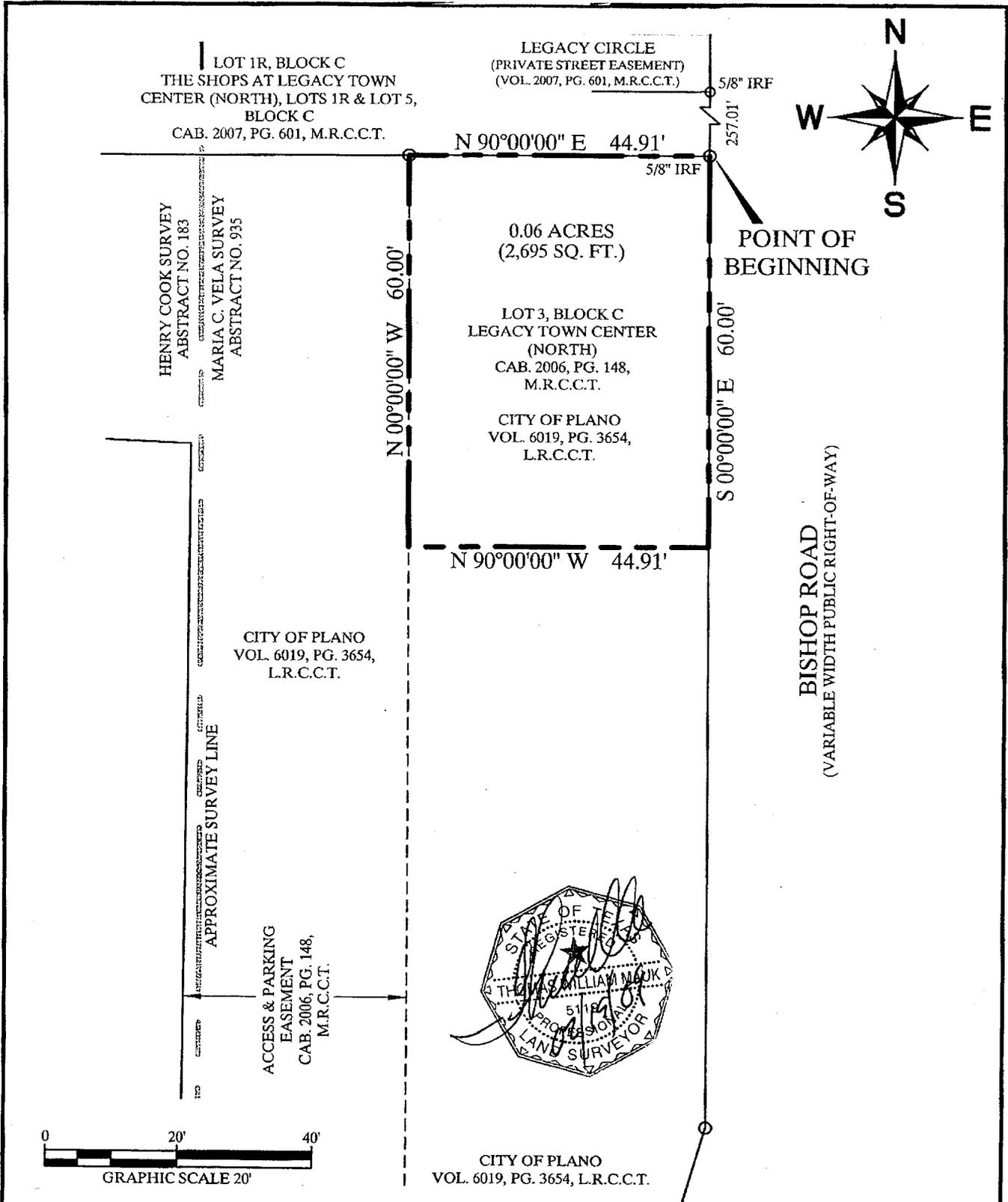
ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2009, by **Thomas H. Muehlenbeck**, City Manager of the **CITY OF PLANO, TEXAS**. a home-rule municipal corporation for and on behalf of said corporation.

Notary Public, State of Texas

After Recording Return to:
Plano City Attorney's Office
P.O. Box 860358
Plano, Texas 75086-0358



2-2 SHEET	Scale:	1" = 20'
	Designed by:	KHA
	Drawn by:	CM
	Checked by:	HH
	Date:	December 15, 2008
Project No.		64316004

**ONCOR ELECTRIC
DELIVERY COMPANY
EASEMENT**

**Kimley-Horn
and Associates, Inc.**

12700 Park Central Drive, Suite 1800
Dallas, Texas 75228

Tel. No. (972) 770-4300
Fax No. (972) 539-3820

IMAGES
XREFS
PLOTTED BY
DWG NAME
LAST SAVED

PLOETZNER, JAMIE 2/19/2009 10:14 AM
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2/19/2009 10:13 AM

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BEING a tract of land situated in the Maria C. Vela Survey, Abstract Number 935, in the City of Plano, Collin County, Texas, being part of a Lot 3, Block C of LEGACY TOWN CENTER (NORTH), an addition to the City of Plano, Collin County, Texas, according to the Plat thereof recorded in Cabinet 2006, Page 148 of the Map Records of Collin County, Texas, being part of a tract of land described in Deed to City of Plano, recorded in Volume 6019, Page 3654 of the Land Records of Collin County, Texas and being more particularly described by metes and bounds as follows:

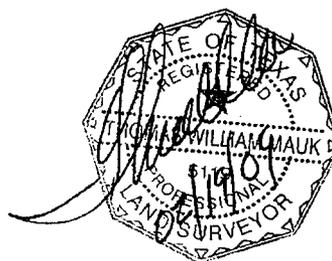
BEGINNING at a 5/8-inch iron rod found in the west right-of-way line of Bishop Road (a variable width public right-of-way) for the southeast corner of Lot 1R, Block C of THE SHOPS AT LEGACY TOWN CENTER (NORTH), LOT 1R & LOT 5, BLOCK C, an addition to the City of Plano, Collin County, Texas, according to the Plat thereof recorded in Cabinet 2007, Page 601 of the Map Records of Collin County, Texas and the northeast corner of said Lot 3, Block G;

THENCE South 00°00'00" East, with the west right-of-way line of Bishop Road, a distance of 60.00 feet to a point for corner;

THENCE North 90°00'00" West, leaving the west right-of-way line of Bishop Road and crossing said Lot 3, Block C, a distance of 44.91 feet to a point for corner in the east line of an Access & Parking Easement, recorded in Cabinet 2006, Page 148 of the Map Records of Collin County, Texas;

THENCE North 00°00'00" West, with the east line of said Access & Parking Easement, a distance of 60.00 feet to a point for corner on the south line of said Lot 1R, Block C;

THENCE North 90°00'00" East, with the south line of said Lot 1R, Block C, at a distance of 44.91 feet to the **POINT OF BEGINNING** and containing 0.06 acres (2,695 square feet) of land, more or less.



1-2 SHEET	Scale: 1" = 20'
	Designed by: KHA
	Drawn by: CM
	Checked by: HHH
	Date: December 15, 2008
Project No. 64316004	

**ONCOR ELECTRIC
DELIVERY COMPANY
EASEMENT**



**Kimley-Horn
and Associates, Inc.**

12700 Park Central Drive, Suite 1800
Dallas, Texas 75221

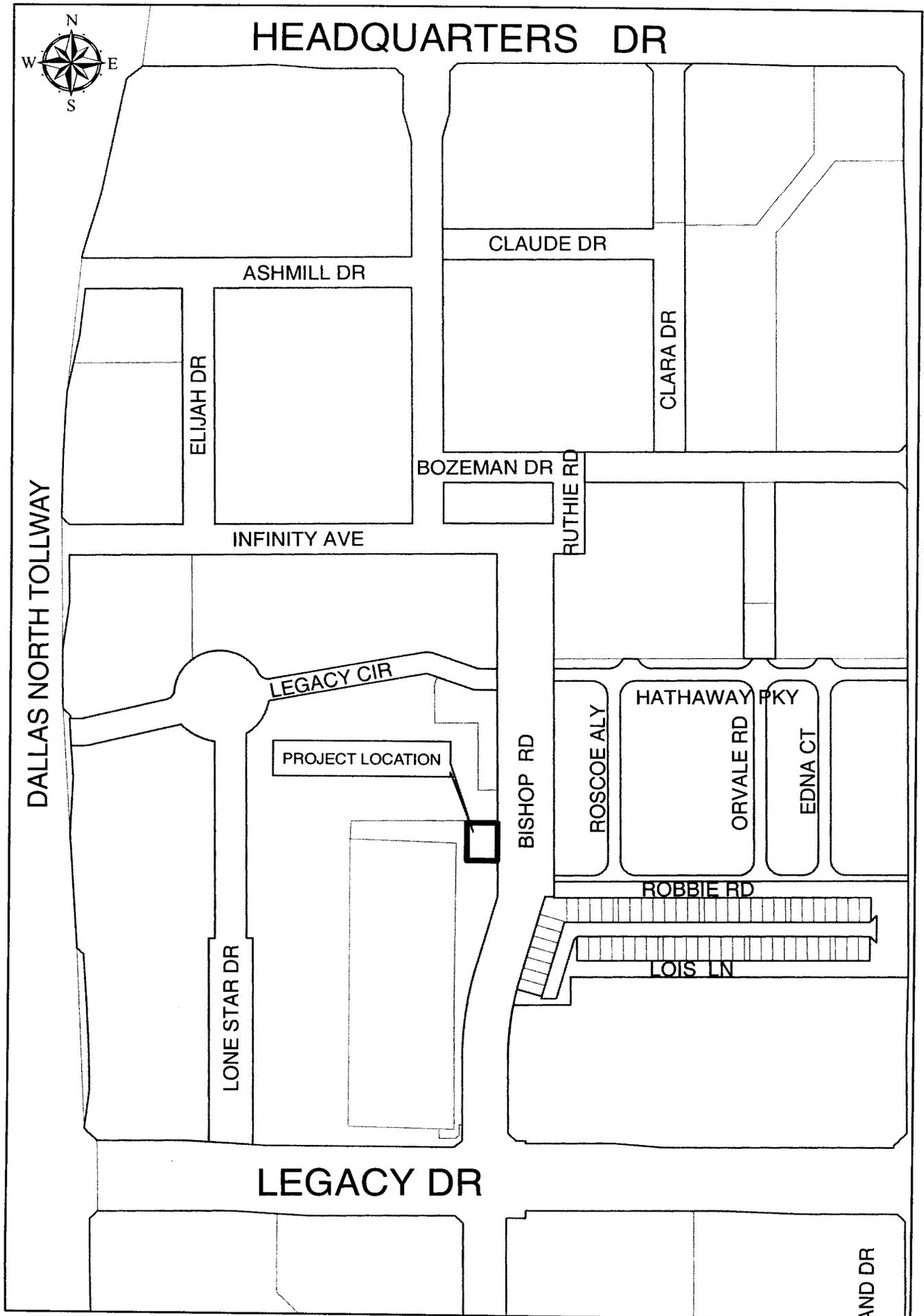
Tel. No. (972) 770-1300
Fax No. (972) 226-3820

IMAGES
XREFS
PLOTTED BY
DWG NAME
LAST SAVED

PLOETZNER, JAMIE 2/19/2009 10:14 AM
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2/19/2009 10:13 AM

P-6

ONCOR ELECTRIC EASEMENT



LOCATION MAP

p.7

02/03/09



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Council Meeting Date:	3/9/09	Reviewed by Legal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Public Works & Engineering		Initials	Date
Department Head	Alan L. Upchurch	Assistant City Manager		
Dept Signature:	<i>Alan L. Upchurch</i>	Deputy City Manager	<i>[Signature]</i>	<i>03-02-09</i>
		City Manager	<i>[Signature]</i>	<i>3/2/09</i>
Agenda Coordinator (include phone #): Irene Pegues (7198)				
ACTION REQUESTED: <input type="checkbox"/> ORDINANCE <input checked="" type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
To approve the terms and conditions of an Interlocal Agreement by and between the City of Plano and Collin County, Texas, for the Widening of Communications Parkway from Parker Road to Spring Creek Parkway.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR:	2008-09	Prior Year (CIP Only)	Current Year	Future Years
Budget		0	0	0
Encumbered/Expended Amount		0	0	0
This Item		0	1,547,109	0
BALANCE		0	1,547,109	0
FUND(S): STREET IMPROVEMENT CIP				
COMMENTS: This item allows the City to enter into an interlocal agreement with Collin County for the Communications Parkway – Parker to Spring Creek project. If this request is approved, Collin County will remit to the City \$1,547,109 for the Widening of Communications Parkway from Parker Road to Spring Creek Parkway.				
STRATEGIC PLAN GOAL: Interlocal agreements for street improvements relate to the City's Goal of Safe, Efficient Travel.				
SUMMARY OF ITEM				
This Agreement provides for Collin County to remit to the City the sum of \$1,547,109.00 for the Widening of Communications Parkway from Parker Road to Spring Creek Parkway. Half of the County funds will be provided after a notice to proceed is issued, the remaining half when the project is half completed. County funding is coming from the following projects:				
	Communications Parkway	#03-52	\$1,075,000	
	Midway Road	#99-63	\$50,826	
	McDermott Road	#03-54	\$21,283	
	Los Rios Boulevard	#03-58	\$400,000	
	Total County Participation		\$1,547,109	
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
Location Map		N/A		

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN INTERLOCAL COOPERATION AGREEMENT BY AND BETWEEN THE CITY OF PLANO AND COLLIN COUNTY, TEXAS, PROVIDING FOR THE WIDENING OF COMMUNICATIONS PARKWAY FROM PARKER ROAD TO SPRING CREEK PARKWAY; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR HIS AUTHORIZED DESIGNEE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, authorizes governmental entities to contract with each other to perform government functions and services under the terms thereof; and

WHEREAS, the City Council has been presented a proposed Interlocal Cooperation Agreement by and between the City of Plano, Texas, and Collin County, Texas, providing terms and conditions for the Widening of Communications Parkway from Parker Road to Spring Creek Parkway, 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 should be authorized to execute it on behalf of the City of Plano.

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

Section I. The terms and conditions of the Agreement, having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interest 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 the _____ day of _____, 2009.

Pat Evans, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:



Diane C. Wetherbee, CITY ATTORNEY

**INTERLOCAL AGREEMENT
BETWEEN COLLIN COUNTY AND THE CITY OF PLANO
CONCERNING THE WIDENING OF COMMUNICATIONS PARKWAY
FROM PARKER ROAD TO SPRING CREEK PARKWAY**

2003 BOND PROJECT #03-52

WHEREAS, the County of Collin, Texas ("County"), and the City of Plano, Texas ("City"), desire to enter into an agreement concerning the Widening of Communications Parkway from Parker Road to Spring Creek Parkway (the "Project"), in Plano, Collin County, Texas; and

WHEREAS, the 2003 Collin County Bond Program includes the Widening of Communications Parkway from Parker Road to Spring Creek Parkway, Project #03-52, with County allocation of \$1,075,000.00. The total Project cost is estimated to be \$3,094,218, and the County's 50% participation is \$1,547,109.00, thus \$472,109.00 additional funding is needed as the County's match; and

WHEREAS, the 1999 Collin County Bond Program includes the widening of Midway Road from Parker Road to Spring Creek Parkway, Project #99-63, with a remaining County allocation of \$50,826.00, which the City proposes to reallocate to the Project; and

WHEREAS, the 2003 Collin County Bond Program includes the widening of McDermott Road from Coit Road to Custer Road, Project #03-54, with a remaining County allocation of \$21,283.00, which the City proposes to reallocate to the Project; and

WHEREAS, the 2003 Collin County Bond Program includes the improvement to Los Rios Boulevard, from Los Robles to Parker Road, Project #03-58, with a County allocation of \$400,000.00, which the City proposes to reallocate to the Project; and

WHEREAS, the County agrees with the City's proposal to reallocate the County's remaining allocations of \$50,826.00 from Midway Road, \$21,283.00 from McDermott Road and \$400,000 from Los Rios Boulevard to the original \$1,075,000.00 for the Project for a total County participation of \$1,547,109.00; and

WHEREAS, the Interlocal Cooperation Act (Texas Government Code Chapter 791) authorizes any local government to contract with one or more

Q-4

local governments to perform governmental functions and services under the terms of the Act; and

WHEREAS, the City and County have determined that the improvements may be constructed most economically by implementing this agreement.

NOW, THEREFORE, this agreement is made and entered into by the County and the City upon and for the mutual consideration stated herein.

WITNESSETH:

ARTICLE I.

The City shall arrange to construct the Widening of Communications Parkway from Parker Road to Spring Creek Parkway. The Project will widen Communications Parkway from a two- and four-lane divided road to a six-lane divided thoroughfare a total distance of approximately 7,500 feet. The Project shall also include construction of additional turn lanes at Windhaven Parkway and underground storm sewers as part of the road improvements. All improvements shall be designed to meet or exceed the current Collin County design standards and shall be constructed in accordance with the plans and specifications approved by the City.

ARTICLE II.

The City shall prepare plans and specifications for the improvements, accept bids and award a contract to construct the improvements and administer the construction contract. In all such activities, the City shall comply with all state statutory requirements. The City shall provide the County with a copy of the executed construction contract(s) for the Project.

ARTICLE III.

The City will acquire approximately 3.0 acres of real property in the vicinity of the improvements for use as right-of-way.

ARTICLE IV.

The City estimates the total actual cost of the Project to be \$3,094,218.00. The County agrees to fund one half of the total cost to construct the Project in an amount not to exceed \$1,547,109.00. The County shall remit 50% of this amount, \$773,554.50, to the City within thirty (30) days

after the City issues a Notice to Proceed to the lowest responsible bidder and the City requests payment. The County will remit the remaining 50% within thirty (30) days after receipt of notice from the City that the Project is 50% complete. Following completion of the Project, the City shall provide a final accounting of expenditures for the Project. If the actual cost to construct the Project is less than the estimated amount set forth herein, the City shall remit the County 50% of the difference between the estimated cost and the actual cost. The Commissioners' Court may revise this payment schedule based on the progress of the Project. The total cost of the Project shall include land acquisition, engineering, construction, inspection, testing, street lighting, landscaping, irrigation and construction administration costs including contingencies.

ARTICLE V.

If the total cost to construct the Project exceeds the amount estimated in Article IV above, the County and City shall share the excess costs equally; however, the County's participation in the Project shall not exceed \$1,547,109.00. The County and City agree that any County balance shall be applied to another City/County project to be mutually agreed upon at a later date.

ARTICLE VI.

The City shall prepare for the County an itemized statement specifying Project costs that have been incurred to date and submit detailed Project cost and progress reports every thirty (30) days until Project completion.

ARTICLE VII.

The City and County agree that the party paying for the performance of governmental functions or services shall make those payments only from current revenues legally available to the paying party.

ARTICLE VIII.

INDEMNIFICATION. To the extent allowed by law, each party agrees to release, defend, indemnify, and hold harmless the other (and its officers, agents, and employees) from and against all claims or causes of action for injuries (including death), property damages (including loss of use), and any other losses, demands, suits, judgments and costs, including reasonable attorneys' fees and expenses, in any way arising out of, related to, or resulting from its performance under this agreement, or caused by its negligent acts or

omissions (or those of its respective officers, agents, employees, or any other third parties for whom it is legally responsible) in connection with performing this agreement.

ARTICLE IX.

VENUE. The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this agreement. The parties agree that this agreement is performable in Collin County, Texas, and that exclusive venue shall lie in Collin County, Texas.

ARTICLE X.

SEVERABILITY. The provisions of this agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this agreement is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation having the force and effect of the law, the remaining portions of the agreement shall be enforced as if the invalid provision had never been included.

ARTICLE XI.

ENTIRE AGREEMENT. This agreement embodies the entire agreement between the parties and may only be modified in writing executed by both parties.

ARTICLE XII.

SUCCESSORS AND ASSIGNS. This agreement shall be binding upon the parties hereto, their successors, heirs, personal representatives and assigns. Neither party will assign or transfer an interest in this agreement without the written consent of the other party.

ARTICLE XIII.

IMMUNITY. It is expressly understood and agreed that, in the execution of this agreement, neither party waives, nor shall be deemed hereby to have waived any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this agreement, the parties do not create any obligations, express or implied, other than those set forth herein, and this agreement shall not create any rights in parties not signatories hereto.

ARTICLE XIV.

TERM. This agreement shall be effective upon execution by both parties and shall continue in effect annually until final acceptance of the Project. This agreement shall automatically renew annually during this period.

APPROVED AS TO FORM:

COUNTY OF COLLIN, TEXAS

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: Keith Self
Title: County Judge
Date: _____

Executed on this _____ date of _____, 2009, by the County of Collin, pursuant to Commissioners' Court Order No. _____

ATTEST:

CITY OF PLANO, TEXAS

By: _____
Name: Diane Zucco
Title: City Secretary
Date: _____

By: _____
Name: Thomas H. Muehlenbeck
Title: City Manager
Date: _____

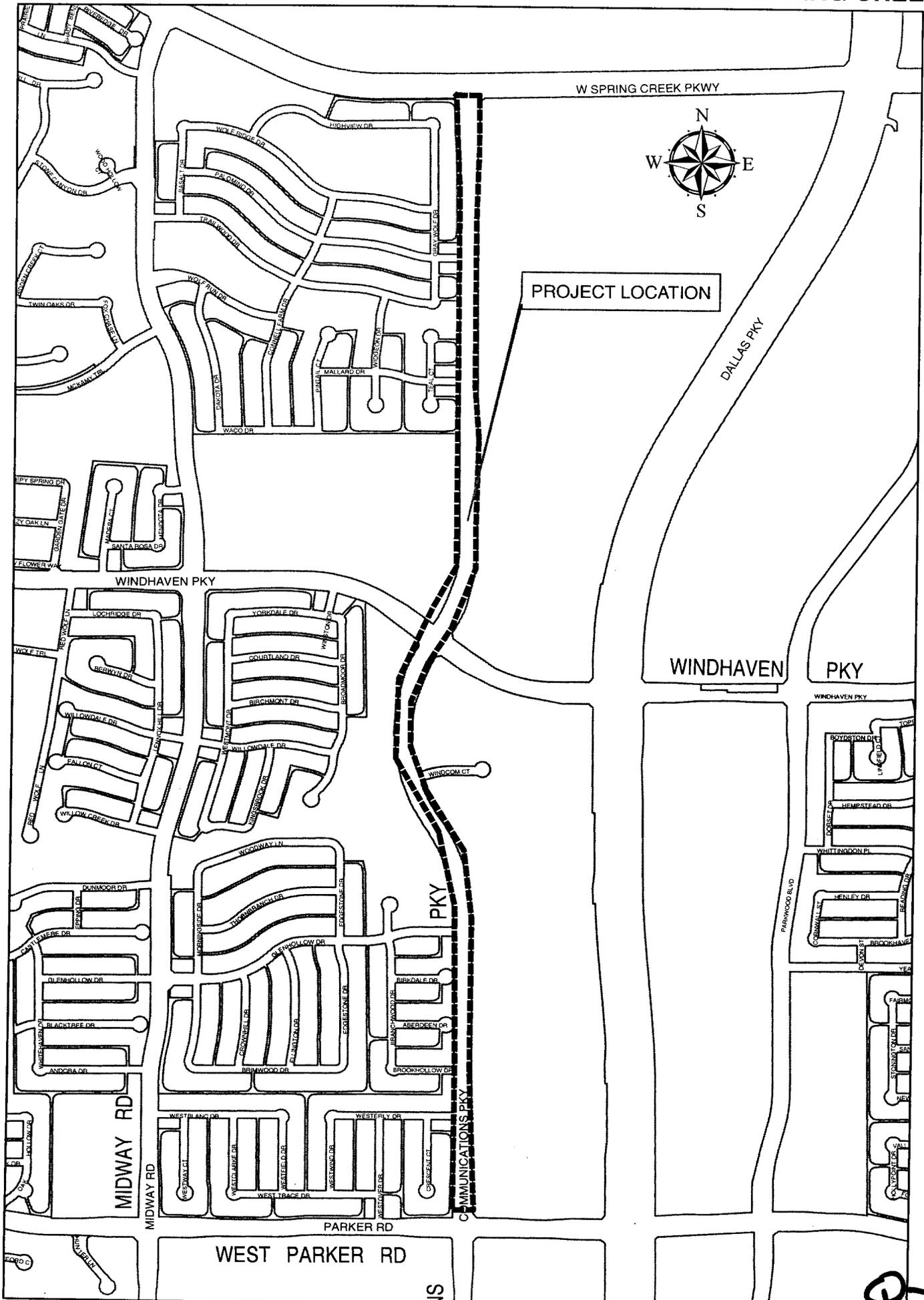
Executed on behalf of the City of Plano pursuant to City Council Resolution No. _____

APPROVED AS TO FORM:

By: _____
Name: Diane Wetherbee
Title: City Attorney
Date: _____

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WIDENING OF COMMUNICATIONS PKY FROM PARKER RD TO W. SPRING CREEK PKY



LOCATION MAP

2/20/2009

Q-9



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Reviewed by Budget	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
Council Meeting Date: 3/9/09		Reviewed by Legal <i>W</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable
Department:	Police Department		Initials	Date
Department Head	Gregory W. Rushin		Assistant City Manager	
Dept Signature:	<i>Gregory W. Rushin</i>		Deputy City Manager	<i>[Signature]</i> 02-24-09
			City Manager	<i>[Signature]</i> 2/24/09
Agenda Coordinator (include phone #): Mary Wright X2410				
ACTION REQUESTED: <input checked="" type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER				
CAPTION				
AN ORDINANCE OF THE CITY OF PLANO, TEXAS, AMENDING CHAPTER 11, LICENSES AND BUSINESS REGULATIONS, OF THE CODE OF ORDINANCES OF THE CITY OF PLANO BY ADDING ARTICLE XI, METAL RECYCLING ENTITIES, ESTABLISHING REGULATIONS GOVERNING THE PURCHASE OF COPPER AND OTHER VALUABLE METALS BY METAL RECYCLING ENTITIES; PROVIDING DEFINITIONS, LICENSING AND RECORDKEEPING REQUIREMENTS; PROVIDING A REPEALER CLAUSE; A SEVERABILITY CLAUSE; A PENALTY CLAUSE; A PUBLICATION CLAUSE; AND AN EFFECTIVE DATE.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(s):				
COMMENTS:				
SUMMARY OF ITEM				
The City Council deems it necessary to establish regulations for metal recycling entities to protect the health, safety, and welfare of the citizens of Plano.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
Ordinance Memo, Occupation Code, and City of Dallas Ordinance				



P.O. Box 860358
Plano, Texas 75086-0358
972-424-5678
Fax 972-424-0099
<http://www.planopolice.org>

MEMORANDUM

DATE: February 17, 2009
TO: Gregory W. Rushin, Chief of Police
FROM: Ed Drain, Assistant Chief
SUBJECT: Metal Recycling Ordinance

Due to an increase in the value of recycled metals and the declining economy, many jurisdictions are experiencing a tremendous increase in the number of offenses involving thefts of these metals. The North Central Texas Council of Governments in a resolution passed in May 2008, asked all cities and counties to adopt these type ordinances in an effort to reduce this problem across North Texas.

With the largest number of metal recycling businesses in the DFW area, the City of Dallas has taken the lead to address the problem. In January 2007, Dallas amended their Ordinance Code Section 40B, Secondary Metals Recyclers, which now serves as a model for other cities in the DFW area implementing a similar ordinance. Other cities that are revising or developing their own ordinances to combat this problem include Fort Worth, Garland, Mesquite, Cedar Hill, North Richland Hills, and Balch Springs. As more cities develop a common ordinance, metal thieves will have fewer locations to sell the stolen property, which may result in a reduction in offenses.

Like other area cities, Plano has seen a corresponding increase in metal thefts, especially copper, in recent years. From 2004 to 2007, the number of copper thefts soared from 5 to 116, an increase of 2,220%. In 2008, there were 76 copper related offenses in Plano, a 34% decrease compared to 2007. The decrease in offenses last year was due in part to a decline in demand for copper and other recycled metals, and a subsequent decline in prices towards the second half of the year. However, when the demand for recycled metals increases, so will the price, and we can expect metal thefts to increase as well.

Chapter 1956 of the Texas Occupation Code (OC), Metal Recycling Entities, regulates metal recyclers within Texas. It requires metal sellers to provide identifying information, mandates record keeping requirements, allows for law enforcement inspections and other provisions to curtail the selling of stolen metals, but it has had minimal impact on reducing this activity. OC Chapter 1956 expressly allows jurisdictions to implement local laws that are more stringent but do not conflict with the state statute. Neither the state statute nor the proposed ordinance applies to purchases of recycled metals from vendors that sell regulated metals in the ordinary course of the seller's business. Major provisions included in the proposed ordinance that are not included or are less stringent in the state statute include:

- Catalytic converters included as a regulated metal.
- Additional notice must be posted that identification is required to sell regulated materials.
- Recycler must maintain a separate record for each transaction.
- Still or video photograph must be taken of the seller at the time of each transaction.
- Copy must be made of the sellers identification for all transactions.
- Prohibits recyclers from purchasing regulated materials from intoxicated persons.
- Purchases from different sellers must be segregated and include the name of the seller and the date purchased.
- Recyclers must maintain a fax machine or similar equipment to receive notifications of stolen regulated materials from the Police Department.

OC Chapter 1956 permits municipalities to implement ordinances to license recycling entities and allows the imposition of a fee, not to exceed \$250, to issue or renew the license. The proposed ordinance requires an annual fee of \$245 and requires the Chief of Police issue the license. The Chief of Police may also suspend the license for up to 30 days for two or more violations of the ordinance, or for the recycling entity's refusal to allow inspections of their facility. The Chief of Police may also revoke the license for three or more violations in a two year period, if materially false information is provided on an application for a license, or if the licensee is convicted of any felony offense, or Class A misdemeanor offense involving theft or fraud. The fee amount and other licensing provisions in the proposed ordinance are consistent with the provisions in the Dallas ordinance.

Plano currently has one secondary metals recycling business, Community Recycling, located at 917 Avenue K. During the development of the proposed ordinance, members of the Plano Police Department met with the manager of Community Recycling to discuss the proposed ordinance. Except for photographing the seller, the manager advised he has no concerns about the above provisions. Photographing the seller will create an additional burden for the business. However, this provision was recommended by Dallas Police Department detectives that specialize in metal thefts since false identification is not uncommon for metal thieves.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PLANO, TEXAS, AMENDING CHAPTER 11, LICENSES AND BUSINESS REGULATIONS, OF THE CODE OF ORDINANCES OF THE CITY OF PLANO BY ADDING ARTICLE XI, METAL RECYCLING ENTITIES, ESTABLISHING REGULATIONS GOVERNING THE PURCHASE OF COPPER AND OTHER VALUABLE METALS BY METAL RECYCLING ENTITIES; PROVIDING DEFINITIONS, LICENSING AND RECORDKEEPING REQUIREMENTS; PROVIDING A REPEALER CLAUSE; A SEVERABILITY CLAUSE; A PENALTY CLAUSE; A PUBLICATION CLAUSE; AND AN EFFECTIVE DATE.

WHEREAS, theft of copper and other valuable metals has destroyed street lights, air conditioning units, irrigation systems and household plumbing, telephone wiring and electrical transformers causing an increase in criminal activity, substantial health and safety risks, and inconvenience to the victims of such crimes in the North Central Texas region including the City of Plano, Texas; and

WHEREAS, based on a report by the Plano Police Department, Council finds that copper thefts in the City of Plano have risen approximately 2,220% since 2004; and

WHEREAS, governmental control of the businesses engaged in the purchase or sale of copper and other valuable metals will assist in deterring the purchase of stolen metal materials; and

WHEREAS, a primary approach to removing this financial gain through criminal activity is to regulate metal recycling entities by prohibiting these recyclers from purchasing certain metal materials unless the seller can show proof of ownership of or permission to sell these materials; and

WHEREAS, Texas Legislature has enacted laws governing regulation of the purchase of copper and other valuable metal material by metal recycling entities to control the possible exchange of stolen metal materials; and

WHEREAS, upon recommendation of the City of Plano Police Department, the City Council deems it necessary to establish regulations for metal recycling entities to protect the health, safety, and welfare of the citizens of Plano.

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

Section I. Chapter 11, Licenses and Business Regulations, of the Code of Ordinances of the City of Plano is hereby amended by adding Art. XI to read in its entirety as follows:

“ARTICLE XI. METAL RECYCLING BUSINESS REGULATIONS

DIVISION 1. GENERALLY

Sec. 11-369. Definitions

The following words and phrases, when used in this article, shall have the meanings ascribed to them by this section:

Aluminum material means a product made from aluminum, an aluminum alloy, or an aluminum by-product. The term includes aluminum wiring and an aluminum beer keg but does not include another type of aluminum can used to contain a food or beverage.

Applicant means an individual, corporation, partnership, sole proprietorship or other business entity in whose name a license has been issued under this chapter or on the application for a metal recycling license.

Chief means the Chief of police for the City of Plano or a designated representative.

Historical marker means a plaque installed recognizing districts, sites, individuals, events, structures, and objects significant in Texas or American history, architecture, archeology, or culture.

Hold notice means written notification by the Chief to a metal recycling entity stating that the metal recycling entity may not sell, redeem, or dispose of certain regulated material that the Chief has reasonable suspicion to believe has been stolen.

Licensee means a person in whose name a license has been issued under this chapter or a person listed as an applicant on the application for a license.

Metal recycling entity means any person who:

(A) is engaged in the business or purchasing, collecting, or soliciting regulated materials as defined in Section 11-369 of this Ordinance; or

(B) operates or maintains a facility where regulated material is purchased or kept for shipment, sale, transfer, or salvage.

Passport means a passport issued by the United States government or issued by another country and recognized by the United States government.

Personal identification document means a valid driver’s license issued by a state in the United States; a United States military identification card; or a personal identification card issued

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by the Texas Department of Public Safety under Chapter 521, Subchapter E of the Texas Transportation Code, as amended, or a similar card or certificate issued by another state.

Purchase transaction means a transaction in which a metal recycling entity gives cash, goods, or services in exchange for regulated material.

Regulated material means:

- (a) aluminum material;
- (b) bronze material;
- (c) copper or brass material; and
- (d) regulated metal as defined in this Section

Regulated metal means:

- (a) manhole covers;
- (b) guardrails;
- (c) metal cylinders designed to contain compressed air, oxygen, gases, or liquids;
- (d) beer kegs made from metal other than aluminum;
- (e) historical markers or cemetery vases, receptacles, or memorials made from metal other than aluminum;
- (f) unused rebar;
- (g) street signs;
- (h) drain gates;
- (i) safes;
- (j) catalytic converters
- (k) communication, transmission, and service wire or cable;
- (l) condensing or evaporator coils for heating or air conditioning units;
- (m) utility structures, including the fixtures and hardware;
- (n) aluminum or stainless steel containers designed to hold propane for fueling forklifts; and
- (o) metal railroad equipment, including tie plates, signal houses, control boxes, signs, signals, traffic devices, traffic control devices, traffic control signals, switch plates, e-clips, and rail tie functions.

Seller means any person who, in a purchase transaction, receives cash, goods or services from a metal recycling entity in exchange for regulated materials.

Sec. 11-370. Exceptions.

This chapter does not apply to:

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(1) a purchase of regulated material from a public utility or a manufacturing, industrial, commercial, retail, or other seller that sells regulated material in the ordinary course of the seller's business;

(2) a purchase of regulated material by a manufacturer whose primary business is the manufacture of iron and steel products made from melting scrap iron and scrap steel;

(3) the transport or hauling of recyclable materials to or from the metal recycling entity; or

(4) the transport, hauling or purchase of aluminum material used to contain food or beverages.

DIVISION 2. RECORD KEEPING, REGULATIONS AND NOTICE.

Sec. 11-371. Records Required.

(a) a metal recycling entity shall maintain an accurate and legible record of each purchase transaction. Each transaction must be recorded and filed separately.

(b) The record of each purchase transaction must be in English and contain the following information:

(1) the name and street address of the metal recycling entity;

(2) the name or initials of the individual recording the information required by this section for the metal recycling entity;

(3) the seller's name, street address, sex, and birth date and the identifying number from the seller's driver's license issued by a state in the United States, United States military identification card, personal identification certificate, or a passport;

(4) the make, model, and license plate number of the motor vehicle and any trailer attached to the motor vehicle in which the regulated material is delivered in a purchase transaction;

(5) the place, date and time of the purchase transaction;

(6) the weight, quantity, or volume and a description, made in accordance with the custom of the trade, of the regulated material purchased;

(7) a general description of the predominant types of regulated material purchased in the purchase transaction;

(8) the amount of consideration given in a purchase transaction for the regulated material;

(9) written documentation evidencing that the seller is the legal owner or is lawfully entitled to sell the regulated material, or a signed statement from the seller affirming a legal right of ownership and the right to sign over title to the regulated material offered for sale;

(10) a clear digital still photograph or a videotape of the seller, taken at the time of the purchase transaction, that clearly depicts the seller's facial features;

(c) A person selling or attempting to sell regulated materials to a metal recycling entity shall:

(1) display to the metal recycling entity the person's driver's license issued by a state in the United States, United States military identification card, personal identification certificate, or a passport; and,

(2) sign a written statement provided by the metal recycling entity affirming that the person is the legal owner of or is lawfully entitled to sell the regulated material offered for sale.

(d) the metal recycling entity or the recycler's agent shall make a copy of the identification to be maintained by the metal recycling entity in the record of the purchase transaction.

(e) A metal recycling entity shall maintain on file the information required by this section for not less than one (1) year after the date of the purchase transaction. A metal recycling entity shall make these records available for inspection by any police officer, upon request, at the metal recycling entity's place of business during the usual and customary business hours of the metal recycling entity pursuant to this code and according to the provisions of Chapter 1956 of the Texas Occupations Code, as amended from time to time.

(f) The recordkeeping requirements of this section do not apply to purchase transactions involving copper or brass material in excess of 50 pounds, bronze material, and aluminum material in excess of 40 pounds.

Sec. 11-372. Notice to Sellers.

(a) A metal recycling entity shall at all times maintain in a prominent place in the metal recycling entity's place of business, in open view to a seller of regulated material, a notice in two-inch lettering that:

(1) contains the following or similar language approved by the Chief: "A PERSON ATTEMPTING TO SELL REGULATED MATERIAL AS DESCRIBED IN ORDINANCE NO. _____ MUST PRESENT SUFFICIENT IDENTIFICATION REQUIRED BY CITY OF PLANO ORDINANCE"; and

(b) The notice required by this section may be contained on a sign that contains another notice required by law to be displayed by the metal recycling entity.

Sec. 11-373. Facsimile, Telecopier, or Similar Equipment Required.

A metal recycling entity shall maintain at its place of business, or otherwise have immediate access to, a facsimile, telecopier or other equipment of similar function on which notifications of stolen material or other notifications relating to regulated material may be received from the police department within twenty four (24) hours of transmittal. The metal recycling entity shall maintain the facsimile number or other access number of the equipment on file with the Chief and shall notify the Chief within 24 hours after any change in the number.

Sec. 11-374. Restrictions on the Purchase of Regulated Material.

(a) A metal recycling entity shall conduct all purchase transactions only between the hours of 7:00 a.m. and 9:00 p.m.

(b) A metal recycling entity shall not purchase any item of regulated material from an intoxicated person.

(c) A metal recycling entity shall not purchase any items of regulated material as defined in Sec. 11-369 of this Ordinance without obtaining proof that the seller owns the material (such as by a receipt or bill of sale) or proof that the seller is an employee, agent, or contractor of a governmental entity, utility company, cemetery, railroad, manufacturer, or other person, business, or entity owning the material and the seller is authorized to sell the item of regulated material on behalf of the person, business, or entity owning the material.

(d) A metal recycling entity shall maintain on file the information required by Subsection (c) of this section for not less than one (1) year after the date of the purchase of the item of regulated material. A metal recycling entity shall make these records available for inspection by any police officer, upon request, at the metal recycling entity's place of business during the usual and customary business hours of the metal recycling entity.

Sec. 11-375. Hold on Regulated Material; Segregation, Labeling, and Inspection of Regulated Material; Exceptions.

(a) A metal recycling entity shall retain possession of purchased regulated material at the metal recycling entity's local place of business and withhold the material from alteration, processing, resale, or salvage use for seventy-two (72) hours after purchase, unless the material is released sooner by written order of the Chief or by order of a court of competent jurisdiction.

(b) A metal recycling entity shall segregate all regulated material purchased from a seller from regulated material purchased from other sellers and attach to the material, or to the container in which the material is held, a label indicating the name of the seller, the date on which the material was purchased, and the number of the receipt on which the purchase information is recorded. If in any single purchase transaction there are multiple items of

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regulated material of the same general type, only one representative item from each type of regulated material must be segregated and labeled in accordance with this subsection.

(c) While in possession of purchased regulated material, a metal recycling entity shall make the material available for inspection by any police officer at the metal recycling entity's place of business during the usual and customary business hours of the metal recycling entity.

Sec. 11-376. Hold on Stolen Regulated Material; Hold Notice.

(a) Whenever a police officer has reasonable suspicion to believe that certain items of regulated material in the possession of a metal recycling entity are stolen, the Chief may issue a hold notice. The hold notice must:

(1) identify those items of regulated material alleged to be stolen and subject to hold; and

(2) inform the metal recycling entity of the restrictions imposed on the regulated material under Subsection (b) of this section.

(b) A metal recycling entity may not, for sixty (60) days after the date of receiving a hold notice under this section, process or remove from the metal recycling entity's place of business any regulated material identified in the hold notice unless that material is released sooner by the Chief or by order of a court of competent jurisdiction. At the expiration of the hold period, the hold is automatically released, and the metal recycling entity may dispose of the regulated material unless otherwise directed by a court of competent jurisdiction.

(c) This section does not apply to items of regulated metal property composed solely of the following: copper or brass material in excess of 50 pounds, bronze material, and aluminum material in excess of 40 pounds.

DIVISION 3. LICENSING OF METAL RECYCLING ENTITY.

Sec. 11-377. License Required.

(a) An application for a license must be made on a form provided by the Chief. Each applicant must be qualified according to the provisions of this chapter.

(b) A person who wishes to purchase regulated material for resale or salvage use must sign the application as applicant. If the person is a legal entity, including but not limited to a corporation, partnership, association, or joint venture, each individual who has a twenty percent (20%) or greater interest in the business must sign the application for a license as an applicant. Each applicant must meet the requirements of Section 11-378 and each applicant will be considered a licensee if a license is granted.

(c) It is a defense to prosecution under this section that, at the time of the alleged offense, the person was purchasing regulated material for resale or salvage use under the specific authority of a valid license issued by the State of Texas (other than a certificate of registration issued under Chapter 1956, Texas Occupations Code, as amended) or the United States government. A license must still be obtained under this section for those activities conducted by a metal recycling entity that are not specifically authorized by a state or federal license.

Sec. 11-378. Issuance of License.

(a) The annual fee for a license issued under this article is Two Hundred Forty Five and No/100 Dollars (\$245.00). Each license will expire one (1) year from the date of issuance and may be renewed only by making an application as provided in this Section. An application for renewal shall be made at least thirty (30) days before the expiration date.

(b) The Chief shall issue a license to an applicant within thirty (30) days after receipt of an application unless it is determined that one or more of the following is true:

(1) An applicant is under eighteen (18) years of age.

(2) An applicant failed to answer or falsely answered a question or request for information on the application form provided.

(3) An applicant has received a final conviction or deferred disposition of two (2) or more offenses under this chapter, other than the offense of conducting business as a metal recycling entity without a license, within two (2) years immediately preceding the application. An appeal of a conviction or being placed on deferred disposition does not stay or waive the thirty (30) day timeframe.

(4) An applicant has not obtained a certificate of occupancy for the premises in which the applicant intends to do business, or the business or its location would otherwise be in violation of the Building Code adopted under the City of Plano Code of Ordinances or any other applicable city ordinance or state or federal law.

(5) The license fee required by this chapter has not been paid.

(6) An applicant has been convicted of a felony or a Class A misdemeanor involving theft or fraud, including but not limited to theft, robbery, burglary, forgery, criminal simulation, deceptive business practices, securing execution of document by deception, or any other similar state or federal criminal offense and three (3) years have not elapsed since the termination of any sentence, parole, or probation; the fact that a conviction is being appealed has no effect. If three (3) years have elapsed, the Chief shall, in accordance with section 53.023 of the Texas Occupations Code, as amended, determine the present fitness of the applicant to be licensed from the information and evidence presented with the application.

(7) An applicant has been convicted of an offense under any federal or state law providing recordkeeping, or licensing requirements for persons purchasing or selling

A-11

regulated material, and three (3) years have not elapsed since the termination of any sentence, parole, or probation. The fact that a conviction is being appealed has no effect.

(c) The license, if granted must state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the premises for which the license is granted. A license issued pursuant to this chapter is valid only for the location stated in the application. Should any licensee move a place of business from the place stated on the license to a new location, the licensee shall give the Chief prior written notice and present the license to the Chief to have the change of location noted on the license.

(d) A license must be posted in a conspicuous place at or near the entrance to the licensed premises so that it may be easily read at any time.

(e) If the Chief determines that issuance or renewal of a license should be denied, the Chief shall send to the applicant or licensee by certified mail, return receipt requested, a written statement of the reasons for the denial and of the applicant or licensee's right to appeal

Sec. 11-379. Suspension.

(a) The Chief may suspend a license for a definite period of time, not exceeding thirty (30) days, if the Chief determines that a licensee:

(1) was convicted, in the aggregate, of two or more violations of this chapter within any six (6) month period after the issuance of a metal recycling license; or

(2) intentionally or knowingly impeded or refused to allow an inspection by the Chief authorized under this chapter.

(b) The Chief shall send to the licensee by certified mail, return receipt requested, a written statement of the reasons for the suspension, the date the suspension is to begin, and the duration of the suspension.

(c) A licensee whose license is suspended may not operate as a metal recycling entity inside the City of Plano during the period of suspension.

Sec. 11-380. Revocation

(a) The Chief shall revoke a license if it is determined that one or more of the following is true:

(1) A licensee has given a false statement as to a material matter in the application process.

(2) A licensee has been convicted within a two (2) year period of three (3) or more offenses under this chapter.

(3) A licensee has been convicted of any felony or of a Class A misdemeanor involving theft or fraud, including but not limited to theft, robbery, burglary, forgery, criminal simulations, deceptive business practices, securing execution of document by deception, or any other similar state or federal criminal offense, and three (3) years have not elapsed since the termination of any sentence, parole, or probation. The fact that a conviction is being appealed has no effect.

(4) A licensee has been convicted of an offense under any federal or state law providing recordkeeping or licensing requirements for persons purchasing or selling regulated material, and three (3) years have not elapsed since the termination of any sentence, parole, or probation. The fact that a conviction is being appealed has no effect.

(5) The license has been suspended at least once within the preceding twelve (12) months.

(b) The Chief shall send to the licensee by certified mail, return receipt requested, a written statement of the reasons for the revocation and of the licensee's right to appeal.

(c) When the Chief revokes a license, the revocation will continue for one (1) year, and the licensee may not be issued a license for one (1) year from the date revocation became final. If the Chief finds that the basis for the revocation action has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date the revocation became final. An applicant whose license was revoked under Subsection (a)(3) or (a)(4) of this section, may not be granted another license within three (3) years of the termination of any sentence, parole, or probation.

Sec. 11-381. Appeal.

A licensee may appeal a decision to suspend or revoke a license by filing a written notice of appeal with the City Secretary within five (5) business days of receipt of the Chief's decision. A hearing will be held, and upon review and consideration of the information submitted by the licensee and the Chief or his designee, the City Council may uphold, modify, or reverse the decision. The City Council's decision is final

Sec. 11-382. Transfer of License.

A licensee shall not:

- (1) transfer a license issued under this chapter to another; or
- (2) operate a business engaged in the purchase of regulated material for resale or salvage use under the authority of a license at any location other than the address designated in the license application.

Sec. 11-383. Reserved.

DIVISION 4. PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 11-384. Offenses; Affirmative Defenses; Penalty.

- (a) A person commits an offense if, without a license issued under this article, he:
- (1) purchases regulated material in the city for resale or salvage use;
 - (2) operates a business establishment in the city that represents or advertises to purchase regulated material for resale or salvage use; or
 - (3) in any other manner conducts business in the city as a metal recycling entity.
- (b) A person who violates any provision of this chapter, or who fails to perform a duty required of him under this chapter, commits an offense. Any person, firm or corporation found to be violating any term or provision of this Ordinance, shall be subject to a fine in accordance with Section 1-4(b) of the City Code of Ordinances for each offense. Every day a violation continues shall constitute a separate offense.
- (c) It is an affirmative defense to prosecution under this chapter that the regulated material involved:
- (1) was purchased from a charitable, philanthropic, religious, fraternal, civic, patriotic, social, or school-sponsored organization or association or from any organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, as amended;
 - (2) was purchased from any public officer acting in an official capacity as a trustee in bankruptcy, executor, administrator, or receiver; from any public official acting under judicial process or authority; or from a sale on the execution, or by virtue, of any process issued by a court;
 - (3) consists of aluminum food or beverage containers, used food or beverage containers, or similar food or beverage containers for the purpose of recycling, other than beer or beverage kegs; or
 - (4) was purchased from a manufacturing, industrial, or other commercial vendor that generates or sells regulated material in the ordinary course of its business.
- (d) It is an affirmative defense to prosecution if a photograph of the seller, taken within the preceding six months, was currently on file with the metal recycler and at the

time of the purchase transaction the metal recycler or an employee of the recycler visually verified that the seller was actually the person depicted in the file photo.

(e) A person commits an offense if they knowingly engage in conduct contrary to this Ordinance.”

Section II. All provisions of the Code of Ordinances of the City of Plano in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the Code of Ordinances of the City of Plano, not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

Section III. It is the intention of the City Council that this Ordinance, and every provision thereof, shall be considered severable, and the invalidity or unconstitutionality of any section, clause, provision or portion of this Ordinance shall not affect the validity or constitutionality of any other portion of this Ordinance.

Section IV. This Ordinance shall become effective forty-five (45) days from and after its passage and publication as required by law.

DULY PASSED AND APPROVED this the _____ day of _____, 2009.

Pat Evans, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

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OCCUPATIONS CODE

CHAPTER 1956.

METAL RECYCLING ENTITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1956.001. DEFINITIONS. In this chapter:

(1) "Aluminum material" means a product made from aluminum, an aluminum alloy, or an aluminum by-product. The term includes aluminum wiring and an aluminum beer keg but does not include another type of aluminum can used to contain a food or beverage.

(2) "Bronze material" means:

(A) a cemetery vase, receptacle, or memorial made from bronze;

(B) bronze statuary; or

(C) material readily identifiable as bronze, including bronze wiring.

(3) "Commission" means the Public Safety Commission.

(4) "Copper or brass material" means:

(A) insulated or noninsulated copper wire or cable of the type used by a public utility or common carrier that contains copper or an alloy of copper or zinc;

(B) a copper or brass item of a type commonly used in construction or by a public utility; or

(C) copper pipe or copper tubing.

(5) "Department" means the Texas Department of Public Safety.

(6) "Director" means the public safety director.

(7) "Metal recycling entity" means a business that is operated from a fixed location and is predominantly engaged in:

(A) performing the manufacturing process by which scrap, used, or obsolete ferrous or nonferrous metal is converted into raw material products consisting of prepared grades and having an existing or potential economic value, by a method that in part requires the use of powered tools and equipment, including processes that involve processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form of that metal;

(B) the use of raw material products described under Paragraph (A) in the manufacture of producer or consumer goods; or

(C) purchasing or otherwise acquiring scrap, used, or obsolete ferrous or nonferrous metals for the eventual use of the metal for the purposes described by Paragraph (A) or (B).

(8) "Personal identification document" means:

(A) a valid driver's license issued by a state in the United States;

(B) a United States military identification card; or

(C) a personal identification certificate issued by the department under Section 521.101, Transportation Code, or a corresponding card or certificate issued by another state.

(9) "Regulated material" means:

(A) aluminum material;

(B) bronze material;

(C) copper or brass material; or

(D) regulated metal.

(10) "Regulated metal" means:

(A) manhole covers;

(B) guardrails;

(C) metal cylinders designed to contain compressed air, oxygen, gases, or liquids;

(D) beer kegs made from metal other than aluminum;

(E) historical markers or cemetery vases, receptacles, or memorials made from metal other than aluminum;

(F) unused rebar;

(G) street signs;

(H) drain gates;

(I) safes;

(J) communication, transmission, and service wire or cable;

(K) condensing or evaporator coils for heating or air conditioning units;

(L) utility structures, including the fixtures and hardware;

(M) aluminum or stainless steel containers designed to hold propane for fueling forklifts; and

(N) metal railroad equipment, including tie plates, signal houses, control boxes, signs, signals, traffic devices, traffic control devices, traffic control signals, switch plates, e-clips, and rail tie functions.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1316, Sec. 2, eff. September 1, 2007.

Sec. 1956.002. EXCEPTION. This chapter does not apply to:

(1) a purchase of regulated material from a public utility or a manufacturing, industrial, commercial, retail, or other seller that sells regulated material in the ordinary course of the seller's business;

(2) a purchase of regulated material by a manufacturer whose primary business is the manufacture of iron and steel products made from melting scrap iron and scrap steel; or

(3) the transport or hauling of recyclable materials to or from the metal recycling entity.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1316, Sec. 2, eff. September 1, 2007.

Sec. 1956.003. LOCAL LAW. (a) A county, municipality, or political subdivision of this state may adopt a rule, charter, or ordinance or issue an order or impose standards that are more stringent than but do not conflict with this chapter or rules adopted under this chapter.

(b) A county, municipality, or political subdivision of this state may issue a license or permit to a business to allow the business to act as a metal recycling entity in that county or municipality and may impose a fee not to exceed \$250 for the issuance or renewal of the license or permit.

(b-1) A municipality or political subdivision of this state, other than a county, may not increase the local license or permit fee imposed on a metal recycling facility to an amount that exceeds 25 percent of the fee charged by the municipality or political subdivision on January 1, 2007. This subsection expires January 1, 2010.

(c) A county, municipality, or political subdivision of this state that issues a license or permit to a business as authorized under Subsection (b) shall submit to the department in the manner required by the department

information on each business that is issued a license or permit.

(d) A municipality or political subdivision of this state, other than a county, may not increase the local license or permit fee imposed on a metal recycling facility unless the increase is approved by the local governing body. A request for an increase in the local license or permit fee must be based on the costs associated with law enforcement and administration of the licensing or permitting program. The municipality or political subdivision must submit a report to the department on the law enforcement and administrative costs associated with the fee increase.

(e) A county may increase the local license or permit fee imposed on a metal recycling facility one additional time before the second anniversary of the date of the initial fee increase. The fee increase must be based on the average cost charged by municipalities statewide.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1316, Sec. 2, eff. September 1, 2007.

SUBCHAPTER A-1. POWERS AND DUTIES

Sec. 1956.011. ADMINISTRATION OF CHAPTER. The department shall administer this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316, Sec. 2, eff. September 1, 2007.

Sec. 1956.012. DEPARTMENT STAFF. The department may employ administrative and clerical staff as necessary to carry out this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316, Sec. 2, eff. September 1, 2007.

Sec. 1956.013. RULES. The commission may adopt rules to administer this chapter, including rules:

- (1) establishing minimum requirements for registration under this chapter; and
- (2) adopting forms required by this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316, Sec. 2, eff. September 1, 2007.

Sec. 1956.014. FEES; REPORTS. (a) The commission by rule shall prescribe fees in reasonable amounts sufficient to cover the costs of administering this chapter, including fees for:

- (1) an initial application for a certificate of registration;
- (2) issuance of a certificate of registration;
- (3) issuance of a renewal certificate of registration; and
- (4) issuance of a duplicate certificate of registration or duplicate renewal certificate of registration.

(b) The commission may not impose a fee for issuance of a certificate of registration that exceeds \$250 annually. The department shall report annually to the legislature, not later than December 1, any costs associated with administering this chapter that are not covered by the fees assessed under this chapter.

(c) The department annually shall submit to both houses of the legislature a report on the number of metal recycling entities who have complied with the registration requirements under this chapter and the total number of metal recycling entities identified statewide. The report must include the information on metal recycling entities submitted to the department by municipalities, counties, and other political subdivisions of this state.

(d) Not later than March 1, 2008, the department shall submit to both houses of the legislature a report on the actual costs incurred by the department in administering this chapter. This subsection expires January 1, 2009.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316, Sec. 2, eff. September 1, 2007.

Sec. 1956.015. STATEWIDE ELECTRONIC REPORTING SYSTEM. (a) The department shall establish a statewide electronic reporting system to track the sales of regulated metal reported to the department under Section 1956.036.

(b) The department shall post a summary of the reports provided to the department under Section 1956.036 on the department's Internet website. The summary must include by county or region the frequency with which a person presents regulated materials for sale to a metal recycling entity. The summary may not identify any person to which the metal recycling entity sells the regulated materials.

(c) Subsection (b) does not apply to regulated material sold by a utility company, municipality, manufacturer, railroad, cemetery, cable or satellite entity, or other business entity that routinely has access to regulated metal.

(d) The department shall maintain the confidentiality of information provided under this section that relates to the financial condition or business affairs of a metal recycling entity or that is otherwise commercially sensitive. The confidential information is not subject to disclosure under Chapter 552, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316, Sec. 2, eff. September 1, 2007.

SUBCHAPTER A-2. CERTIFICATE OF REGISTRATION

Sec. 1956.021. REGISTRATION REQUIRED. A person may not act as a metal recycling entity or represent to the public that the person is a metal recycling entity unless the person is registered under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316, Sec. 2, eff. September 1, 2007.

Sec. 1956.022. ISSUANCE OF CERTIFICATE;
QUALIFICATIONS. (a) The department shall issue a certificate of registration to an applicant who:

- (1) applies and pays a registration fee; and
- (2) presents any relevant evidence relating to the applicant's qualifications as required by commission rule.

(b) The commission by rule may establish qualifications for the holder of a certificate of registration under this chapter, which may include accepting copies of a license or permit issued by a county or municipality authorizing a metal recycling entity to conduct business in that county or municipality.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316, Sec. 2, eff. September 1, 2007.

Sec. 1956.023. TERM OF CERTIFICATE. (a) A certificate of registration is valid for two years after the date of issuance.

(b) The department shall adopt a system under which certificates of registration expire and are renewed on various dates.

(c) Not later than the 45th day before the date a person's certificate of registration is scheduled to expire, the department shall send written notice of the impending expiration to the person at the person's last known address according to the records of the department.

(d) A person whose certificate of registration has expired may not make a representation for which a certificate of registration is required under Section 1956.021 or perform collections services until the certificate has been renewed.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316, Sec. 2, eff. September 1, 2007.

Sec. 1956.024. RENEWAL OF CERTIFICATE. (a) To renew a certificate of registration, a person must submit an application for renewal in the manner prescribed by the department.

(b) A person who is otherwise eligible to renew a certificate of registration may renew an unexpired certificate by paying the required renewal fee to the department before the expiration date of the certificate.

(c) A person whose certificate of registration has been expired for 90 days or less may renew the certificate by paying to the department a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(d) A person whose certificate of registration has been expired for more than 90 days but less than one year

may renew the certificate by paying to the department a renewal fee that is equal to two times the normally required renewal fee.

(e) A person whose certificate of registration has been expired for one year or more may not renew the certificate. The person may obtain a new certificate of registration by complying with the requirements and procedures, including the examination requirements, for an original certificate.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316, Sec. 2, eff. September 1, 2007.

SUBCHAPTER A-3. PRACTICE BY CERTIFICATE HOLDERS

Sec. 1956.031. NOTICE TO SELLERS. (a) A metal recycling entity shall at all times maintain in a prominent place in the entity's place of business, in open view to a seller of regulated material, a notice in two-inch lettering that:

(1) includes the following language:

"A PERSON ATTEMPTING TO SELL ANY REGULATED MATERIAL MUST PRESENT SUFFICIENT IDENTIFICATION AND WRITTEN PROOF OF OWNERSHIP REQUIRED BY STATE LAW."

"WARNING: STATE LAW PROVIDES A CRIMINAL PENALTY FOR A PERSON WHO INTENTIONALLY PROVIDES A FALSE DOCUMENT OF IDENTIFICATION OR OTHER FALSE INFORMATION TO A METAL RECYCLING ENTITY WHILE ATTEMPTING TO SELL ANY REGULATED MATERIAL."; and

(2) states the metal recycling entity's usual business hours.

(b) The notice required by this section may be contained on a sign that contains another notice if the metal recycling entity is required to display another notice under applicable law.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316, Sec. 2, eff. September 1, 2007.

Sec. 1956.032. INFORMATION PROVIDED BY SELLER. (a) Except as provided by Subsection (f), a person attempting to sell regulated material to a metal recycling entity shall:

(1) display to the metal recycling entity the person's personal identification document;

(2) provide to the metal recycling entity the make, model, and license plate number of the motor vehicle used to transport the regulated material; and

(3) either:

(A) present written documentation evidencing that the person is the legal owner or is lawfully entitled to sell the regulated material; or

(B) sign a written statement provided by the metal recycling entity that the person is the legal owner of or is lawfully entitled to sell the regulated material offered for sale.

(b) A person required by a municipality to prepare a signed statement consisting of the information required by Subsection (a)(3) may use the statement required by the municipality to comply with Subsection (a)(3).

(c) The metal recycling entity or the entity's agent shall visually verify the accuracy of the identification presented by the seller at the time of the purchase of regulated material and make a copy of the identification to be maintained by the entity in the entity's records, except as otherwise provided by Subsection (f).

(d) The metal recycling entity or the entity's agent for recordkeeping purposes may photograph the seller's entire face, not including any hat, and obtain the name of the seller's employer.

(e) The metal recycling entity or the entity's agent for recordkeeping purposes may take a photograph of the motor vehicle of the seller in which the make, model, and license plate number of the motor vehicle are identifiable in lieu of the information required under Subsection (a)(3).

(f) The metal recycling entity is not required to make a copy of the identification as required under Subsection (c) or collect the information required under Subsection (a)(3) if:

(1) the seller signs the written statement as required under Subsection (a)(3);

(2) the seller has previously provided the information required under Subsection (a); and

(3) the previously provided information has not changed.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316, Sec. 2, eff. September 1, 2007.

Sec. 1956.033. RECORD OF PURCHASE. (a) Each metal recycling entity in this state shall keep an accurate electronic record or an accurate and legible written record of each purchase made in the course of the entity's business from an individual of:

(1) copper or brass material;

(2) bronze material;

(3) aluminum material; or

(4) regulated metal.

(b) The record must be in English and include:

(1) the place and date of the purchase;

(2) the name and address of each individual from whom the regulated material is purchased or obtained;

(3) the identifying number of the seller's personal identification document;

(4) a description made in accordance with the custom of the trade of the type and quantity of regulated material purchased; and

(5) the information required by Section 1956.032(a)(3).

Added by Acts 2007, 80th Leg., R.S., Ch. 1316, Sec. 2, eff. September 1, 2007.

Sec. 1956.034. PRESERVATION OF RECORDS. A metal recycling entity shall preserve each record required by Sections 1956.032 and 1956.033 until the third anniversary of the date the record was made.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316, Sec. 2, eff. September 1, 2007.

Sec. 1956.035. INSPECTION OF RECORDS BY PEACE OFFICER. (a) On request, a metal recycling entity shall permit a peace officer of this state to inspect, during the entity's usual business hours:

(1) a record required by Section 1956.033; or

(2) regulated material in the entity's

possession.

(b) The inspecting officer shall inform the entity of the officer's status as a peace officer.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316, Sec. 2, eff. September 1, 2007.

Sec. 1956.036. FURNISHING OF REPORT TO DEPARTMENT. (a) Except as provided by Subsection (b), not later than the seventh day after the date of the purchase or other acquisition of material for which a record is required under Section 1956.033, a metal recycling entity

shall send by facsimile or electronic mail to or file with the department a report containing the information required to be recorded under that section.

(b) If a metal recycling entity purchases bronze material that is a cemetery vase, receptacle, memorial, or statuary or a pipe that can reasonably be identified as aluminum irrigation pipe, the entity shall:

(1) not later than the close of business on the entity's first working day after the purchase date, notify the department; and

(2) not later than the fifth day after the purchase date, mail to or file with the department a report containing the information required to be recorded under Section 1956.033.

(c) Subsection (b) does not apply to a purchase from:

(1) the manufacturer or fabricator of the material or pipe;

(2) a seller bearing a bill of sale for the material or pipe; or

(3) the owner of the material or pipe.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316, Sec. 2, eff. September 1, 2007.

Sec. 1956.037. PLACEMENT OF ITEMS ON HOLD. (a) A metal recycling entity may not dispose of, process, sell, or remove from the premises an item of regulated metal unless:

(1) the entity acquired the item more than 72 hours, excluding weekends and holidays, before the disposal, processing, sale, or removal; or

(2) the entity purchased the item from a manufacturing, industrial, commercial, retail, or other seller that sells regulated material in the ordinary course of its business.

(b) A peace officer who has reasonable suspicion to believe that an item of regulated material in the possession of a metal recycling entity is stolen may place the item on hold by issuing to the entity a written notice that:

(1) specifically identifies the item alleged to be stolen and subject to the hold; and

(2) informs the entity of the requirements of Subsection (c).

(c) On receiving the notice, the entity may not, except as provided by Subsection (e), process or remove from the entity's premises the identified item before the 60th day after the date the notice is issued unless the hold is released at an earlier time in writing by a peace officer of this state or a court order.

(d) After the holding period expires, the entity may dispose of the item unless disposition violates a court order.

(e) If a hold is placed on a purchase of regulated material, a metal recycling entity may not dispose of, process, sell, or remove from the premises any item from the purchased material unless the hold on the material is released.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316, Sec. 2, eff. September 1, 2007.

Sec. 1956.038. PROHIBITED ACTS. A person may not, with the intent to deceive:

(1) display to a metal recycling entity a false or invalid personal identification document in connection with the person's attempted sale of regulated material;

(2) make a false, material statement or representation to a metal recycling entity in connection with:

(A) that person's execution of a written statement required by Section 1956.032(a)(3); or

(B) the entity's efforts to obtain the information required under Section 1956.033(b); or

(3) display or provide to a metal recycling entity any information required under Section 1956.032 that the person knows is false or invalid.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316, Sec. 2, eff. September 1, 2007.

Sec. 1956.039. HOURS FOR PURCHASING MATERIAL. (a) Subject to Subsection (b), a county, municipality, or political subdivision may establish the hours during which a metal recycling entity may purchase regulated material.

(b) A metal recycling entity may not purchase from the general public regulated material:

(1) more than 15 consecutive hours in one day;

or

(2) later than 9 p.m.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316, Sec. 2, eff. September 1, 2007.

Sec. 1956.040. CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly violates Section 1956.038.

An offense under this subsection is a Class A misdemeanor unless it is shown on trial of the offense that the person has previously been convicted of a violation of this subchapter, in which event the offense is a state jail felony.

(b) A person commits an offense if the person knowingly buys stolen regulated material. An offense under

this subsection is a Class A misdemeanor unless it is shown on trial of the offense that the person has previously been convicted under this subsection, in which event the offense is a state jail felony.

(c) A person commits an offense if the person knowingly sells stolen regulated material. An offense under this subsection is a state jail felony unless it is shown on trial of the offense that the person has previously been convicted under this subsection, in which event the offense is a third degree felony.

(d) On the conviction of a metal recycling entity for an offense punishable under Subsection (b), a court, in addition to imposing any other applicable penalty, may order that the entity cease doing business as a metal recycling entity for a period not to exceed:

(1) 30 days from the date of the order for each violation that forms the basis of the conviction for a first offense; and

(2) 180 days from the date of the order for each violation that forms the basis of the conviction if it is shown on trial of the offense that the person has previously been convicted under this section.

(e) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section or the other law.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316, Sec. 2, eff. September 1, 2007.

SUBCHAPTER B. SALE OF CRAFTED PRECIOUS METAL TO DEALERS

Sec. 1956.051. DEFINITIONS. In this subchapter:

(1) "Crafted precious metal" means jewelry, silverware, an art object, or another object, other than a

coin or commemorative medallion, made in whole or in part from precious metal.

(2) "Dealer" means a person who engages in the business of purchasing and selling crafted precious metal.

(3) "Department" means the Texas Department of Public Safety.

(4) "Precious metal" means gold, silver, platinum, palladium, iridium, rhodium, osmium, ruthenium, or an alloy of those metals.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1956.052. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to crafted precious metal that has been sold or used primarily for personal, family, or household purposes.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1956.053. EXCEPTION: PRECIOUS METAL EXTRACTED, RECOVERED, OR SALVAGED FROM INDUSTRIAL BY-PRODUCTS OR INDUSTRIAL WASTE PRODUCTS. This subchapter does not apply to a person whose purchase or sale of precious metal or a product made of precious metal is merely incidental to the person's business of extracting, recovering, or salvaging precious metal from industrial by-products or industrial waste products.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1956.054. EXCEPTION: DENTAL, PHARMACEUTICAL, OR MEDICAL APPLICATION OF CRAFTED PRECIOUS METAL. This

subchapter does not apply to a dental, pharmaceutical, or medical application of crafted precious metal.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1956.055. EXCEPTION: CRAFTED PRECIOUS METAL ACQUIRED FROM ANOTHER DEALER WHO PREVIOUSLY MADE REQUIRED REPORTS. This subchapter does not apply to crafted precious metal acquired in good faith in a transaction involving the stock-in-trade of another dealer who previously made the reports concerning that metal as required by this subchapter if:

(1) the selling dealer delivers to the acquiring dealer a written document stating that the reports have been made;

(2) the acquiring dealer submits a copy of the statement to the chief of police of the municipality or the sheriff of the county in which the selling dealer is located; and

(3) each dealer involved in the transaction retains a copy of the statement until the third anniversary of the date of the transaction.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1956.056. EXCEPTION: CRAFTED PRECIOUS METAL ACQUIRED IN DISSOLUTION OR LIQUIDATION SALE. This subchapter does not apply to crafted precious metal acquired in a nonjudicial sale, transfer, assignment, assignment for the benefit of creditors, or consignment of the assets or stock-in-trade, in bulk, or a substantial part of those assets, of an industrial or commercial enterprise, other than a dealer, for the voluntary

dissolution or liquidation of the seller's business, or for disposing of an excessive quantity of personal property, or property that has been acquired in a nonjudicial sale or transfer from an owner other than a dealer, the seller's entire household of personal property, or a substantial part of that property, if the dealer:

(1) gives written notice to the chief of police of the municipality or the sheriff of the county in which the dealer's business is located that a reporting exemption is being claimed under this section;

(2) retains in the dealer's place of business, until the third anniversary of the date of the transaction, a copy of the bill of sale, receipt, inventory list, or other transfer document; and

(3) makes the record retained available for inspection by a peace officer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1956.057. EXCEPTION: CRAFTED PRECIOUS METAL ACQUIRED IN JUDICIAL SALE. This subchapter does not apply to crafted precious metal acquired in a sale made:

(1) by any public officer in the officer's official capacity as a trustee in bankruptcy, executor, administrator, receiver, or public official acting under judicial process or authority; or

(2) on the execution of, or by virtue of, any process issued by a court.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1956.058. EXCEPTION: CRAFTED PRECIOUS METAL ACQUIRED AS PAYMENT FOR OTHER CRAFTED PRECIOUS METAL BY

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PERSON IN BUSINESS OF SELLING TO CONSUMERS. This subchapter does not apply to crafted precious metal acquired in good faith as part or complete payment for other crafted precious metal by a person whose principal business is primarily that of selling directly to the consumer crafted precious metal that has not been subject to a prior sale.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1956.059. EXCEPTION: CRAFTED PRECIOUS METAL ACQUIRED FROM OR REPORTED TO GOVERNMENTAL AGENCY. This subchapter does not apply to crafted precious metal:

(1) acquired as surplus property from the United States, a state, a subdivision of a state, or a municipal corporation; or

(2) reported by a dealer as an acquisition or a purchase, or reported as destroyed or otherwise disposed of, to:

(A) a state agency under another law of this state; or

(B) a municipal or county office or agency under another law of this state or a municipal ordinance.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1956.060. EXCEPTION: CRAFTED PRECIOUS METAL ACQUIRED BY PERSON LICENSED UNDER TEXAS PAWNSHOP ACT. This subchapter does not apply to crafted precious metal acquired by a person licensed under Chapter 371, Finance Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1956.061. EFFECT ON OTHER LAWS AND ORDINANCES. This subchapter does not:

(1) excuse noncompliance with another state law or municipal ordinance covering the reporting, holding, or releasing of crafted precious metal;

(2) prohibit a municipality from enacting, amending, or enforcing an ordinance relating to a dealer; or

(3) supersede a municipal ordinance except to the extent the ordinance does not require reporting for transactions involving crafted precious metal.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1956.062. REPORT OF PURCHASE REQUIRED. (a) A dealer shall, as required by Section 1956.063, report all identifiable crafted precious metal that the dealer purchases, takes in trade, accepts for sale on consignment, or accepts for auction.

(b) Before crafted precious metal is offered for sale or exchange, a dealer must notify each person intending to sell or exchange the metal that, before the dealer may accept any of the person's property, the person must file with the dealer a list describing all of the person's crafted precious metal to be accepted by the dealer. The list must contain:

(1) the proposed seller's name and address;

(2) a complete and accurate description of the crafted precious metal; and

(3) the proposed seller's certification that the information is true and complete.

(c) The dealer shall record the proposed seller's driver's license number or department personal identification certificate number on physical presentation of the license or personal identification certificate by the seller. The record must accompany the list.

(d) The dealer shall:

(1) provide to a peace officer, on demand, the list required by Subsection (b); and

(2) mail or deliver a complete copy of the list to the chief of police or the sheriff as provided by Section 1956.063 not later than 48 hours after the list is filed with the dealer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1956.063. FORM OF REPORT; FILING. (a) A report required by this subchapter must comply with this section unless a similar report is required by another state law or a municipal ordinance, in which event the required report must comply with the applicable law or ordinance.

(b) If a transaction regulated by this subchapter occurs in a municipality that maintains a police department, the original and a copy of the report required by this subchapter shall be submitted to the municipality's chief of police. If the transaction does not occur in such a municipality, the original and a copy of the report shall be submitted to the sheriff of the county in which the transaction occurs.

(c) The dealer shall submit the report on a form prescribed by the district attorney or person performing the duties of district attorney of the county in which the transaction occurs.

(d) The dealer shall retain a copy of the report until the third anniversary of the date the report is filed.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1956.064. REQUIRED RETENTION OF CRAFTED PRECIOUS METAL. (a) A dealer may not melt, deface, alter, or dispose of crafted precious metal that is the subject of a report required by this subchapter before the 11th day after the date the report is filed unless:

(1) the peace officer to whom the report is submitted, for good cause, authorizes disposition of the metal;

(2) the dealer obtains the name, address, and description of the buyer and retains a record of that information; or

(3) the dealer is a pawnbroker and the disposition is the redemption of pledged property by the pledgor.

(b) A dealer who retains information under Subsection (a)(2) shall make that information available for inspection by any peace officer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1956.065. INSPECTION OF CRAFTED PRECIOUS METAL BY PEACE OFFICER. (a) A dealer shall make crafted precious metal purchased by the dealer available for inspection by a peace officer during regular business hours while in the dealer's possession.

(b) Information obtained under this section is confidential except for use in a criminal investigation or prosecution or a civil court proceeding.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1956.066. PURCHASE FROM MINOR. (a) A dealer may not purchase crafted precious metal from a person younger than 18 years of age unless the seller delivers to the dealer before the purchase a written statement from the seller's parent or legal guardian consenting to the transaction.

(b) The dealer shall retain the statement with the records required to be kept under this subchapter. The dealer may destroy the statement after the later of:

- (1) the date the item is sold; or
- (2) the first anniversary of the date the dealer purchased the item.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1956.067. PURCHASE AT TEMPORARY LOCATION OF DEALER. (a) A dealer who conducts business at a temporary location for a period of less than 90 days may not engage in the business of buying precious metal or used items made of precious metal unless, within a 12-month period at least 30 days before the date on which each purchase is made, the person has filed:

- (1) a registration statement with the department; and
- (2) a copy of the registration statement with the local law enforcement agency of:

(A) the municipality in which the temporary location is located; or

(B) if the temporary location is not located in a municipality, the county in which the temporary location is located.

(b) The registration statement must contain:

(1) the name and address of the dealer;

(2) the location where business is to be conducted;

(3) if the dealer is an association, the name and address of each member of the association;

(4) if the dealer is a corporation, the name and address of each officer and director of the corporation; and

(5) other relevant information required by the department.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1956.068. PURCHASE OF MELTED ITEMS. A dealer, in the course of business, may not purchase from a person other than a manufacturer of or a regular dealer in crafted precious metal an object formed as the result of the melting of crafted precious metal.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1956.069. CRIMINAL PENALTY. (a) A dealer commits an offense if the dealer:

(1) fails to make or permit inspection of a report as required by Section 1956.062 or 1956.063;

(2) disposes of crafted precious metal or fails to make a record available for inspection by a peace officer as required by Section 1956.064;

(3) fails to obtain or retain a statement as required by Section 1956.066;

(4) fails to file a registration statement as required by Section 1956.067; or

(5) purchases an object in violation of Section 1956.068.

(b) An offense under this section is a Class B misdemeanor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

SUBCHAPTER C. RESTRICTIONS ON SALE OF CERTAIN ITEMS TO METAL RECYCLING ENTITIES

Sec. 1956.101. DEFINITIONS. In this subchapter:

(1) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1316, Sec. 5, eff. September 1, 2007.

(2) "Motor vehicle" has the meaning assigned by Section 541.201, Transportation Code.

(3) "PCB-containing capacitor" means a capacitor that contains polychlorinated biphenyls and is regulated under the federal Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.).

(4) "Person" means an individual, corporation, partnership, sole proprietorship, or other business entity.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1316, Sec. 5, eff. September 1, 2007.

Sec. 1956.102. EXCEPTION. This subchapter does not apply to a sale or transfer by or on behalf of a metal recycling entity.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1956.103. RESTRICTIONS ON TRANSFER OF CERTAIN PROPERTY. (a) A person may not sell or otherwise transfer to a metal recycling entity:

(1) a lead-acid battery, fuel tank, or PCB-containing capacitor that is included with another type of scrap, used, or obsolete metal without first obtaining from the metal recycling entity a written and signed acknowledgment that the scrap, used, or obsolete metal includes one or more lead-acid batteries, fuel tanks, or PCB-containing capacitors;

(2) any of the following items that contain or enclose a lead-acid battery, fuel tank, or PCB-containing capacitor or of which a lead-acid battery, fuel tank, or PCB-containing capacitor is a part:

(A) a motor vehicle;

(B) a motor vehicle that has been junked, flattened, dismantled, or changed so that it has lost its character as a motor vehicle;

(C) an appliance; or

(D) any other item of scrap, used, or obsolete metal; or

(3) a motor vehicle or a motor vehicle that has been junked, flattened, dismantled, or changed so that it has lost its character as a motor vehicle if the motor vehicle includes, contains, or encloses a tire or scrap tire.

(b) Subsection (a)(3) does not apply to the sale or other transfer of a motor vehicle or a junked, flattened, dismantled, or changed motor vehicle from another state.

(c) Subsection (a) does not apply to a fuel tank that has been completely drained and rendered unusable in accordance with Texas Commission on Environmental Quality rules regardless of whether the fuel tank is attached to a motor vehicle.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 47, Sec. 1, eff. September 1, 2005.

Sec. 1956.104. NOTICE OF RESTRICTIONS. A metal recycling entity shall post in a conspicuous location a notice that:

(1) is readily visible to a person selling material to the metal recycling entity;

(2) is at least 24 inches horizontally by 18 inches vertically; and

(3) contains the following language:

TEXAS LAW PROHIBITS:

1. THE SALE OF A WHOLE, FLATTENED, OR JUNKED MOTOR VEHICLE, AN APPLIANCE, OR ANY OTHER SCRAP METAL ITEM CONTAINING A LEAD-ACID BATTERY, FUEL TANK THAT HAS NOT BEEN COMPLETELY DRAINED AND RENDERED UNUSABLE, OR PCB-CONTAINING CAPACITOR; AND

2. THE SALE OF LEAD-ACID BATTERIES, FUEL TANKS THAT HAVE NOT BEEN COMPLETELY DRAINED AND RENDERED UNUSABLE, OR PCB-CONTAINING CAPACITORS INCLUDED WITH OTHER SCRAP METALS WITHOUT OUR PRIOR WRITTEN ACKNOWLEDGMENT.

VIOLATION OF THIS LAW IS A MISDEMEANOR.

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Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 47, Sec. 2, eff. September 1, 2005.

Sec. 1956.105. CRIMINAL PENALTY. (a) A person commits an offense if the person violates this subchapter.

(b) An offense under this section is a misdemeanor punishable by:

- (1) a fine of not more than \$1,000;
- (2) confinement in the county jail for not more than 60 days; or
- (3) both the fine and the confinement.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

SUBCHAPTER D. DISCIPLINARY PROCEDURES

Sec. 1956.151. DENIAL OF CERTIFICATE; DISCIPLINARY ACTION. The department shall deny an application for a certificate of registration, suspend or revoke a certificate of registration, or reprimand a person who is registered under this chapter if the person:

- (1) obtains a certificate of registration by means of fraud, misrepresentation, or concealment of a material fact;
 - (2) sells, barter, or offers to sell or barter a certificate of registration;
 - (3) violates a rule adopted under this chapter;
- or
- (4) violates Section 1956.021.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316, Sec. 4, eff. September 1, 2007.

Sec. 1956.152. INVESTIGATION. Within the limits of available resources, the department may investigate:

(1) a person who engages in a practice that violates this chapter; and

(2) a complaint filed with the department against a person registered under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316, Sec. 4, eff. September 1, 2007.

Sec. 1956.153. HEARING. (a) A person whose application for a certificate of registration is denied, whose certificate of registration is suspended or revoked, or who is reprimanded is entitled to a hearing before the department if the person submits to the department a written request for the hearing.

(b) A hearing is governed by department rules for a contested hearing and by Chapter 2001, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316, Sec. 4, eff. September 1, 2007.

SUBCHAPTER E. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 1956.201. ENFORCEMENT PROCEEDINGS; INJUNCTION. (a) The department, the attorney general, or the district, county, or city attorney for the county or municipality in which an alleged violation of this chapter occurs may, on receipt of a verified complaint, bring an appropriate administrative or judicial proceeding to enforce this chapter or a rule adopted under this chapter.

(b) The attorney general or an attorney representing the state may initiate an action for an injunction to prohibit a person from violating this chapter or a rule adopted under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316, Sec. 4, eff. September 1, 2007.

Sec. 1956.202. CIVIL PENALTY. (a) Except as provided by Subsection (d), a person who violates this chapter or a rule adopted under this chapter is liable to this state for a civil penalty of not more than \$1,000 for each violation.

(b) The amount of the penalty shall be based on:

- (1) the seriousness of the violation;
- (2) the history of previous violations;
- (3) the amount necessary to deter a future violation; and
- (4) any other matter that justice may require.

(c) The attorney general may sue to collect a civil penalty under this section. In the suit the attorney general may recover, on behalf of the state, the reasonable expenses incurred in obtaining the penalty, including investigation and court costs, reasonable attorney's fees, witness fees, and other expenses.

(d) A civil penalty may not be assessed under this section for conduct described by Section 1956.038.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316, Sec. 4, eff. September 1, 2007.

Sec. 1956.203. CRIMINAL PENALTY FOR CERTAIN SOLICITATION. (a) A person commits an offense if the person solicits the purchase of regulated material at a location other than a business location at which the

material is produced as a by-product in the ordinary course of that business.

(b) An offense under this section is a Class B misdemeanor.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316, Sec. 4, eff. September 1, 2007.

**ARTICLE I.
GENERAL.**

Sec. 40B-1. Purpose.

Sec. 40B-2. Definitions.

Sec. 40B-3. Records required.

Sec. 40B-4. Notice to sellers.

Sec. 40B-5. Facsimile, telecopier, or similar equipment required.

Sec. 40B-6. Restrictions on the purchase of regulated metal property.

Sec. 40B-7. 72-hour hold on regulated metal property; segregation, labeling, and inspection of regulated metal property; exceptions.

Sec. 40B-8. Hold on stolen regulated metal property; hold notice.

Sec. 40B-9. Offenses; defenses; penalty.

**ARTICLE II.
LICENSING OF SECONDARY METALS RECYCLERS.**

Sec. 40B-10. License required.

Sec. 40B-11. Issuance of license; posting.

Sec. 40B-12. Fees.

Sec. 40B-13. Expiration of license.

Sec. 40B-14. Suspension.

Sec. 40B-15. Revocation.

Sec. 40B-16. Appeal.

Sec. 40B-17. Transfer of license.

**ARTICLE I.
GENERAL.**

SEC. 40B-1. PURPOSE.

This chapter is an exercise of the city's police power to promote, through regulation of secondary metals recyclers, the recovery of stolen property. This chapter provides licensing and recordkeeping requirements and enforcement procedures that will enable the police department to identify and recover

public and private property composed of certain metals that may have been illegally appropriated. (Ord. Nos. 20260; 22958)

SEC. 40B-2. DEFINITIONS.

In this chapter:

- (1) CHIEF means the chief of police for the city of Dallas or a designated representative.
- (2) FERROUS METAL means a metal that contains significant quantities of iron or steel.

(3) HOLD NOTICE means written notification by the chief to a secondary metals recycler stating that the secondary metals recycler may not sell, redeem, or dispose of certain regulated metal property that the chief has reasonable cause to believe has been stolen.

(4) LICENSEE means a person in whose name a license has been issued under this chapter or a person listed as an applicant on the application for a license.

(5) NONFERROUS METAL means a metal that does not contain significant quantities of iron or steel, including, but not limited to, copper, brass, aluminum, bronze, lead, zinc, nickel, and their alloys.

(6) PASSPORT means a passport issued by the United States government or issued by another country and recognized by the United States government.

(7) PERSON means an individual, partnership, corporation, joint venture, trust, association, and any other legal entity.

(8) PERSONAL IDENTIFICATION CERTIFICATE means a personal identification card issued by the Texas Department of Public Safety under Chapter 521, Subchapter E of the Texas Transportation Code, as amended, or a similar card or certificate issued by another state.

(9) PURCHASE TRANSACTION means a transaction in which a secondary metals recycler gives consideration in exchange for regulated metal property.

(10) REGULATED METAL PROPERTY means any item composed in whole or in part of any ferrous or nonferrous metal, other than an item composed in whole of tin.

(11) SECONDARY METALS RECYCLER means any person who:

(A) is engaged in the business of purchasing, collecting, or soliciting regulated metal property; or

(B) operates or maintains a facility where regulated metal property is purchased or kept for shipment, sale, transfer, or salvage.

(12) SELLER means any person who, in a purchase transaction, receives consideration from a secondary metals recycler in exchange for regulated metal property. (Ord. Nos. 20260; 22958; 26537)

SEC. 40B-3. RECORDS REQUIRED.

(a) A secondary metals recycler shall maintain an accurate and legible record of each purchase transaction. Each transaction must be recorded separately.

(b) The record of each purchase transaction must be in English and contain the following information:

(1) the name and address of the secondary metals recycler;

(2) the name or initials of the individual recording the information required by this section for the secondary metals recycler;

(3) the seller's name, address, sex, and birthdate and the identifying number from the seller's driver's license, military identification card, passport, or personal identification certificate;

(4) the license number of any motor vehicle in which the regulated metal property is delivered in a purchase transaction;

(5) the place, date, and time of the purchase transaction;

(6) the weight, quantity, or volume and a description, made in accordance with the custom of the trade, of the regulated metal property purchased;

(7) a general description of the predominant types of regulated metal property purchased in the purchase transaction;

(8) the amount of consideration given in a purchase transaction for the regulated metal property;

(9) a signed statement from the seller in a purchase transaction affirming a legal right of ownership and the right to sign over title to the regulated metal property offered for sale; and

(10) a photograph, videotape, or similar likeness of the seller that clearly depicts the seller's facial features.

(c) A person selling or attempting to sell regulated metal property to a secondary metals recycler shall:

(1) display to the secondary metals recycler the person's driver's license, military identification card, passport, or personal identification certificate; and

(2) sign a written statement provided by the secondary metals recycler affirming that the person is the legal owner of, or is lawfully entitled to sell, the regulated material offered for sale.

(d) The secondary metals recycler or the recycler's agent shall visually verify the accuracy of the identification presented by the seller at the time of each purchase of regulated metal property.

(e) A secondary metals recycler shall maintain on file the information required by this section for not less than one year from the date of the purchase transaction. A secondary metals recycler shall make these records available for inspection by any police officer, upon request, at the secondary metals recycler's place of business during the usual and customary business hours of the secondary metals recycler.

(f) The recordkeeping requirements of this section, other than Subsections (b)(7) and (b)(10), do not apply to purchase transactions involving regulated metal property composed solely of the following nonferrous metal materials for which definitions and recordkeeping requirements are provided by Chapter 1956, Subchapter A of the Texas Occupations Code, as amended:

(1) Copper or brass material in excess of 50 pounds.

(2) Bronze material.

(3) Aluminum material in excess of 40 pounds.

(g) It is a defense to prosecution under Subsection (b)(10) of this section that:

(1) a photograph of the seller, taken within the preceding six months, was currently on file with the secondary metals recycler; and

(2) at the time of the purchase transaction, the secondary metals recycler, or an employee of the secondary metals recycler, visually verified that the seller was actually the person depicted in the file photograph. (Ord. Nos. 20260; 22958; 26537)

SEC. 40B-4. NOTICE TO SELLERS.

(a) A secondary metals recycler shall at all times maintain in a prominent place in the secondary metals recycler's place of business, in open view to a seller of regulated metal property, a notice in two-inch lettering that contains the following or similar language approved by the chief: "A PERSON ATTEMPTING TO SELL ANY REGULATED METAL PROPERTY MUST PRESENT SUFFICIENT IDENTIFICATION REQUIRED BY CITY OF DALLAS ORDINANCE."

(b) The notice required by this section may be contained on a sign that contains another notice required by law to be displayed by the secondary metals recycler. (Ord. Nos. 22958; 26537)

SEC. 40B-5. FACSIMILE, TELECOPIER, OR SIMILAR EQUIPMENT REQUIRED.

A secondary metals recycler shall maintain at its place of business, or otherwise have immediate access to, a facsimile, telecopier, or other equipment of similar function on which notifications of stolen property or other notifications relating to regulated metal property may be expeditiously received from the police department. The equipment must be operable at all times during the usual and customary business hours of the secondary metals recycler. The secondary metals recycler shall maintain the facsimile number or other access number of the equipment on file with the chief and shall notify the chief within 24 hours after any change in the number. (Ord. Nos. 22958; 26537)

SEC. 40B-6. RESTRICTIONS ON THE PURCHASE OF REGULATED METAL PROPERTY.

(a) A secondary metals recycler shall conduct all purchase transactions only between the hours of 7:00 a.m. and 7:00 p.m.

(b) A secondary metals recycler shall not purchase any item of regulated metal property from an intoxicated person.

(c) A secondary metals recycler shall not purchase any of the following items of regulated metal property without obtaining proof that the seller owns the property (such as by a receipt or bill of sale) or proof that the seller is an employee, agent, or contractor of a governmental entity, utility company, cemetery, railroad, manufacturer, or other person, business, or entity owning the property and the seller is authorized to sell the item of regulated metal property on behalf of the person, business, or entity owning the property:

(1) A manhole cover.

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- (2) An electric light pole and its fixtures and hardware.
- (3) A guard rail.
- (4) A street sign, traffic sign, or traffic signal and its fixtures and hardware.
- (5) Communication, transmission, and service wire.
- (6) A funeral marker or funeral vase.
- (7) An historical marker.
- (8) Railroad equipment, including but not limited to a tie plate, switch plate, E clip, or rail tie junction.
- (9) Any metal item that is marked with any form of the name, initials, or logo of a governmental entity, utility company, cemetery, or railroad.
- (10) A copper or aluminum condensing or evaporator coil from a heating or air conditioning unit.
- (11) An aluminum or stainless steel container or bottle designed to hold propane for fueling fork lifts.

(d) A secondary metals recycler shall maintain on file the information required by Subsection (c) of this section for not less than one year from the date of the purchase of the item of regulated metal property. A secondary metals recycler shall make these records available for inspection by any police officer, upon request, at the secondary metals recycler's place of business during the usual and customary business hours of the secondary metals recycler.

(e) The requirements of Subsections (c) and (d) of this section do not apply to purchase transactions involving regulated metal property composed solely of the following nonferrous metal materials for which definitions, recordkeeping requirements, and other regulations are provided by Chapter 1956, Subchapter A of the Texas Occupations Code, as amended:

- (1) Copper or brass material in excess of 50 pounds.
- (2) Bronze material.
- (3) Aluminum material in excess of 40 pounds. (Ord. Nos. 22958; 26537)

SEC. 40B-7. 72-HOUR HOLD ON REGULATED METAL PROPERTY; SEGREGATION, LABELING, AND INSPECTION OF REGULATED METAL PROPERTY; EXCEPTIONS.

(a) Except as provided in Subsection (c) of this section, a secondary metals recycler shall retain possession of purchased regulated metal property at the secondary metals recycler's local place of business and withhold the property from alteration, processing, resale, or salvage use for 72 hours after purchase, unless the property is released sooner by written order of the chief or by order of a court of competent jurisdiction.

(b) Except as provided in Subsection (c) of this section, a secondary metals recycler shall segregate all regulated metal property purchased from a seller from regulated metal property purchased from other sellers and attach to the property, or to the container in which the property is held, a label indicating the name of the seller, the date on which the property was purchased, and the number of the receipt on which the purchase information is recorded. If in any single purchase transaction there are multiple items of regulated metal property of the same general type, only one representative item from each type of regulated property must be segregated and labeled in accordance with this subsection.

(c) The hold, segregation, and labeling requirements of Subsections (a) and (b) of this section do not apply to any item of regulated metal property composed solely of ferrous metal material, unless the secondary metals recycler has received notice that the chief has, in accordance with this subsection, designated the item or type of item as being subject to those requirements. The chief shall periodically review theft statistics on ferrous regulated metal property and establish a list of items or types of items that the chief determines are subject to the requirements of Subsection (a) and (b). A current list must be maintained on file in the chief's office, or in another designated office of the police department, so that it may be inspected by the public during the city's normal business hours. Notice of the list must be given to secondary metals recyclers in accordance with schedules and procedures established by the chief. A secondary metals recycler is presumed to have received notice of the list if the police department transmits the list to the facsimile number or access number provided by the secondary metals recycler under Section 40B-5 of this chapter.

(d) While in possession of purchased regulated metal property, a secondary metals recycler shall make the property available for inspection by any police officer at the secondary metals recycler's place of business during the usual and customary business hours of the secondary metals recycler. (Ord. Nos. 20260; 22958; 26537)

SEC. 40B-8. HOLD ON STOLEN REGULATED METAL PROPERTY; HOLD NOTICE.

(a) Whenever a police officer has reasonable cause to believe that certain items of regulated metal property in the possession of a secondary metals recycler are stolen, the chief may issue a hold notice. The hold notice must:

- (1) identify those items of regulated metal property alleged to be stolen and subject to hold; and
- (2) inform the secondary metals recycler of the restrictions imposed on the regulated metal property under Subsection (b) of this section.

(b) A secondary metals recycler may not, for 60 days from the date of receiving a hold notice under this section, process or remove from the secondary metals recycler's place of business any regulated metal property identified in the hold notice, unless the property is released sooner by the chief or by order of a court of competent jurisdiction. At the expiration of the hold period, the hold is automatically released, and the secondary metals recycler may dispose of the regulated metal property unless otherwise directed by a court of competent jurisdiction.

(c) This section does not apply to items of regulated metal property composed solely of the following nonferrous metal materials for which definitions and hold notice requirements are provided by Chapter 1956, Subchapter A of the Texas Occupations Code, as amended:

- (1) Copper or brass material in excess of 50 pounds.
- (2) Bronze material.
- (3) Aluminum material in excess of 40 pounds. (Ord. Nos. 20260; 22958; 26537)

SEC. 40B-9. OFFENSES; DEFENSES; PENALTY.

(a) A person who violates any provision of this chapter, or who fails to perform a duty required of him under this chapter, commits an offense. A person is guilty of a separate offense for each item of regulated metal property involved in a violation of this chapter. An offense under this chapter is punishable by a fine not to exceed \$500.

(b) It is a defense to prosecution under this chapter that the regulated metal property involved:

(1) was purchased from a charitable, philanthropic, religious, fraternal, civic, patriotic, social, or school-sponsored organization or association or from any organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, as amended;

(2) was purchased from any public officer acting in an official capacity as a trustee in bankruptcy, executor, administrator, or receiver; from any public official acting under judicial process or authority; or from a sale on the execution, or by virtue, of any process issued by a court;

(3) consists of aluminum food or beverage containers, used food or beverage containers, or similar food or beverage containers for the purpose of recycling, other than beer or beverage kegs; or

(4) was purchased from a manufacturing, industrial, or other commercial vendor that generates or sells regulated metal property in the ordinary course of its business.

(c) The culpable mental state required for the commission of an offense under this chapter is governed by Section 1-5.1 of this code. (Ord. Nos. 20260; 22958; 26537)

**ARTICLE II.
LICENSING OF SECONDARY METALS RECYCLERS.**

SEC. 40B-10. LICENSE REQUIRED.

(a) A person commits an offense if, without a license issued under this article, he:

- (1) purchases regulated metal property in the city for resale or salvage use;
- (2) operates a business establishment in the city that purports to purchase regulated metal property for resale or salvage use; or
- (3) in any other manner conducts business in the city as a secondary metals recycler.

(b) An application for a license must be made on a form provided by the chief. Each applicant must be qualified according to the provisions of this chapter.

(c) A person who wishes to purchase regulated metal property for resale or salvage use must sign the application as applicant. If the person is a legal entity, including but not limited to a corporation, partnership, association, or joint venture, each individual who has a 20 percent or greater interest in the business must sign the application for a license as an applicant. Each applicant must meet the requirements of Section 40B-11(a), and each applicant will be considered a licensee if a license is granted.

(d) It is a defense to prosecution under this section that, at the time of the alleged offense, the person was purchasing regulated metal property for resale or salvage use under the specific authority of a valid license issued by the State of Texas or the United States government. A license must still be obtained under this section for those activities conducted by a secondary metals recycler that are not specifically authorized by a state or federal license. (Ord. 22958)

SEC. 40B-11. ISSUANCE OF LICENSE; POSTING.

(a) The chief shall issue a license to an applicant within 30 days after receipt of an application unless it is determined that one or more of the following is true:

- (1) An applicant is under 18 years of age.
- (2) An applicant or an applicant's spouse is overdue in payment to the city of taxes, fees, fines, or penalties assessed against or imposed upon the applicant or the applicant's spouse.
- (3) An applicant failed to answer or falsely answered a question or request for information on the application form provided.
- (4) An applicant or an applicant's spouse has been convicted of two or more offenses under this chapter, other than the offense of conducting business as a secondary metals recycler without a license, within two years immediately preceding the application. The fact that a conviction is being appealed has no effect.
- (5) An applicant has not obtained a certificate of occupancy for the premises in which the applicant intends to do business, or the business or its location would otherwise be in violation of the Dallas Development Code or any other applicable city ordinance or state or federal law.
- (6) The license fee required by this chapter has not been paid.
- (7) An applicant has been convicted of a felony or a Class A misdemeanor involving theft or fraud, including but not limited to theft, robbery, burglary, forgery, criminal simulation, deceptive business practices, securing execution of document by deception, or any other similar state or federal criminal offense, and three years have not elapsed since the termination of any sentence, parole, or probation; the fact that a conviction is being appealed has no effect. If three years have elapsed, the chief shall, in accordance with Section 4(c), Article 6252-13c of Vernon's Texas Civil Statutes, as amended, determine the present fitness of the applicant to be licensed from the information and evidence presented with the application.
- (8) An applicant has been convicted of an offense under any federal or state law providing recordkeeping or licensing requirements for persons purchasing or selling regulated metal property, and three years have not elapsed since the termination of any sentence, parole, or probation. The fact that a conviction is being appealed has no effect.

(b) The license, if granted, must state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the premises for which the license is granted. A license issued pursuant to this chapter is valid only for the location stated in the application. Should any licensee move a place of business from the place stated on the license to a new location, the licensee shall give the chief prior written notice and present the license to the chief to have the change of location noted on the license.

(c) A license must be posted in a conspicuous place at or near the entrance to the licensed premises so that it may be easily read at any time.

(d) If the chief determines that issuance or renewal of a license should be denied, the chief shall send to the applicant or licensee by certified mail, return receipt requested, a written statement of the reasons for the denial and of the applicant or licensee's right to appeal. (Ord. 22958)

SEC. 40B-12. FEES.

The annual fee for a license issued under this article is \$245. (Ord. 22958)

SEC. 40B-13. EXPIRATION OF LICENSE.

Each license will expire one year from the date of issuance and may be renewed only by making application as provided in Section 40B-10. To assure reissuance of a license prior to expiration, application for renewal should be made at least 30 days before the expiration date. (Ord. 22958)

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SEC. 40B-14. SUSPENSION.

(a) The chief shall suspend a license for a definite period of time, not exceeding 30 days, if the chief determines that a licensee, an individual who is a business associate of the licensee in the same or a related business or a corporate officer of the licensee, or an employee of the licensee:

- (1) committed, in the aggregate, two or more violations of this chapter within any six-month period; or
- (2) intentionally or knowingly impeded or refused to allow an inspection by the chief authorized under this chapter.

(b) The chief shall send to the licensee by certified mail, return receipt requested, a written statement of the reasons for the suspension, the date the suspension is to begin, the duration of the suspension, and the licensee's right to appeal.

(c) A licensee whose license is suspended may not operate as a secondary metals recycler inside the city during the period of suspension. (Ord. 22958)

SEC. 40B-15. REVOCATION.

(a) The chief shall revoke a license if it is determined that one or more of the following is true:

(1) A licensee has given a false statement as to a material matter submitted to the chief during the application process.

(2) A licensee, an individual who is a business associate of the licensee in the same or a related business or a corporate officer of the licensee, or an employee of the licensee has been convicted within a two-year period of three or more offenses under this chapter. If a conviction is appealed, the time period between conviction and final disposition on appeal of the conviction is not included in calculating the two-year period if the conviction is affirmed.

(3) A licensee has been convicted of any felony or of a Class A misdemeanor involving theft or fraud, including but not limited to theft, robbery, burglary, forgery, criminal simulation, deceptive business practices, securing execution of document by deception, or any other similar state or federal criminal offense, and three years have not elapsed since the termination of any sentence, parole, or probation. The fact that a conviction is being appealed has no effect.

(4) A licensee has been convicted of an offense under any federal or state law providing recordkeeping or licensing requirements for persons purchasing or selling regulated metal property, and three years have not elapsed since the termination of any sentence, parole, or probation. The fact that a conviction is being appealed has no effect.

(5) A cause for suspension under Section 40B-14 has occurred and the license has already been suspended at least once within the preceding 12 months.

(6) The licensee does not qualify for a license under Section 40B-11(a).

(b) The chief shall send to the licensee by certified mail, return receipt requested, a written statement of the reasons for the revocation and of the licensee's right to appeal.

(c) When the chief revokes a license, the revocation will continue for one year, and the licensee may not be issued a license for one year from the date revocation became final. If, subsequent to revocation, the chief finds that the basis for the revocation action has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date the revocation became final. If the license was revoked under Subsection (a)(3) or (a)(4) of this section, an applicant may not be granted another license within three years of the termination of any sentence, parole, or probation. (Ord. 22958)

SEC. 40B-16. APPEAL.

If the chief denies issuance or renewal of a license, or suspends or revokes a license, the aggrieved party may appeal the decision of the chief to a permit and license appeal board in accordance with Section 2-96 of this code. The action of the chief is final unless a timely appeal is made. The filing of an appeal stays the action of the chief in suspending or revoking a license until the permit and license appeal board makes a final decision. (Ord. 22958)

SEC. 40B-17. TRANSFER OF LICENSE.

A licensee shall not:

- (1) transfer a license issued under this chapter to another; or
- (2) operate a business engaged in the purchase of regulated metal property for resale or salvage use under the authority of a license at any location other than the address designated in the license application. (Ord. 22958)

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CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY		Reviewed by Purchasing	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable	
<input type="checkbox"/> Consent	<input type="checkbox"/> Regular	<input type="checkbox"/> Statutory	Reviewed by Budget	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Not Applicable
Council Meeting Date: 3/9/09		Reviewed by Legal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Not Applicable	
Department:	Legal			Initials	Date
Department Head	Diane Wetherbee			Assistant City Manager	
Dept Signature:	<i>[Signature]</i>			Deputy City Manager	
			City Manager	<i>[Signature]</i>	<i>3/5/09</i>
Agenda Coordinator (include phone #): Lynne Jones - 7109					
ACTION REQUESTED: <input checked="" type="checkbox"/> ORDINANCE <input type="checkbox"/> RESOLUTION <input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> AGREEMENT <input type="checkbox"/> APPROVAL OF BID <input type="checkbox"/> AWARD OF CONTRACT <input type="checkbox"/> OTHER					
CAPTION					
AN ORDINANCE OF THE CITY OF PLANO, TEXAS CORRECTING A TYPOGRAPHICAL ERROR IN ORDINANCE NO. 2009-1-21 PROVIDING FOR THE ISSUANCE AND SALE OF CITY OF PLANO, TEXAS, GENERAL OBLIGATION REFUNDING AND IMPROVEMENT BONDS, SERIES 2009; LEVYING A TAX IN PAYMENT THEREOF; AWARDING THE SALE THEREOF; APPROVING THE OFFICIAL STATEMENT; AND ENACTING OTHER PROVISIONS RELATING THERETO; AND PROVIDING AN EFFECTIVE DATE.					
FINANCIAL SUMMARY					
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	Prior Year (CIP Only)	Current Year	Future Years	TOTALS	
Budget	0	0	0	0	
Encumbered/Expended Amount	0	0	0	0	
This Item	0	0	0	0	
BALANCE	0	0	0	0	
FUND(S):					
COMMENTS:					
SUMMARY OF ITEM					
This ordinance corrects a typographical error in Ordinance No. 2009-1-21 to correct the date from March 1, 2018 to March 1, 2019 to make it consistent with other portions of the Ordinance, Official Statement and other related documents.					
List of Supporting Documents: n/a			Other Departments, Boards, Commissions or Agencies n/a		

A-1

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PLANO, TEXAS CORRECTING A TYPOGRAPHICAL ERROR IN ORDINANCE NO. 2009-1-21 PROVIDING FOR THE ISSUANCE AND SALE OF CITY OF PLANO, TEXAS, GENERAL OBLIGATION REFUNDING AND IMPROVEMENT BONDS, SERIES 2009; LEVYING A TAX IN PAYMENT THEREOF; AWARDED THE SALE THEREOF; APPROVING THE OFFICIAL STATEMENT; AND ENACTING OTHER PROVISIONS RELATING THERETO; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on January 26, 2009, the City Council adopted Ordinance No. 2009-1-21 regarding the issuance and sale of City of Plano, Texas, general obligation refunding and improvement bonds; and

WHEREAS, it has been determined that there was a typographical error in the last paragraph on page 19 of the Ordinance regarding a date allowing for redemption of the bonds that was inconsistent with other provisions of the Ordinance and Official Statement; and

WHEREAS, the Council desires to correct the date appearing in the last paragraph on page 19 from March 1, 2018 to March 1, 2019 so that it conforms with all other portions of the Ordinance, Official Statement and all other related documents.

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

Section I. The date in the last paragraph of page 19 in Ordinance No. 2009-1-21 is hereby corrected from March 1, 2018 to March 1, 2019, and the corrected page attached hereto as "Exhibit "A" is to be inserted into the original Ordinance.

Section II. This Ordinance shall become effective immediately upon its passage.

DULY PASSED AND APPROVED this the ____ day of _____, 2009.

Pat Evans, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

The principal of this Bond shall be payable without exchange or collection charges in lawful money of the United States of America upon presentation and surrender of this Bond at the designated office in East Syracuse, New York, of The Bank of New York Trust Company, N.A., as Paying Agent/Registrar (the "Designated Payment/Transfer Office"), or, with respect to a successor paying agent/registrar, at the Designated Payment/Transfer Office of such successor. Interest on this Bond shall be paid either by (i) by check dated as of the interest payment date, and sent on or before the interest payment date by first-class United States mail, postage prepaid, by the Paying Agent/Registrar to the registered owner at the address of such owner as appears in the registration books of the Paying Agent/Registrar or (ii) by such other customary banking arrangements acceptable to the Paying Agent/Registrar and the person to whom interest is to be paid, provided that the registered owner shall bear all risk and expense of such interest payment method. For the purpose of the payment of interest on this Bond, the registered owner shall be the person in whose name this Bond is registered at the close of business on the "Record Date," which shall be the fifteenth day of the month next preceding such interest payment date; provided, however, that in the event of nonpayment of interest on a scheduled payment date and for 30 days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (the "Special Payment Date," which shall be 15 days after the Special Record Date) shall be sent at least five Business Days prior to the Special Record Date by first-class United States mail, postage prepaid, to the address of each owner of a Bond appearing in the registration books of the Paying Agent/Registrar at the close of business on the last Business Day next preceding the date of mailing of such notice.

If the date for the payment of the principal of or interest on this Bond shall be a Saturday, Sunday, legal holiday, or day on which banking institutions in the city where the Designated Payment/Transfer Office is located are required or authorized by law or executive order to close, the date for such payment shall be the next succeeding day which is not a Saturday, Sunday, legal holiday, or day on which banking institutions are required or authorized to close, and payment on such date shall have the same force and effect as if made on the original date payment was due and no additional interest shall be due by reason of nonpayment on the date on which such payment is otherwise stated to be due and payable.

This Bond is one of a series of fully registered bonds specified in the title hereof issued in the aggregate principal amount of \$35,330,000 (herein referred to as the "Bonds"), issued pursuant to this ordinance (the "Ordinance") for the purpose of providing funds to refund the Refunded Bonds, to make certain permanent public improvements and to pay the costs of issuing the Bonds.

The City has reserved the option to redeem the Bonds maturing on or after September 1, 2019, in whole or in part before their respective scheduled maturity dates, on March 1, 2019, or on any date thereafter, at a price equal to the principal amount of the Bonds so called for redemption plus accrued interest to the date fixed for redemption. If less than all of the Bonds are to be redeemed, the City shall determine the maturity or maturities and the amounts thereof to be redeemed and shall direct the Paying Agent/Registrar to call by lot the Bonds, or portions thereof, within such maturity and in such principal amounts, for redemption.