



CITY COUNCIL

1520 AVENUE K

DATE: 1/25/2010
 CALL TO ORDER: 7:00 p.m.
 INVOCATION: Pastor Jack Schneider
 St. Paul Lutheran Church
 PLEDGE OF ALLEGIANCE: Brownie Troop 1522
 Shepard 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>PROCLAMATIONS & SPECIAL RECOGNITION</u> Proclamation: Heart Awareness Month - 2010</p> <p><u>CERTIFICATES OF APPRECIATION</u> <u>Multicultural Outreach Roundtable</u> Dr. Christopher Parr</p> <p><u>COMMENTS OF PUBLIC INTEREST</u> <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> <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>	

ITEM NO.	EXPLANATION	ACTION TAKEN
(a)	<p><u>Approval of Minutes</u> January 11, 2010</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) CSP No. 2009-145-C for LIBRARY RFID SYSTEM to Integrated Technology Group (ITG) in the amount of \$694,813 and authorizing the City Manager to execute all necessary documents. This will establish an annual fixed price contract with three optional one-year renewals for the maintenance thereof.</p>	
	<p>(c) Bid No. 2010-27-B for Meadows Addition project to Jim Bowman Construction Co., L.P., in the amount of \$1,106,456.</p>	
	<p><u>Approval of Change Order</u></p>	
	<p>(d) To Jim Bowman Construction Company, LP, increasing the contract by \$59,190 for Ridgeview Drive from Independence Parkway to Coit Road, Change Order No. 1. (Original Bid No. 2009-105-B)</p>	
	<p>(e) To Jim Bowman Construction Company, L.P. , increasing the contract by \$86,349 for the 2008 - 2009 Arterial Concrete Pavement Rehabilitation Project, Ohio Drive and Kings Manor Drive, Project No. 5984, Change Order No. 1, Bid No. 2009-174-B.</p>	
	<p><u>Adoption of Resolutions</u></p>	
	<p>(f) To repeal Resolution No. 2008-9-26(R) and approving new recreation membership fees that include a three (3) month membership option; and providing an effective date.</p>	
	<p>(g) To approve the terms and conditions of a Professional Services Agreement by and between Alternative Service Concepts, LLC, and the City of Plano; authorizing its execution by the City Manager; and providing an effective date.</p>	
	<p>(h) To approve the terms and conditions of a Second Amended Real and Business Personal Property Tax Abatement Agreement by and between the City of Plano, Texas and Diodes Incorporated, a Delaware corporation; authorizing its execution by the City Manager; and providing an effective date.</p>	
	<p>(i) To approve the terms and conditions of a Second Amended Economic Development Incentive Agreement by and between the City of Plano, Texas and Diodes Incorporated, a Delaware corporation; authorizing its execution by the City Manager; and providing an effective date.</p>	
	<p>(j) To approve the terms and conditions of an Easement for Encroachments by and between Legacy North PT MFA II, L.P., and the City of Plano; authorizing its execution by the City Manager; and providing an effective date.</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
(k)	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 reconstruction of 14th Street from K Avenue to Ridgewood Drive; authorizing its execution by the City Manager; and providing an effective date.	
(l)	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 McDermott Road from Coit Road to Ohio Drive; authorizing its execution by the City Manager; and providing an effective date.	
(m)	To approve the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano and Collin County, Texas, providing for major thoroughfare rehabilitation improvements on Plano Parkway, Preston Meadow Drive, Legacy Drive, Jupiter Road, Parker Road, Los Rios Boulevard, Ohio Drive and Premier Drive; authorizing its execution by the City Manager; and providing an effective date.	
(n)	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 Chaparral Road from K Avenue to east of Cloverhaven Way; authorizing its execution by the City Manager; and providing an effective date.	
(o)	<p><u>Adoption of Ordinances</u></p> <p>To amend Section 12-102(e) and adding Section 12-102(f) to Chapter 12 (Traffic Code) of the City of Plano Code of Ordinances to prohibit the stopping, standing, or parking of motor vehicles on a certain section of Gifford Drive and to prohibit the parking of vehicles on a certain section of Gifford Drive, within the City limits of the City of Plano; declaring it unlawful and a misdemeanor to park motor vehicles upon such sections of such roadways within the limits herein defined; providing a fine for criminal penalties not to exceed \$200.00 for each offense; and providing a repealer clause, a severability clause, a savings clause, a publication clause, and an effective date.</p>	
	<p><u>ITEMS FOR INDIVIDUAL CONSIDERATION:</u></p> <p><u>Public Hearing Items: Applicants are limited to fifteen (15) minutes presentation time with a five (5) minute rebuttal, if needed. Remaining speakers are limited to thirty (30) total minutes of testimony time, with three (3) minutes assigned per speaker. The presiding officer may extend these times as deemed necessary.</u></p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
	<p><u>Non-Public Hearing Items: The Presiding Officer may permit limited public comment for items on the agenda not posted for a Public Hearing. The Presiding Officer will establish time limits based upon the number of speaker requests, length of the agenda, and to ensure meeting efficiency, and may include a cumulative time limit. Speakers will be called in the order cards are received until the cumulative time is exhausted.</u></p>	
(1)	<p>An Ordinance to transfer the sum of \$49,000 from the Convention & Tourism Fund unappropriated fund balance to the Convention & Tourism Fund operating appropriation for Fiscal Year 2009-10 for the purpose of providing additional funds for the costs associated with conducting a Plano Convention Center feasibility and market study; amending the budget of the City and Ordinance 2009-9-13, Section 1, Item "H" to reflect the actions taken herein; declaring this action to be a case of public necessity; and providing an effective date.</p>	
(2)	<p>A Resolution to approve the terms and conditions of an Agreement by and between North Star Research Corporation, a division of HVS Convention, Sports and Entertainment and the City of Plano; authorizing its execution by the City Manager; and providing an effective date.</p>	
(3)	<p>Public Hearing and consideration of Zoning Case 2009-24 to request to rescind a portion of the H-05 Heritage Resource Designation on 0.1± acre located on the west side of K Avenue, 355± feet south of 18th Street. Zoned Downtown Business/Government with Heritage Resource Designation #5. Applicant: Bill Squiric</p>	
(4)	<p>A Resolution to approve the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano, Texas and ADS Alliance Data Systems, Inc., a Delaware corporation; authorizing its execution by the City Manager and providing an effective date.</p>	
(5)	<p>An Ordinance providing for the issuance and sale of City of Plano, Texas, Combination Tax and Revenue Certificates of Obligation, Series 2010; levying a tax in payment thereof and pledging surplus municipal drainage utility system revenues in payment thereof; approving execution and delivery of a purchase contract; approving the Official Statement; and enacting other provisions relating thereto.</p>	
(6)	<p>An Ordinance providing for the issuance and sale of City of Plano, Texas, General Obligation Refunding and Improvement Bonds, Series 2010; levying a tax in payment thereof; approving the Official Statement; approving the execution and delivery of a purchase contract; and enacting other provisions relating thereto.</p>	
(7)	<p>An Ordinance providing for the issuance and sale of City of Plano, Texas, Municipal Drainage Utility System Revenue Refunding and Improvement Bonds, Series 2010; approving execution and delivery of a purchase contract; approving the Official Statement; and enacting other provisions relating thereto.</p>	

ITEM NO.	EXPLANATION	ACTION TAKEN
	<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>	



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		01/25/2010		
Department:		City Manager's Office		
Department Head		Tom Muehlenbeck		
Agenda Coordinator (include phone #): Sharon Wright ext. 7107				
CAPTION				
Proclamation: Heart Awareness Month - 2010				
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				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	

**PLANO CITY COUNCIL
PRELIMINARY OPEN MEETING
January 11, 2010**

COUNCIL MEMBERS

Phil Dyer, Mayor
Harry LaRosiliere, Mayor Pro Tem
Lee Dunlap, Deputy Mayor Pro Tem
Pat Miner
Ben Harris
Mabrie Jackson (resigned)
Lissa Smith
Jean Callison

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 Dyer called the meeting to order at 5:18 p.m., Monday, January 11, 2010, in Training Room A of the Municipal Center, 1520 K Avenue. All Council Members were present with the exception of Mayor Pro Tem LaRosiliere. Mayor Dyer 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/Litigation, Section 551.071 and to receive information regarding 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 Dyer reconvened the meeting back into the Preliminary Open Meeting at 5:25 p.m. in Training Room A where the following matter was discussed:

Council Briefing on Paperless Agenda Packet

Technology Services Director Stephens provided a briefing on accessing the paperless agenda packet.

Mayor Dyer recessed the meeting at 5:50 p.m. and it was reconvened in Council Chambers at 6:04 p.m.

Consideration and action resulting from Executive Session discussion

No items were brought forward.

Departmental Briefing - Planning

Director of Planning Jarrell advised the Council of reorganization creating three divisions: Planning, GIS and Community Services. She spoke to the work of the Planning Division in review of site plans for additions to existing buildings, boundary adjustments with other cities and participation in the Planning in School Program. Ms. Jarrell advised that the Heritage Preservation Division is working on an update to the Preservation Plan, maintains oversight of designated areas and individual locations, manages the tax exempt program and administers the hotel/motel tax grant program. She spoke to Long Range Planning efforts including maintaining and updating the Comprehensive Plan, monitoring demographic information and managing special studies. Ms. Jarrell advised regarding projects such as the development of a design book for remodeling older homes, redesign of the Comprehensive Plan, preparations for the 2010 Census and inventory of vacant residential lots/undeveloped property.

Ms. Jarrell advised that the Geographic Information System (GIS) manages a computer data base which creates maps, assigns addresses for new development, and maintains the land management system that drives Building Inspections, Property Standards and Customer Utility Services Department operations. She spoke to support of 911 dispatch, maintenance of stormwater sewer maps and support provided to other departments. Ms. Jarrell spoke to the Community Services Division's primary role in administering federal grants for housing and social services, the Buffington Community Services Grants consisting of City monies for social service agencies, management of the Day Labor Center, and work with neighborhoods and homeowners' association.

Ms. Jarrell responded to the Council regarding cooperation with the appraisal district in matching parcels through GIS and exchange of information and to information provided citizens regarding property that may be located in flood plains.

Discussion and Direction regarding content of 2010 Bond Sale, Tax Note Sale, Refinancing General Obligation Bonds, and Drainage Improvement Bonds

City Manager Muehlenbeck spoke to authority received from voters in 2005 for improvement/enlargement to the Carpenter Park Recreation Center and not including authorization from 2009 (warm-water pool at \$6 million) advising regarding the anticipated impact on operations/maintenance. He spoke to the need for upgrades to the Plano Aquatic Center and to moving ahead with design work from 2009 authority. Mr. Muehlenbeck advised that design of a new technology services center would result in a more efficient facility and monies are included in the 2009 authority. He spoke to street improvements authorized in 2005 and Director of Public Works/Engineering Upchurch spoke to the recommendation to sell bonds in order to provide a cash flow while awaiting reimbursements from other entities.

Mr. Muehlenbeck spoke to approval of authority in 2009 for construction of Fire Station #13, bids coming in lower than anticipated and to removing \$1 million in issuance as the full amount may not be needed. He advised that the City may borrow internally for any funds necessary then reimbursement through a bond sale in 2011. Mr. Muehlenbeck advised that the remaining item for tax notes in the amount of \$10,035 would cover the balance of the shared public safety improvements.

Mr. Muehlenbeck spoke to General Obligation bonds as 20-year debt issued through authority granted by citizens for streets/parks, etc. and rated by bond agencies. He spoke to tax notes as a vehicle not approved by the public, being shorter in term and based on consideration of the longevity of the asset. Mr. Muehlenbeck spoke to refinancing some General Obligation authority and to drainage bonds being funded through utility bill surcharges and Ms. Tacke advised that savings for refinancing would be \$887,000. Mr. Muehlenbeck responded to Deputy Mayor Pro Tem Dunlap, advising that the first obligation is to pay for debt which will increase 1.5 cents, these items reflect results of the 2005 and 2009 elections and citizen expectations, that there is authority remaining from both elections and to public sale of bonds. He spoke to last year's AAA rating of the City's drainage bonds and the Council concurred to proceed with the bond sale with removal of \$1 million in public safety improvements.

Council items for discussion/action on future agendas

No items were discussed.

Consent and Regular Agenda

City Manager Muehlenbeck requested that Consent Agenda Item "E," a resolution to approve the terms and conditions of a Professional Services Agreement by and between Alternative Service Concepts, LLC, and the City of Plano be pulled and held until the January 25, 2010 meeting.

City Manager Muehlenbeck requested that Consent Agenda Item "F," a resolution to accept the findings and opinions of the Annual Audit be removed for individual consideration.

Mayor Dyer advised that he would be stepping down on Regular Agenda Items "2," Public Hearing and an ordinance to amend the Comprehensive Zoning Ordinance of the City, so as to rezone 9.3± acres located at the southeast corner of Spring Creek Parkway and Communications Parkway from Agricultural to Regional Employment and "3," Public Hearing and an ordinance as requested in Zoning Case 2009-22 to amend the Comprehensive Zoning Ordinance of the City, granting Specific Use Permit No. 603 so as to allow the additional use of Long-term Care Facility on 6.1± acres of land located on the east side of Communications Parkway, 290± feet south of Spring Creek Parkway.

Nothing further was discussed. Mayor Dyer adjourned the Preliminary Meeting at 6:42 p.m.

Phil Dyer, Mayor

ATTEST

Diane Zucco, City Secretary

PLANO CITY COUNCIL
January 11, 2010

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LaShon Ross, Assistant City Manager
Diane C. Wetherbee, City Attorney
Diane Zucco, City Secretary

Mayor Dyer convened the Council into the Regular Session on Monday, January 11, 2010, at 7:01 p.m. in the Council Chamber of the Plano Municipal Center, 1520 K Avenue. All Council Members were present with the exception of Mayor Pro Tem LaRosiliere.

The invocation was led by Steve Sharp, Worship Pastor of Meadows Baptist Church and the Pledge of Allegiance was led by Cub Scout Pack 18 of Saigling Elementary.

COMMENTS OF PUBLIC INTEREST

No one appeared to speak.

CONSENT AGENDA

Upon the request of Staff, Consent Agenda Item "E" was pulled and held until the January 25, 2010 meeting.

Upon the request of Staff, Consent Agenda Item "F" was removed for individual consideration.

Mayor Dyer advised that he would be stepping down on Regular Agenda Items "2" and "3" due to possible conflicts of interest.

Council Member Miner spoke to revisions in the minutes to reflect his absences.

Upon a motion made by Deputy Mayor Pro Tem Dunlap and seconded by Council Member Smith, the Council voted 6-0 to approve and adopt all remaining items on the Consent Agenda as recommended and as follows with revision to Consent Agenda Item "A":

Upon a motion made by Council Member Harris and seconded by Council Member Callison, the Council voted 7-0 to approve and adopt all items on the Consent Agenda as recommended and as follows:

Approval of Minutes (Consent Agenda Item "A")

December 7, 2009
December 10, 2009 (with revision)
December 14, 2009
December 22, 2009

Approval of Expenditures

Award/Rejection of Bid/Proposal: (Purchase of products/services through formal procurement process by this agency)

Bid No. 2010-31-B for Erosion Control Briarwood - Eight Locations to ARK Contracting Services, LLC in the amount of \$996,155. (Consent Agenda Item "B")

Purchase from an Existing Contract

To approve the purchase of three (3) Rear Loader Bodies and three (3) Automated Side Loader Bodies in the amount of \$517,175 from Heil of Texas, through an existing contract/agreement with Texas Association School Buyboard Program, and authorizing the City Manager to execute all necessary documents. (#280-07). (Consent Agenda Item "C")

To approve the purchase of three (3) Rear Loader Chassis and three (3) Automated Side Loader Chassis in the amount of \$869,527 from Bond Equipment Company, through an existing contract/agreement with Texas Association School Buyboard Program, and authorizing the City Manager to execute all necessary documents. (#281-07). (Consent Agenda Item "D")

Adoption of Resolutions

To approve the terms and conditions of a Professional Services Agreement by and between Alternative Service Concepts, LLC, and the City of Plano; authorizing its execution of all necessary documents by the City Manager; and providing an effective date. (Item pulled and held to 1-25-10) (Consent Agenda Item "E")

END OF CONSENT

Resolution No. 2010-1-1(R) - To accept the findings and opinions of the Annual Audit; authorizing the City Manager to publish the results thereof; and providing an effective date. (Consent Agenda Item "F")

Director of Finance Tacke advised that the City received a “clean” opinion and recognized Staff’s efforts to bring the information to Council in a timely manner to assist in bond sales. Finance Committee Member Council Member Harris thanked Staff for their efforts.

Upon a motion made by Council Member Callison and seconded by Deputy Mayor Pro Tem Dunlap, the Council voted 6-0 to accept the findings and opinions of the Annual Audit and further to adopt Resolution No. 2010-1-1(R).

Public Hearing and adoption of Ordinance No. 2010-1-2 as requested in Zoning Case 2009-20 to amend Section 3.300 (Exterior Wall Construction Standards for Structures) and Section 3.1200 (Landscaping Requirements) of Article 3 (Supplementary Regulations) and related sections of the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, pertaining to above ground and/or at-grade parking structures; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date. Applicant: City of Plano (Regular Agenda Item “1”)

Planning Manager Firgens advised that the request resulted from direction from the Council to explore crafting regulations for the exterior of parking structures and consideration of aesthetics, costs, and appropriateness of recommendations. She advised that the Planning and Zoning Commission recommended approval of the request subject to the following stipulations:

Amend Section 3.300 (Exterior Wall Construction Standards for Structures) of Article 3 (Supplementary Regulations) to read as follows:

3.300 Exterior Wall Construction Standards for Structures

Exterior wall construction for structures shall be in accordance with the standards in the following subsections. For the purposes of this section, exterior wall construction refers to the exterior material or finish of a wall assembly.

3.301 Residential Structures

- (1) Exterior wall construction for residential structures of three stories or less shall consist of a minimum of 75% masonry with no single wall face of any residence containing less than 50% of its exposed surface of masonry construction as herein specified. The construction standard applies only to the first floor of a building in the following zoning districts:

Ordinance No. 2010-1-2 (cont'd)

Abbreviated Designation	Zoning District Name
A	Agricultural
BG	Downtown Business/Government
CB-1	Central Business-1
CE	Commercial Employment
ED	Estate Development
MF-1	Multifamily Residence-1
MF-2	Multifamily Residence-2
MF-3	Multifamily Residence-3
PH	Patio Home
R	Retail
SF-A	Single-Family Residence Attached
SF-6	Single-Family Residence-6
SF-7	Single-Family Residence-7
SF-9	Single-Family Residence-9
SF-20	Single-Family Residence-20
2F	Two-Family Residence

Exterior wall construction for all residential uses in districts where permitted other than those listed above shall meet the requirements of the City of Plano Building Code.

~~3.302~~(2) Where more than 40% of existing residential structures along both sides of a street and lying between the two nearest intersecting streets, do not meet the above minimum structure standards, then such standards shall not apply.

~~3.303~~(3) Standards for masonry construction in all districts shall be defined as that form of construction composed of stone, brick, concrete, hollow clay tile, concrete block or tile, or other similar building unit or materials or combination of these materials laid up unit by unit and set in mortar. Brick veneer construction is included in the definition of masonry. Exterior plasters as defined in the City of Plano Building Code and cementitious lap siding shall be acceptable masonry construction alternatives. (ZC 2000-01; Ordinance No. 2000-3-28)

~~3.305~~(4) Unless specified as part of a planned development district, the above masonry requirements shall not apply to UR districts. In addition, exterior plasters, as noted above, are not permitted in UR districts unless specified as part of a planned development. (ZC 97-52; Ordinance No. 98-2-15)

Ordinance No. 2010-1-2 (cont'd)

3.302 Nonresidential Uses

- (1) Except as otherwise regulated by this ordinance, exterior wall construction in districts permitting nonresidential uses shall be of such material that conforms to the International Building Code unless an alternative has been approved by the Building Official. However, metal and membrane exterior walls are prohibited in all zoning districts with the following exception:

Metal and membrane exterior wall construction is permitted in the Light Industrial-1 and Light Industrial-2 districts with approval of a facade plan as part of the site plan review process by the Planning & Zoning Commission only under the following conditions:

- (4) (a) The metal or membrane exterior wall construction is not visible from a public thoroughfare or residential zoning district.
- (2)(b) The lot containing the building is located at least 1,000 feet from any residential zoning district boundary line unless separated by a Type C or larger thoroughfare.

(2) Special Requirements for Parking Structures.

Except in BG and CB-1 zoning districts, all exterior walls of parking structures shall be architecturally designed to be integrated with the primary building on the site, including consistent architectural design elements and building materials between structures.

Amend Section 3.1200 (Landscaping Requirements) of Article 3 (Supplementary Regulations) to include the following:

3.1200 Landscaping Requirements

(1) Nonresidential Landscaping Requirements

(f) Landscaping for Above Ground and/or At-Grade Parking Structures

These standards shall apply to all nonresidential districts, except BG and CB-1, and shall be in addition to other landscaping requirements as required in Section 3.1200 and within the overlay districts.

- (i) Where an above ground and/or at-grade parking structure is located 100 feet or less from the adjacent street right-of-way, the required landscaping shall comply with the following regulations:

1. A minimum ten-foot landscape edge shall be provided adjacent to the exterior perimeter of the parking structure.

Ordinance No. 2010-1-2 (cont'd)

2. Within the required landscape edge, one shade tree (three-inch caliper minimum) shall be provided for every 50 lineal feet of parking structure frontage, exclusive of entry drives and pedestrian access points. Ornamental trees (eight to ten feet height minimum) can be substituted for shade trees at a ratio of 2:1.
 3. Additionally, ten shrubs (five gallon minimum) per required shade tree shall be provided within the required landscape edge. If a decorative trellis is used as part of the façade structure, vines may count as part of the minimum shrub requirement.
 4. A maximum of 60% of any one species is allowed for any required plantings stated above.
- (ii) Where an above ground and/or at-grade parking structure is located greater than 100 feet from the adjacent street right-of-way, the required landscaping shall comply with the following regulations:
1. Within a maximum of ten feet from the exterior perimeter of the parking structure, one shade tree (three inch caliper minimum) shall be provided for every 50 lineal feet of parking structure frontage, exclusive of entry drives and pedestrian access points. Ornamental trees (eight to ten feet height minimum) can be substituted for shade trees at a ratio of 2:1.
 2. A maximum of 60% of any one species is allowed for any required plantings stated above.

Ms. Firgens responded to the Council regarding discussions with landscape architects to determine the appropriate size for trees and their location.

Mayor Dyer opened the Public Hearing. Shane Jordan, citizen of Plano, spoke to removing the term “shade” from tree recommendations. Ms. Firgens advised that there are provisions for an ornamental tree substitution. No one else spoke either for or against the request. The Public Hearing was closed.

Upon a motion made by Council Member Miner and seconded by Council Member Harris, the Council voted 6-0 to amend Section 3.300 and Section 3.1200 of Article 3 and related sections of the Comprehensive Zoning Ordinance of the City, pertaining to above ground and/or at-grade parking structures as requested in Zoning Case 2009-20 and as recommended by the Planning and Zoning Commission; and further to adopt Ordinance No. 2010-1-2.

Due to possible conflicts of interest Mayor Dyer stepped down from the bench on the following two items.

Public Hearing and adoption of Ordinance No. 2010-1-3 as requested in Zoning Case 2009-21 to amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, so as to rezone 9.3± acres located at the southeast corner of Spring Creek Parkway and Communications Parkway, in the City of Plano, Collin County, Texas, from Agricultural to Regional Employment; directing a change accordingly in the official zoning map of the City; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date. Applicant: Rutledge Haggard (Regular Agenda Item “2”)

Director of Planning Jarrell advised that the Planning and Zoning Commission recommended approval of this item as submitted.

Deputy Mayor Pro Tem Dunlap opened the Public Hearing. Shane Jordan, representing the applicant, advised that contact was made with the area homeowners association who felt project was acceptable. No one else spoke either for or against the request. The Public Hearing was closed.

Upon a motion made by Council Member Callison and seconded by Council Member Smith, the Council voted 5-0 to amend the Comprehensive Zoning Ordinance of the City so as to rezone 9.3± acres located at the southeast corner of Spring Creek Parkway and Communications Parkway from Agricultural to Regional Employment as requested in Zoning Case 2009-21 and as recommended by the Planning and Zoning Commission; and further to adopt Ordinance No. 2010-1-3.

Public Hearing and adoption of Ordinance No. 2010-1-4 as requested in Zoning Case 2009-22 to amend the Comprehensive Zoning Ordinance of the City, Ordinance No. 2006-4-24, as heretofore amended, granting Specific Use Permit No. 603 so as to allow the additional use of Long-term Care Facility on 6.1± acres of land located on the east side of Communications Parkway, 290± feet south of Spring Creek Parkway, in the City of Plano, Collin County, Texas, presently zoned Agricultural; directing a change accordingly in the official zoning map of the City; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date. Applicant: Acres of Sunshine, Ltd. (Regular Agenda Item “3”)

Director of Planning Jarrell advised that the Planning and Zoning Commission recommended approval of this item as submitted.

Deputy Mayor Pro Tem Dunlap opened the Public Hearing. Shane Jordan, representing the applicant, advised that he was available for any questions. No one else spoke either for or against the request. The Public Hearing was closed.

Upon a motion made by Council Member Callison and seconded by Council Member Smith, the Council voted 5-0 to amend the Comprehensive Zoning Ordinance of the City, granting Specific Use Permit No. 603 so as to allow the additional use of Long-term Care Facility on 6.1± acres of land located on the east side of Communications Parkway, 290± feet south of Spring Creek Parkway, as requested in Zoning Case 2009-22 and as recommended by the Planning and Zoning Commission; and further to adopt Ordinance No. 2010-1-4.

Mayor Dyer resumed his seat at the bench.

Resolution No. 2010-1-5(R) to approve the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano, Texas and Scarbrough, Medlin & Associates, Inc., a Texas corporation; authorizing its execution by the City Manager and providing an effective date. (Regular Agenda Item “4”)

Director of Finance Tacks advised that the agreement of up to \$25,000 provides for occupancy of 13,500 square feet of commercial space; retention, transfer or creation of up to 50 full-time job equivalents and runs from January 1, 2010 to December 31, 2019.

Upon a motion made by Council Member Harris and seconded by Council Member Smith, the Council voted 6-0 to approve the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano and Scarbrough, Medlin & Associates, Inc., and further to adopt Resolution No. 2010-1-5(R).

There being no further discussion, Mayor Dyer adjourned the meeting at 7:49 p.m.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, City Secretary



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		1-25-2010		
Department:		Purchasing		
Department Head		Mike Ryan		
Agenda Coordinator (include phone #): Nancy Corwin x7137				
CAPTION				
Award of Competitive Sealed Proposal No 2009-145-C for CSP for LIBRARY RFID SYSTEM to Integrated Technology Group (ITG) in the amount of \$694,813 and authorizing the City Manager or his designee to execute all necessary documents.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" 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	750,000	41,788	791,788
Encumbered/Expended Amount	0	0	0	0
This Item	0	-694,813	-41,788	-736,6010
BALANCE	0	55,187	0	-6,574,222
FUND(s): TECHNOLOGY FUND (062.62324), GENERAL FUND (01.681)				
<p>COMMENTS: Funding in the amount of \$750,000 is included in the Technology Fund for an upgrade to the Library Inventory Control System. The cost for this upgrade is estimated to be \$694,813. Funding for the Library Inventory Control System maintenance agreement will be paid from the Library operating budget located within the General Fund. The estimated future annual amount is \$41,788, which will be made within approved budget appropriations.</p> <p>STRATEGIC PLAN GOAL: Technology improvements for City Libraries relate to the City's Goals of "Great Neighborhoods - 1st Choice to Live" and "Financially Strong City with Service Excellence".</p>				
SUMMARY OF ITEM				
Annual contract with renewals				
Staff recommends the Competitive Sealed Proposal of Integrated Technology Group (ITG), for a first year total amount of \$694,813, be accepted as the best proposal, and conditioned upon timely execution of any necessary contract documents. This will upgrade the Library Inventory Control System and establish an annual fixed price contract, with three optional one-year renewals for the maintenance thereof.				
List of Supporting Documents: Recommendation Memo, Bid Evaluation			Other Departments, Boards, Commissions or Agencies	



City of Plano
Library Administration
2501 Coit Road
Plano, TX 75075-3712
Phone: 972.769.4208
Fax: 972.769.4269

Memorandum

Date: January 4, 2010
To: Nancy Corwin, Purchasing Buyer II
From: Joyce Baumbach, Director of Libraries
Subject: RFID Recommendation

The Library Radio Frequency Identification (RFID) Evaluation Committee consisted of Danny Housewright, Brent Bloechle, Mike Shamel and Joyce Baumbach. The process began in June 2009 with specifications for a RFID system. The bids went out in July and were reviewed August through October. The evaluation committee was reviewing six bids based strictly on the product with the committee having no knowledge of pricing. During the review period, we analyzed the six bids independently of other committee members. After the reviews were completed, the evaluation committee met with Purchasing, pricing was revealed and the six bids were narrowed down to two vendors. The committee asked many questions to the two vendors through the Purchasing representative. Best and Final Offers were requested and received. The committee is recommending the bid be awarded to Integrated Technology Group. Integrated Technology Group met all the committee's expectations and the pricing was the lowest. The company can provide full service in the design, implementation, and maintenance of the system. References from libraries' using the system spoke highly of the customer service, ease of use of the system, and support of Integrated Technology Group.

Thank you for assisting us in the process. Your help is greatly appreciated.

2009-145-C
RFID for Library

Best and Final Results

COMBINED MATRIX	WEIGHTING	POINTS		WEIGHTED SCORE		POINTS		WEIGHTED SCORE		POINTS		WEIGHTED SCORE	
		ITG	3M	ITG	3M	TechLogic	Bibliotheca	Libramation	MK Sorting	TechLogic	Bibliotheca	Libramation	MK Sorting
Extent of offer to exceed the needs of the City as evidenced in Submittals Section XI.B.1 and 2 (30%)	30%	3.25	2.75	0.98	0.83	2.75	2.00	0.60	0.60	2.00	2.00	0.60	0.60
evidenced in Submittals Section XI.B.3 (20%)	20%	4.25	3.50	0.85	0.70	2.75	3.00	0.60	0.60	2.75	2.00	0.55	0.40
Service/Warranty plan offer as evidenced in Submittals Section XI.B.4 (10%)	10%	3.00	3.25	0.30	0.33	3.00	2.50	0.25	0.25	2.50	2.75	0.25	0.28
Ease of use as evidenced in Submittals Section XI.B.6. and from the demonstration option in Section X. (10%)	10%	3.25	3.00	0.33	0.30	2.75	2.25	0.23	0.23	2.75	2.50	0.28	0.25
Price	30%	4.65	4.15	1.40	1.25	3.97	3.36	1.01	1.01	4.29	5.00	1.29	1.50
TOTAL	100%			3.85	3.40			2.88	2.88			2.96	3.03

Best and Final Offers

	With Pricing	Without Pricing
ITG	3.85	2.45
3M	3.40	2.15
TechLogic	3.14	1.95
Bibliotheca	2.68	1.68
Libramation	2.96	1.68
MK Sorting	3.03	1.53



**CITY OF PLANO
COUNCIL AGENDA ITEM**

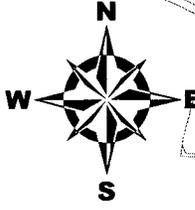
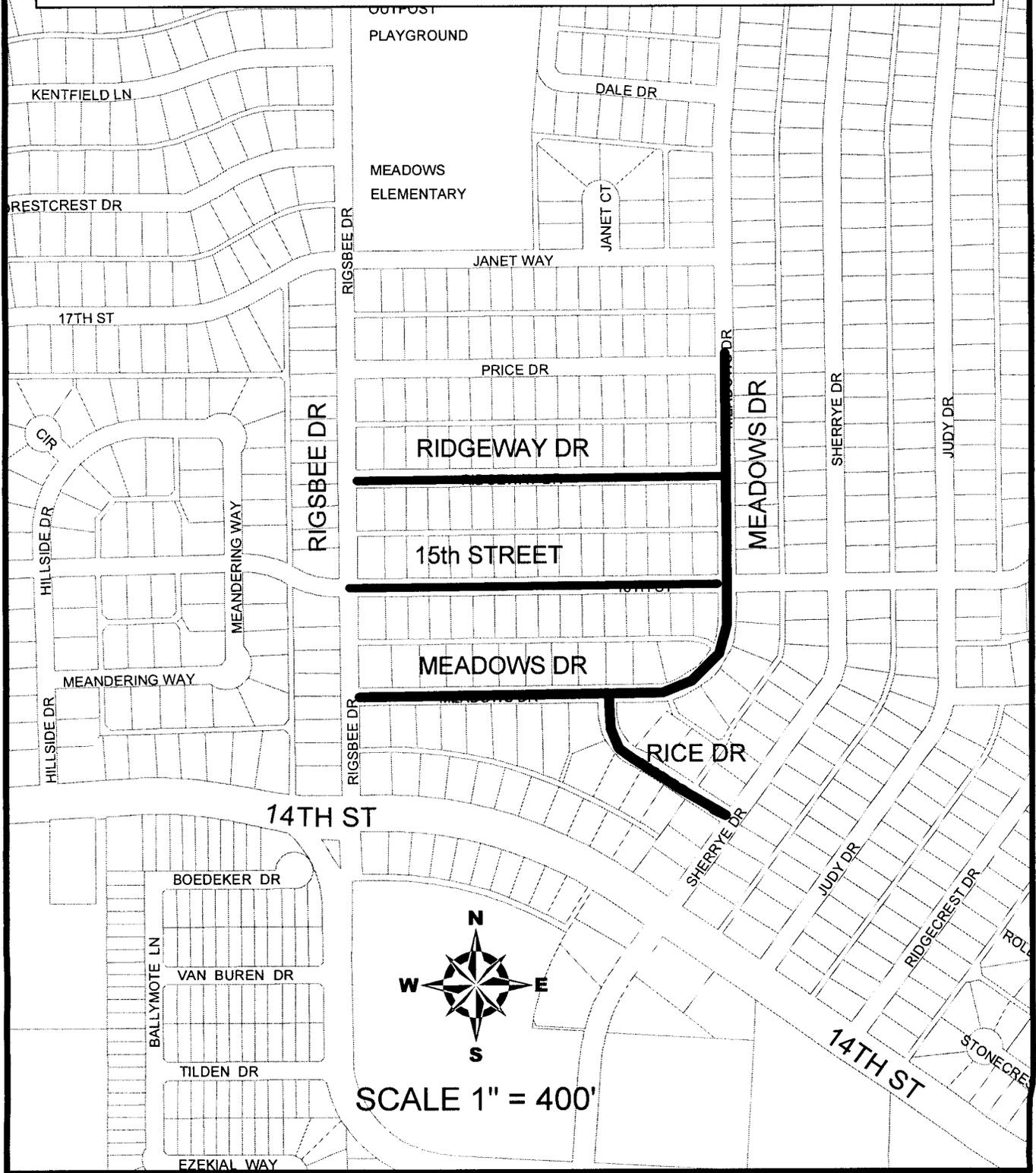
CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		01/25/10		
Department:		Public Works & Engineering		
Department Head		Alan L. Upchurch		
Agenda Coordinator (include phone #):				Project No. 5927
CAPTION				
Approval of Bid No. 2010-27-B for Meadows Addition project to Jim Bowman Construction Co., L.P., in the amount of \$1,106,456.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR:	2009-10	Prior Year (CIP Only)	Current Year	Future Years
		TOTALS		
Budget		221,000	2,058,500	0
Encumbered/Expended Amount		-221,000	-129,300	0
This Item		0	-1,106,456	0
BALANCE		0	822,744	0
FUND(S): STREET IMPROVEMENT CIP & WATER CIP				
<p>COMMENTS: Funds are included in the 2009-10 Street Improvement CIP & Water CIP. This item, in the amount of \$1,106,456, will leave a current year balance of \$822,744 for the Meadows Addition, Ph. 1 project.</p> <p>STRATEGIC PLAN GOAL: Street and sidewalk paving and water line construction relates to the City's Goal of Financially Strong City with Service Excellence.</p>				
SUMMARY OF ITEM				
<p>Staff recommends the Alternate No. 1 bid of Jim Bowman Construction Co., L.P., in the amount of \$1,106,456.48 be accepted as the lowest responsible bid conditioned on timely execution of any contract documents.</p> <p>The second vendor being recommended is J & T Excavating in the amount of \$1,162,265.00.</p> <p>The Engineer's estimate was \$1,850,000.00.</p> <p>The project consists of the reconstruction of approximately 4,400 linear feet of 27 foot wide residential street paving with sidewalks and 8 inch waterline in the Meadows Addition.</p> <p>At the bid opening, two of the vendors did not acknowledge receipt of Addendum No. 1. Their names were read but their bid amounts were not read. Jim Bowman Construction Co., LP and RKM Utility Services, Inc., stated that they did not receive the addendum. Meetings were held with the Purchasing Department and the Legal Department and it was determined that a vendors' failure to acknowledge is an immaterial and waivable defect. Therefore, all bids were evaluated for consideration for the above contract.</p>				



**CITY OF PLANO
COUNCIL AGENDA ITEM**

List of Supporting Documents: Location Map; Bid Summary	Other Departments, Boards, Commissions or Agencies N/A

MEADOWS ADDITION PROJECT NO. 5927



SCALE 1" = 400'

CITY OF PLANO
***CORRECTED BID TABULATION**
2010-27-B
MEADOWS ADDITION – PROJECT NO. 5927
BID TABULATION

BIDDER:	BID BOND	ADD1 ACK	TOTAL BASE BID	ALT NO. 1 TOTAL BID
*JIM BOWMAN CONSTRUCTION CO., L.P.	YES	NO	\$1,106,456.48	\$1,106,456.48
J & T EXCAVATING	YES	YES	\$1,162,265.00	\$1,162,265.00
*RKM UTILITY SERVICES, INC.	YES	NO	\$1,196,388.05	\$1,196,388.05
TRI-CON SERVICES	YES	YES	\$1,260,920.40	\$1,260,920.40
SYB CONSTRUCTION COMPANY, INC.	YES	YES	\$1,298,186.40	\$1,298,186.40
JRJ PAVING, LP	YES	YES	\$1,331,765.34	\$1,331,765.34
TISEO PAVING CO.	YES	YES	\$1,353,870.35	\$1,353,870.35
CAMINO CONSTRUCTION, LP	YES	YES	\$1,363,720.40	\$1,363,720.40
JESKE CONSTRUCTION CO.	YES	YES	\$1,565,253.10	\$1,565,253.10

I certify that the above includes all firms contacted to bid and that replies are exactly as stated.

Dianna Wike

Dianna Wike, Buyer Supervisor

January 5, 2010

Date

“BID TABULATION STATEMENT”

ALL BIDS SUBMITTED FOR THE DESIGNATED PROJECT ARE REFLECTED ON THIS BID TAB SHEET. **HOWEVER, THE LISTING OF A BID ON THIS SHEET SHOULD NOT BE CONSTRUED AS A COMMENT ON THE RESPONSIVENESS OF SUCH BID OR AS ANY INDICATION THAT THE CITY ACCEPTS SUCH BID AS RESPONSIVE.** THE CITY WILL MAKE A DETERMINATION AS TO THE RESPONSIVENESS OF BIDS 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 BIDDER UPON AWARD OF THE CONTRACT AND, ACCORDING TO LAW, ALL BIDS RECEIVED WILL BE AVAILABLE FOR INSPECTION AT THAT TIME.

PURCHASING DIVISION
CITY OF PLANO TEXAS



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY					
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory					
Council Meeting Date:		1/25/10			
Department:	Public Works & Engineering				
Department Head	Alan L. Upchurch				
Agenda Coordinator (include phone #):		Irene Pegues (7198)		Project No. 5789	
CAPTION					
To Jim Bowman Construction Company, LP, increasing the contract by \$59,190 for Ridgeview Drive from Independence Parkway to Coit Road, Change Order No. 1. (Original Bid No. 2009-105-B)					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP					
FISCAL YEAR:	2009-10	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		648,016	637,984	0	1,286,000
Encumbered/Expended Amount		-648,016	-382,603	0	-1,030,619
This Item		0	-59,190	0	-59,190
BALANCE		0	196,191	0	196,191
FUND(S): STREET IMPROVEMENT CIP					
<p>COMMENTS: Funds are included in the 2009-10 Street Improvement CIP. This change order, in the amount of \$59,190, will leave a current year balance of \$196,191 for the Ridgeview – Coit to Independence project.</p> <p>STRATEGIC PLAN GOAL: Median improvements for street improvement projects relate to the City's Goal of Financially Strong City with Service Excellence.</p>					
SUMMARY OF ITEM					
<p>This change order, in the amount of \$59,190.00, is for revising the scope of work to include median grading, spreading 6" of top soil and installation of block sod for all the medians and removal of street headers. After the project was bid, it was determined that the entire median needed to be regraded. Also, the existing dirt excavated from the project was determined to not be suitable for topsoil. Therefore, new topsoil is needed and the entire median will be sodded.</p> <p>Staff recommends approval of Change Order No. 1. The contract total will be \$949,366.54, which includes change orders of 6.65% of the original contract amount of \$890,176.54.</p>					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		
Change Order No. 1			N/A		

CHANGE ORDER NO. 1

**RIDGEVIEW DRIVE FROM INDEPENDENCE PARKWAY TO COIT ROAD
PROJECT NO. 5789
PURCHASE ORDER NO. 103706
CIP NO. 33-31190
BID NO. 2009-105-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 **JIM BOWMAN CONSTRUCTION CO., LP**, for the **RIDGEVIEW DRIVE FROM INDEPENDENCE PARKWAY TO COIT ROAD PROJECT**, dated May 26, 2009.

B. DESCRIPTION OF CHANGE

The change order is for revising the scope of work to including median grading, spreading 6" of top soil and installation of block sod for all the medians, and deleting street headers.

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>
108	Install street header	815	0	LS	\$5.00	-\$4,075.00
702	6" top soil, solid block sod, Bermuda, fertilize and water until established to match existing	1	0	LS	\$15,000.00	-\$15,000.00
702a	Grade median	0	1	LS	\$11,200.00	\$11,200.00
702b	6" topsoil	0	7,200	SY	\$5.80	\$41,760.00
702c	Solid sod Bermuda	0	7,500	SY	\$3.95	\$29,625.00
700	Existing tree adjustment to match proposed grades	1	0	LS	\$4,320.00	-\$4,320.00
	TOTAL:					\$59,190.00

Original Contract Amount	\$ 890,176.54
Contract Amount (Including Previous Change Orders)	\$ 890,176.54
Amount, Change Order No.1	\$ 59,190.00
Revised Contract Amount	\$ 949,366.54
Total Percent Increase Including Previous Change Orders	6.65%

D. EFFECT OF CHANGE ON CONTRACT TIME

The work required under this change order will add **20** day(s) to this project:

Original Contract Time	<u>120 working days</u>
Amount (Including Previous Change Orders)	<u>120 working days</u>
Amount, Change Order No. 1	<u>20 working days</u>
Revised Contract Time	<u>140 working days</u>
Total Percent Increase Including Previous Change Orders	<u>16.67%</u>

E. AGREEMENT

By the signatures below, duly authorized agents of the **CITY OF PLANO, TEXAS**, and **JIM BOWMAN CONSTRUCTION CO., LP**, do hereby agree to append this Change Order No. 1 to the original contract between themselves, dated May 26, 2009.

OWNER: CITY OF PLANO

**CONTRACTOR: JIM BOWMAN
CONSTRUCTION CO., LP, a Texas
Limited Partnership**

By: **JIM BOWMAN GP, LLC, a
Texas Limited Liability Company,
Its General Partner**

By: _____
(signature)

By: _____
(signature)

Print Name: Thomas H. Muehlenbeck

Print Name: Jim Bowman

Print Title: City Manager

Print Title: Sole Manager

Date: _____

Date: _____

APPROVED AS TO FORM:

By: _____
Diane C. Wetherbee, City Attorney

ACKNOWLEDGMENTS

STATE OF TEXAS §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2010 by **JIM BOWMAN, SOLE MANAGER** of **JIM BOWMAN GP, LLC**, a Texas Limited Liability Company, General Partner of **JIM BOWMAN CONSTRUCTION COMPANY, LP**, a **TEXAS** Limited 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 _____, 2010, 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				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		01/25/2010		
Department:		Public Works Administration / David Falls		
Department Head		Alan Upchurch		
Agenda Coordinator (include phone #): Margie Stephens (x4104)				
CAPTION				
<i>To Jim Bowman Construction Company, L.P. , increasing the contract by \$86,349.47 for the 2008 - 2009 Arterial Concrete Pavement Rehabilitation Project, Ohio Drive and Kings Manor Drive, Project No. 5984, Change Order No. 1, Bid No. 2009 - 174 - 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: 2009-10	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	2,129,912	4,484,088	2,300,000	8,914,000
Encumbered/Expended Amount	-2,129,912	-1,737,822	0	-3,867,734
This Item	0	-86,349	0	-86,349
BALANCE	0	2,659,917	2,300,000	4,959,917
FUND(S): CAPITAL RESERVE				
COMMENTS: Funds are included in the Capital Reserve Fund. This change order, in the amount of \$86,349, will leave a current year balance of \$2,659,917 for the Arterial Concrete Repair project. STRATEGIC PLAN GOAL: Street pavement repairs relate to the City's Goal of Financially Strong City with Service Excellence.				
SUMMARY OF ITEM				
This change order is for additional concrete street pavement repairs on Ohio Drive. As work progressed repair locations increased in size and additional locations were identified as needing repair.				
Staff recommends approval of Change Order No. 1. The total Contract will be \$469,417.72, which is a 22.54% increase of the original contract amount of \$383,068.25.				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Change Order No. 1				

CHANGE ORDER NO. 1

**2008-2009 ARTERIAL CONCRETE PAVEMENT REHAB PROJECT
OHIO DRIVE AND KINGS MANOR
PROJECT NO. 5984
PURCHASE ORDER NO. 103748
CIP NO. 35-51131
BID NO. 2009-174-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 **JIM BOWMAN CONSTRUCTION COMPANY, L.P.** for the **2008-09 ARTERIAL CONCRETE PAVEMENT REHAB PROJECT, OHIO DRIVE AND KINGS MANOR**, dated September 14, 2009.

B. DESCRIPTION OF CHANGE

The change order is for additional concrete pavement repair. As the project progressed additional pavement was identified as needing repair as the contractor is working in the area.

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>
100	Full Depth Sawcut	5,755	11,000		\$0.90	\$4,720.50
101	Longitudinal & Transvers BJ	5,755	11,000		\$2.00	\$10,490.00
102	R/D Existing Concrete	3,012	4,200		\$9.00	\$10,692.00
103	F/I 10" 4200 PSI Concrete Paving	3,012	4,200		\$45.90	\$54,529.20
104	F/I 6" Monolithic Curb	2,126	3,000		\$1.90	\$1,660.60
107	R/R Concrete Sidewalk	8,806	9,500		\$4.00	\$2,776.00
117	Full Depth Sawcut	1,535	1,707.00		\$1.00	\$172.00
118	Longitudinal & Transvers BJ	1,535	1,514.20		\$2.00	-\$41.60
119	R/D Existing Concrete	1,742	1,693.48		\$8.50	-\$412.42
120	F/I Flex Base	627	740.64		\$30.50	\$3,466.02
121	F/I 6" 4200 PSI Concrete Paving	1,742	1,693.48		\$33.90	-\$1,644.83
122	F/I 6" Monolithic Curb	785	756.00		\$2.00	-\$58.00
	TOTAL:					\$86,349.47

2008-2009 Arterial Concrete Pavement Rehab, Ohio Drive & Kings Manor
 Project No. 5984

Original Contract Amount	\$	<u>383,068.25</u>
Contract Amount (Including Previous Change Orders)	\$	<u>383,068.25</u>
Amount, Change Order No. 1	\$	<u>86,349.47</u>
Revised Contract Amount	\$	<u>469,417.72</u>
Total Percent Increase Including Previous Change Orders		<u>22.54%</u>

D. EFFECT OF CHANGE ON CONTRACT TIME

The work required under this change order will add 22 working day(s) to this project:

Original Contract Time	<u>100 working days</u>
Amount (Including Previous Change Orders)	<u>100 working days</u>
Amount, Change Order No. 1	<u>22 working days</u>
Revised Contract Time	<u>122 working days</u>
Total Percent Increase Including Previous Change Orders	<u>22.00%</u>

E. AGREEMENT

By the signatures below, duly authorized agents of the **CITY OF PLANO, TEXAS**, and **JIM BOWMAN CONSTRUCTION COMPANY, L.P.**, do hereby agree to append this Change Order No. 1 to the original contract between themselves, dated September 14, 2009.

OWNER: CITY OF PLANO

**CONTRACTOR: JIM BOWMAN
CONSTRUCTION COMPANY, L.P.
a Texas Limited Partnership
By: JIM BOWMAN GP, LLC, A TEXAS
LIMITED LIABILITY COMPANY, ITS
GENERAL PARTNER**

By: _____
(signature)

By: _____
(signature)

Print
Name: Thomas H. Muehlenbeck

Print
Name: Jim Bowman

Print
Title: City Manager

Print
Title: Sole Manager

Date: _____

Date: Jan. 9, 2010

APPROVED AS TO FORM:

By: _____
Diane C. Wetherbee, City Attorney



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY			Initials	Date
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory		Purchasing		
Council Meeting Date:	1/25/10	Budget		
Department:	Parks and Recreation	Legal		
Department Head	Amy Fortenberry	Assistant City Manager		
Dept Signature:		Deputy City Manager		
		City Manager		
Agenda Coordinator (include phone #): Susan Berger (7255)				

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

CAPTION

A Resolution of the City Council of the City of Plano, Texas repealing Resolution No. 2008-9-26(R) and approving new recreation membership fees that include a three (3) month membership option; and providing an effective date.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

FISCAL YEAR: 2009-10	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	2,550,276	0	2,550,276
Encumbered/Expended Amount	0	0	0	0
This Item	0	26,147	0	26,147
BALANCE	0	2,576,423	0	2,576,423

FUND(S): **GENERAL FUND, RECREATION REVOLVING FUND**

COMMENTS: Approval of this item will generate approximately \$26,147 in additional Recreation Membership revenue annually.

STRATEGIC PLAN GOAL: Expanding membership options for residents at Plano Recreation Centers relates to "Financially Strong City with Service Excellence" and "Great Neighborhoods - 1st Choice to Live."

SUMMARY OF ITEM

A resolution in September 2008 was adopted by City Council to raise recreation membership fees and establish a College Membership fee allowing college students to purchase a half price adult membership for the summer months. This membership at \$65 was very successful and the Parks and Recreation Department staff would like to propose that this College membership become a Three Month Membership for any age, effective for three consecutive months from the date of purchase and half the price of any annual membership.



CITY OF PLANO COUNCIL AGENDA ITEM

<u>Recreation Memberships</u>	<u>Current Annual</u>	<u>Proposed Three Month</u>
<i>Plano Residents</i>		
Youth (ages 3-15)	\$80	\$40
Adult (ages 16-59)	\$130	\$65
Senior (ages 60+)	\$100	\$50
College	\$65 (June, July, Aug)	discontinue
<i>Non-Residents</i>		
Youth (ages 3-15)	\$160	\$80
Adult (ages 16-59)	\$260	\$130
Senior (ages 60+)	\$200	\$100
Work in Plano	\$195	\$97

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies The Parks and Recreation Planning Board reviewed the proposed fees at their January 5, 2010 meeting and recommended City Council approval.
-------------------------------	--

A Resolution of the City Council of the City of Plano, Texas repealing Resolution No. 2008-9-26(R) and approving new recreation membership fees that include a three (3) month membership option; and providing an effective date.

WHEREAS, the City Council recognizes the importance of providing effective and efficient Parks and Recreation services and programs; and

WHEREAS, the City Council recognizes an important interest in establishing a Three (3) Month Recreation Membership (consecutive months) fee for any age group usable at any time to replace the summer only College Membership as a response to citizen demand and to increase revenue to cover the expenses and costs associated with operating the facility.

WHEREAS, after review and consideration of the proposed Three (3) Month Recreation Membership, the City Council finds that its adoption is necessary to preserve the current level of services offered by the Parks and Recreation Department, while increasing revenues and decreasing the tax subsidy for operation;

NOW, THEREFORE, THE CITY COUNCIL FOR THE CITY OF PLANO, TEXAS RESOLVES THAT:

Section I. The City Council, finding the proposed Three (3) Month Recreation Membership acceptable and in the best interest of the City of Plano and its citizens, hereby approves that the Three (3) month Recreation Membership will replace the summer only Three Month College Membership with the fees to be one half of the current annual fees.

Section II. The City Council further repeals all prior Resolutions in conflict with the provisions of this Resolution.

Section III. This Resolution becomes effective February 1, 2010.

DULY PASSED AND APPROVED this 25th day of January, 2010.

Phil Dyer, MAYOR

ATTEST:

Di Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY					
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory					
Council Meeting Date:		01/25/10			
Department:		Purchasing / Risk			
Department Head		Mike Ryan			
Agenda Coordinator (include phone #): Glenna Hayes x 7539					
CAPTION					
A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of a Professional Services Agreement by and between Alternative Service Concepts, LLC, and the City of Plano; authorizing its execution by the City Manager, or his designee; and providing an effective date.					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	2009-10; 2010-11	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	442,382	111,287	553,669
Encumbered/Expended Amount		0	-165,575	0	-165,575
This Item		0	-245,220	-111,287	-356,507
BALANCE		0	31,587	0	31,587
FUND(S): PROPERTY/LIABILITY LOSS FUND					
<p>COMMENTS: Funds are included in the FY 2009-10 Self Insurance Department Budget. This item, in the estimated total amount of \$356,507, will provide for the continuation of professional services for third party claims administration for the purposes of evaluating the program and rebidding. The estimated annual amount to be spent in FY 2009-10 is \$245,220. The estimated future annual amount is \$111,287, which will be made within approved budget appropriations.</p> <p>STRATEGIC PLAN GOAL: Providing professional services for third party claims administration relates to a "Financially Strong City with Service Excellence."</p>					
SUMMARY OF ITEM					
Staff recommends the acceptance of an agreement between Alternative Services Concepts, LLC and the City, continuing professional services for third party claims administration for the purposes of evaluating the program and rebidding. The term of the agreement is for a period of 12 months from date of execution of any necessary contract documents, in an estimated expenditure of \$356,507.22. 2010-43-C					
List of Supporting Documents: Resolution; Contract			Other Departments, Boards, Commissions or Agencies		

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of a Professional Services Agreement by and between Alternative Service Concepts, LLC, and the City of Plano; authorizing its execution by the City Manager, or his designee; and providing an effective date.

WHEREAS, the City Council has been presented a proposed professional services agreement for third party claims administration services between Alternative Service Concepts, LLC., and the City of Plano, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and,

WHEREAS, the City has elected to continue such services while reviewing the current program and developing a new competitive proposal; and

WHEREAS, upon full review and consideration of the Agreement (2010-43-C), 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 designee, shall be authorized to execute it on behalf of the City of Plano.

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

Section I. The terms and conditions of the Agreement, having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things approved.

Section II. The City Manager, or his 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 25th day of January, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

**PROFESSIONAL SERVICES AGREEMENT
BY AND BETWEEN THE CITY OF PLANO, TEXAS AND
ALTERNATIVE SERVICE CONCEPTS, LLC
FOR CLAIMS SERVICE CONTRACT NO. 2010-43-C**

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 **ALTERNATIVE SERVICE CONCEPTS, LLC**, incorporated in the State of Delaware, hereinafter referred to as "Professional" to be effective from and after the date as provided herein.

W I T N E S S E T H:

WHEREAS, the City desires to engage the services of Professional to process claims related to risk management, hereinafter referred to as the "Project"; and

WHEREAS, Professional desires to render such 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. Engagement

The City hereby agrees to retain Professional to perform professional services in connection with processing claims related to risk management, and Professional agrees to perform such services in accordance with the terms and conditions of this Agreement.

II. Scope of Services

Professional shall provide all labor, supervision, materials, and equipment necessary for processing claims related to risk management. These products and services shall be provided in accordance with the Specifications for processing claims related to risk management, a copy of which is attached hereto and incorporated herein as **Exhibit "A,"** and the Fee Schedule a copy of which is attached hereto and incorporated herein for all purposes as **Exhibit "B."** The Contract consists of this written agreement and the following items which are attached hereto and incorporated herein by reference:

- (a) Scope of Services for Claims Administration (**Exhibit "A"**);
- (b) Fee Schedule (**Exhibit "B"**);
- (c) Insurance Requirements (**Exhibit "C"**); and
- (d) Affidavit of No Prohibited Interest (**Exhibit "D"**).

These documents make up the Contract documents and what is called for by one shall be as binding as if called for by all. In the event of an inconsistency or conflict in any of the provisions of the Contract documents, the inconsistency or conflict shall be resolved by giving precedence first to this written agreement then to the contract documents in the order in which they are listed above. These documents shall be referred to collectively as "Contract Documents."

III. Term of Contract

The term of this Contract will be for a period of twelve (12) months from date of execution.

IV. Compensation/Expenses

Compensation and expenses during the term of this contract shall be as set forth in the Fee Schedule, attached hereto and incorporated herein as Exhibit "B"

V. Insurance

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

VI. Reimbursement MMSEA Fines

Professional shall promptly reimburse City for any fines, penalties or costs incurred by City pursuant to the Medicare Secondary Payer Mandatory Reporting Provision of the Medicare, Medicaid and SCHIP Extension Act of 2007 (MMMSEA), including any subsequent amendments, arising out of Professional's negligence or failure to perform in strict conformance with the provisions contained in the herein contract. Professional shall reimburse City within 30 days of receiving notice from City that MMSEA fines, penalties or costs have been incurred.

VII. Indemnity

1. GENERAL INDEMNITY

PROFESSIONAL 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, FINES INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES, CAUSED BY THE NEGLIGENT ACT OR OMISSION OR INTENTIONAL WRONGFUL ACT OR OMISSION OF PROFESSIONAL ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES OR ANY OTHER THIRD PARTIES FOR WHOM PROFESSIONAL IS LEGALLY RESPONSIBLE (HEREINAFTER "CLAIMS"). PROFESSIONAL IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS.

IN ITS SOLE DISCRETION, CITY SHALL HAVE THE RIGHT TO SELECT OR TO APPROVE DEFENSE COUNSEL TO BE RETAINED BY PROFESSIONAL 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 PROFESSIONAL'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF

PROFESSIONAL'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. PROFESSIONAL SHALL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF PROFESSIONAL FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND PROFESSIONAL SHALL BE LIABLE FOR ALL COSTS INCURRED BY CITY.

2. PATENT AND COPYRIGHT INFRINGEMENT INDEMNITY AND REMEDY

2.1 PROFESSIONAL WILL DEFEND, INDEMNIFY AND HOLD HARMLESS AT ITS EXPENSE ANY CLAIM/SUIT BROUGHT AGAINST THE CITY TO THE EXTENT IT IS BASED ON AN INFRINGEMENT CLAIM, AND PROFESSIONAL WILL INDEMNIFY THE CITY FOR THOSE COSTS AND DAMAGES FINALLY AWARDED AGAINST THE CITY FOR AN INFRINGEMENT CLAIM ARISING FROM PROFESSIONAL'S PERFORMANCE UNDER THIS CONTRACT. PROFESSIONAL'S DUTIES TO DEFEND AND INDEMNIFY ARE CONDITIONED UPON: THE CITY PROMPTLY NOTIFYING PROFESSIONAL IN WRITING OF THE INFRINGEMENT CLAIM; PROFESSIONAL HAVING SOLE CONTROL OF THE DEFENSE OF THE CLAIM/SUIT AND ALL NEGOTIATIONS FOR ITS SETTLEMENT OR COMPROMISE; AND THE CITY PROVIDING TO PROFESSIONAL COOPERATION AND, IF REQUESTED BY PROFESSIONAL, REASONABLE ASSISTANCE IN THE DEFENSE OF THE INFRINGEMENT CLAIM. IN ADDITION TO PROFESSIONAL'S OBLIGATION TO DEFEND, AND SUBJECT TO THE SAME CONDITIONS, PROFESSIONAL WILL PAY ALL DAMAGES FINALLY AWARDED AGAINST THE CITY BY A COURT OF COMPETENT JURISDICTION FOR AN INFRINGEMENT CLAIM OR AGREED TO, IN WRITING, BY PROFESSIONAL IN SETTLEMENT OF AN INFRINGEMENT CLAIM.

2.2. IF AN INFRINGEMENT CLAIM OCCURS, OR IN PROFESSIONAL'S OPINION IS LIKELY TO OCCUR, PROFESSIONAL SHALL, AT ITS EXPENSE: (A) PROCURE FOR THE CITY THE RIGHT TO CONTINUE USING THE PRODUCT; (B) REPLACE OR MODIFY THE PRODUCT SO THAT IT BECOMES NON-INFRINGEMENT WHILE PROVIDING FUNCTIONALLY EQUIVALENT PERFORMANCE; OR (C) ACCEPT THE RETURN OF THE PRODUCT AND GRANT THE CITY A CREDIT FOR THE PRODUCT, LESS A REASONABLE CHARGE FOR DEPRECIATION. THE DEPRECIATION AMOUNT WILL BE CALCULATED BASED UPON GENERALLY ACCEPTED ACCOUNTING STANDARDS. PROFESSIONAL WILL PROCEED UNDER SUBSECTION (C) ABOVE ONLY IF SUBSECTIONS (A) AND (B) PROVE TO BE COMMERCIALY UNREASONABLE.

VIII. Independent Contractor

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

IX. Assignment and Subletting

Professional 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. Professional 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 Professional from its full obligations to the City as provided by this Agreement.

X. Audits and Records

Professional agrees that at any time during normal business hours and as often as City may deem necessary, with reasonable notice in writing, Professional 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 three (3) years from the date of City's acceptance of the final Project, or for such other or longer period, if any, as may be required by applicable statute or other lawful requirement.

XI. Prohibited Interest

Professional 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 Professional shall execute the affidavit shown in Exhibit "D". Professional understands and agrees that the existence of a prohibited interest during the term of this Agreement will render the Agreement voidable.

XII. Contract Termination

The parties agree that City shall have the right to terminate this Agreement with or without cause upon sixty (60) days written notice to Professional. In the event of such termination, Professional shall deliver to City all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items prepared by Professional in connection with this Agreement. Professional shall be entitled to compensation for any and all work completed to the reasonable satisfaction of City in accordance with the provisions of this Agreement prior to termination.

XIII. Ownership of Documents

Upon termination of this Agreement, Professional shall transfer, assign and make available to City, or its representatives, all property and materials in its possession or control belonging to the City and paid for by the City. In the event that the material, which is the subject of this Agreement, is copyrightable subject matter, Professional and City agree that for the purposes of this order the material shall be a work made for hire and the property of the City. In the event that the material which is the subject of this Agreement is not copyrightable subject matter, or for any reason is determined not to be a work made for hire, then and in such event Professional hereby assigns all right, title and interest to said material to City for the fees specified herein.

XIV. Trade Secrets

In conducting business and in anticipation of conducting business with Professional it may be necessary for the City to share trade secrets and/or other confidential and/or proprietary information or matter with Professional. The parties agree that such information and the materials referenced in the Agreement, the results and developments there from are confidential and/or proprietary information belonging to the City. Professional agrees not to disclose to any third party any such trade secrets and/or confidential or proprietary information for its own separate benefit. Professional will be responsible for its employees or agents complying with the provisions of this Agreement.

XV. Complete Agreement

This Agreement, including the Exhibits lettered "A" through "D", 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

XVI. Mailing of Notices

Unless instructed otherwise in writing, Professional 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, Texas
Risk Management Department
Attn: Darrell Edwards
P.O. Box 860358
Plano, TX 75086-0358

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

Alternative Service Concepts, LLC
Attn: Tommie Biggers
5601 NW 72nd Street, Suite 100
Oklahoma City, OK 73132

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.

XVII. 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. Agreement Interpretation:

This is a negotiated Agreement, should any part be in dispute, the parties agree that the terms of 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 Professional 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.

**ALTERNATIVE SERVICE CONCEPTS,
LLC.**

DATE: _____

BY: _____

NAME: _____

TITLE: _____

CITY OF PLANO, TEXAS

DATE: _____

BY: _____

Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, City Attorney

ACKNOWLEDGMENTS

STATE OF _____ §

COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____,
20____, by _____, _____ of **ALTERNATIVE SERVICE CONCEPTS,
LLC.**, incorporated in the State of Delaware, on behalf of said Alternative Service Concepts,
LLC.

Notary Public, State of _____

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 20____, by **THOMAS H. MUEHLENBECK**, City Manager, of the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

Notary Public, State of Texas

SCOPE OF SERVICES FOR CLAIMS ADMINISTRATION

“ASC” AGREES:

1. (a) To review all claims and/or losses reported during the term of this Contract which involve Workers Compensation, Property & Casualty claims against “Client”.
- (b) To investigate, adjust, settle or resist all such losses and/or claims within the agreed discretionary settlement authority limit of Two Thousand Five Hundred Dollars (\$2,500.00) and in accordance with the client’s claims handling procedures a copy of which is attached to this contract (Attachment 2).
- (c) To investigate, adjust, settle or resist all such losses and/or claims as are in excess of the agreed discretionary settlement authority limit of Two Thousand Five Hundred Dollars (\$2,500.00) only with specific prior approval of “Client”.
- (d) To report excess claims to “Client’s” excess carrier only if “Client” fulfills its obligations under “Client Agrees” Section, 4c.
- (e) To comply with all state and federal reporting mandates on behalf of “Client”.
2. To furnish all claim forms necessary for proper claims administration.
3. To establish claim and/or loss files, paper files and database files, for each reported claim and/or loss. Such files shall be the exclusive property of “Client”. Such files are available for review by “Client” at any reasonable time, with notice.
4. To maintain adequate Automobile Liability, Errors and Omissions, Fidelity, General Liability, and Workers’ Compensation insurance coverage in accordance with currently published City of Plano Risk Department requirements.
6. To provide access to the STARS claims system for six (6) users at no additional cost. (Attachment 1)

“CLIENT” AGREES:

1. To make funds available for payment of claims and/or loss payments and for associated allocated expense within the discretionary settlement authority limit of Two Thousand Five Hundred Dollars (\$2,500.00) and for claim and/or loss payments in excess of the discretionary settlement authority limit of Two Thousand Five Hundred Dollars (\$2,500.00) with the prior approval of “Client”.
2. To pay “ASC” fees in accordance with the “Fee Schedule” contained in Exhibit B attached to this Contract.
3. To pay “ASC” in accordance with the Texas Prompt Payment Law.
4. (a) To pay all Allocated Loss Expenses in addition to the claim service fee to be paid to “ASC” as prescribed in this Contract.
(b) “Allocated Loss Expenses” shall include but not be limited to attorneys’ fees; experts’ fees (i.e. engineering, physicians, chemists, etc.); fees for independent medical examinations; witnesses’ fees; witnesses’ travel expenses; court reporters’ fees; transcript fees; the cost of obtaining public records; commercial photographers’ fees; automobile appraisal or property appraisal fees; medical cost containment services, such as utilization review, provider bill audit, preadmission authorization, hospital bill audit, and medical case management; all outside expense items; extraordinary travel expenses incurred by “ASC” at the request of “Client”; and any other similar fees, cost or expenses associated with the investigation, negotiation, settlement or defense of any claim hereunder or as required for the collection of subrogation on behalf of “Client”.
(c) To provide “ASC” with complete copies of all excess policies which apply to the claims reported during the Contract period.
5. To relinquish authority to “ASC” in all matters relating to claims service within the agreed discretionary settlement authority limit of Two Thousand Five Hundred Dollars (\$2,500.00).

“ASC” AND “CLIENT” MUTUALLY AGREE AS FOLLOWS:

1. The Contract term is 12 months from date of contract execution. This Contract may be terminated by either “ASC” or “Client” with cause by providing sixty (60) days’ prior written notice by certified mail.
 - (a) In the event that this Contract terminates or expires for any reason:
 - i. ASC will provide “Client” with a delimited text file of all tables in the STARS Systems no later than the end of the 60 day notice required in this section. The required medium shall be at the sole discretion of the “Client”.
 - ii. “Client” shall have the option to have ASC handle open files which have been reported for an additional fee at the then prevailing rates, or to have ASC return the files to the client.
2. This Contract covers Claim Service for “Client” in the United States of America.
3. Gross receipts tax or assessments in those states or jurisdictions where levied shall be in addition to the service fee.
4. In the event any one or more of the provisions of this Contract shall be determined to be invalid or unenforceable by any court or other appropriate authority, the remainder of this Contract shall continue in full force and effect, as if said invalid and unenforceable portion had not been included in this Contract.
5. This Contract shall be construed and interpreted in accordance with the laws of the state of Texas.
6. This Contract represents the entire understanding of “ASC” and “Client” and supersedes all prior oral and written communications between “ASC” and “Client” as to the subject matter. Neither this Contract nor any provisions of it may be amended, modified or waived except in writing signed by a duly authorized representative of “ASC” and “Client”.
7. The failure or delay of either “ASC” or “Client” to take action with respect to any failure of the other party to observe or perform any of the terms or provisions of this

Contract, or with respect to any default hereunder by such other party, shall not be construed as a waiver or operate as a waiver of any rights or remedies of either "ASC" or "Client" or operate to deprive either "ASC" or "Client" of its right to institute and maintain any action or proceeding which it may deem necessary to protect, assert or enforce any such rights or remedies.

8. To not employ a person who has been employed by the other party at any time during the term of this Contract, unless the person to be employed shall not have been employed by the other party during the immediately preceding six (6) months or unless the hiring party shall have the other party's prior written consent.
9. "Client" reserves the right of final approval of all staff assigned to the City under this contract. In the event that the performance of any such staff is not satisfactory, the City will submit a written statement to the ASC Account Manager requesting appropriate corrective action up to and including replacement. Upon request of replacement, ASC will have 30 days to comply in providing a staff member of similar skills, experience and capabilities, at the same fee structure.
10. During the term of this Contract, "Client" will store, at its expense, all claim files.

ATTACHMENT 1

STARS – CLAIM SYSTEM

System Access

ASC will provide the City of Plano read only access to STARSWeb for reporting/claim review. ASC will provide the City with 6 user IDs at no cost. Any additional IDs will be invoiced at \$30/per additional user/per month.

Input Capabilities

City of Plano would also like the ability for designated employees to report claims through our online reporting setup with QRM. ASC will have the City of Plano's custom loss reports available for use by their employees designated to report claims.

A URL link to our QRM (24/7 reporting tool) will be added to the STARSWeb home page. This will trigger a series of alerts and allow for proper claim protocol/handling procedures. ASC can also place a secured (logon required) link on the City's website.

Report Recreation

The STARSWeb claims system offers internet-based reporting via STARSWeb. STARSWeb users will have access to over 80 templates in the reports manager. The City of Plano will have the ability to add customized conditions, sorts, filters, alerts, define their output (i.e., download to Excel or other software), create graphs, etc.

Note: If the City would like ASC to re-create current Riskmaster reports that are not part of our standard reporting offering an hourly personnel rate may apply.

System Alerts

ASC will set up the proper ID security and new claim alerts through the My STARS home page. These notifications will be set up per id.

Time Needed

ASC shall complete the conversion no later than 120 days from date of execution.

Summary of Expected Costs - See Exhibit "B" Fee Schedule, Item #8

On-Line Check Register Data:

ASC AGREES:

1. To create a comma delimited file that, at a minimum, includes the file claim number, check date, department, payee, and amount.
2. That for workers' compensation claims, the payee name will be left blank.
3. To generate a transaction identification number for each file.
4. To transfer the files relating to the checks and the on-line check register from ASC to the City of Plano over a mutually agreed secure method.

Designated Printer for Check Printing:

ASC AGREES:

1. To provide a printer for printing checks and absorb the costs for the printer, its installation, printing supplies (ink, etc.) all support and maintenance associated with ensuring the City of Plano maintains the capacity to print checks from the STARS System.
2. To remedy any problems associated with the inability of the City of Plano to print from the supplied printer within 24 hours of notice of problem or malfunction.

Associate Accounting Procedures

ASC AGREES:

1. To prepare 1099s and the responsibility of remedying any 1099 errors, questioned items and to absorb the cost of penalties associated with 1099 reporting. ASC is not responsible for 1099's on transactions occurring prior to the effective date of this agreement.
2. To mail the City of Plano copies of all 1099s reported to the Internal Revenue Service and any other correspondence related to the City of Plano's account.

STARS System Training

ASC AGREES:

1. To provide, at no additional cost to the City of Plano, up to 8 hours of training to be conducted onsite at a facility designated by the City of Plano.
2. To provide, at no additional cost to the City of Plano, up to 12 hours of web-based training to be lead by a facilitator technically proficient in the use and functionality of the STARS System.
3. To provide unlimited telephonic support of the STARS System over the life of the contract.

ATTACHMENT 2

CITY OF PLANO

SPECIAL CLAIM HANDLING INSTRUCTIONS

Description of Business: Municipality - City

Policy Information

Excess Workers' Compensation – Midwest Employers - \$1,000,000 SIR
Excess Liability – St. Paul Fire & Marine - \$1,000,000 SIR
EMT Professional Liability – Western World Ins. - \$500 Deductible
Underground Storage Tank Liability – Illinois Insurance - \$10,000 Deductible

Contacts

City of Plano

Darrell Edwards, Risk Manager
P. O. Box 860358
Plano, TX 75086-0358
Office (972) 941-7303

Jim Miller, Risk Program Manager
P. O. Box 860358
Plano, TX 75086-0358
Office (972) 941-7129

Elsa Gonzales, Claims Coordinator
P. O. Box 860358
Plano, TX 75086-0358
Office (972) 941-7306

Arthur J. Gallagher

Nancy Sylvester, Vice President
235 Highlandia Dr, Suite 200
Baton Rouge, LA 70810
Office (225) 906-1219
nancy_sylvester@aig.com

Midwest Employers, Excess Carrier

Dan Sulzner, Client Manager
14755 North Outer Forty Drive
Suite 300
Chesterfield, MO 63017
Office (636) 449-7157
dsulzner@mwecc.com

Illinois Union Insurance
580 Walnut Street
Cincinnati, OH 45202
Office (513) 369-5000

Western World Insurance
400 Parson's Pond Dr.
Franklin Lakes, NA 07417

St. Paul Fire & Marine Insurance

2700 NE Loop 410 Ste. 105
San Antonio, TX 78265

SECTION 1 – WORKERS COMPENSATION

I. Reporting Losses

First Reports of Injury (DWC-1) will be provided by the City's Claim Rep, directly to the claims adjuster. Claim files will be set up before the end of the next business day following receipt of the Employer's First Report of Injury by the TPA's claims assistant. If all information is not available, the City Claims Rep will submit the available information and follow-up with the department for the additional information. This information will then be forwarded to the TPA.

II. Claim Investigation, Set Up and Processing

- a. Initial claim investigations will be performed in accordance with Industry's Best Practices, and in compliance with provisions as specified in the Contract and applicable supplements (including on-site investigations) to provide the complete and necessary information to reserve and adjust all claims. The adjuster will respond to the hospital if an employee is in the ER or admitted for any injury, exposure or condition regardless of the status of the claim.
- b. The City's Claims Rep will track and verify all claims assignments to the TPA. A weekly assignment log will be maintained by the TPA.
- c. All files will be created within one (1) working day, and reserved within two (2) working days, of receipt of the Employer's First Report of Injury (DWC 1). All reports will be set up as claims and classified under the following claim types:

Medical Only – minor treatment not to exceed \$2,500.00 total incurred.

Indemnity – more than 7 days of lost time and treatment that generates bills and/or medical incurred costs that exceed \$2,500.00.

- d. The adjuster will answer all questions related to the particular claim that the employee may have and then document the file notes with all questions and answers provided.
- e. Diaries will be established, monitored, and maintained, so that every open claim is reviewed, and claimant contact is made at least once every 30 days by the adjuster. Confirmation of every Adjuster's claim review and claimant contact must be documented in the claim file's "Adjuster's Notes" section/notepad. All notes will be maintained and addressed on the same business day or within 24 hours of receipt, with the exception of weekends. Claims occurring over a weekend or long holiday must be documented on the first scheduled workday. Claims that remain open for medical maintenance benefits only may be set on a diary not to exceed 90 days. If active medical treatment resumes, the diary span will return to 30 days.

A Supervisory file review will occur at least once every 30 days on all open indemnity claims, claims open for more than 60 days and 25% of all other claims, and will document the review of reserves, benefit management, medical and/or case management (telephonic or field), and the Adjuster's action plan. Supervisory claim reviews will be clearly documented in the claim file's Adjuster Notes (notepad) section, identifying the supervisor, comments, and or instructions to the Adjuster. Supervisor will also review all vendor reports authorizing surgical procedures.

- f. Payments will be made promptly.
- Uncontroverted Indemnity – as required by law.
 - Uncontroverted Medical – within forty-five (45) days of receipt.
- g. All medical treatment and hospital bills/charges are to be reviewed by the Adjuster for verification of relation to the originally reported injury. Following the Adjuster's review, the claims coordinator will make copies of the bills for files and mail all original bills/records to be audited to:

MCMC
P.O. Box 291587
Nashville, TN 37217

Once MCMC has audited the bill, they will return the bill and Explanation of Review to the ASC office for payment. .

Requests for Pre-Authorization or Pre-Certification, are to be sent directly to:

Speciality Health
330 E. Liberty Street, Suite 200
Reno, NV 889501-2221
P (775) 329-6200
F (775) 329-6221

- h. Copies of correspondence between the Adjuster and doctors, claimants, attorneys, rehabilitation counselors, case managers, investigators, and state agencies, must be documented immediately in the Adjuster's Notes/notepad, and hard copies kept in the claim file. Immediate shall mean all notes will be maintained and addressed on the same business day or within 24 hours of receipt, with the exception of weekends & holidays. Claims occurring over a weekend or holiday must be documented on the first scheduled workday.
- i. Every claim should be immediately evaluated for possible subrogation potential. All claims involving potential subrogation should be brought to the attention of the Claims Coordinator, and cc'd to Risk Manager. **No subrogation recovery less than 100% of the loss should be accepted without express authority from the City of Plano's Risk Manager or designee.** All claims will be reviewed for possible subrogation.

- j. Prior to the assignment of surveillance or other outside investigators, the Adjuster shall seek **express authority from** City of Plano's Claims Coordinator which will in turn get authorization from the Risk Manager before surveillance is approved.
- k. Refer all WC cases to Brandi Prejean with Thornton, Biechlin, Segrato, Reynolds & Guerra (DWC Rep) at (512) 329-6666 and ensure that each claim is brought to the attention of Paige Mims, Assistant City Attorney (972) 941-5235.
- l. The City's WC Adjuster and a City of Plano representative will attend all BRC's and CCH's and other proceedings. The Adjuster will arrive with the entire claim file and all pertinent information. The Adjuster will notify the Claims Coordinator and the Risk Manager of all hearings. A summary report will also be provided to the Claims Coordinator and Risk Manager.
- m. Upon written notice of claim, a three-point contact must be made and a complete investigation of **all** claims must be initiated within **24** hours. All conversations must be documented and summarized in the Adjuster's Notes/notepad immediately. The three points of contact will include contact with the Claims Coordinator, the Claimant and the doctor's office. The investigation will include a site visit, documentation and pictures if applicable.
- n. Initial phone contact with an injured employee or claimant will be accomplished or attempted within 24 hours of receipt of notification of the claim. This will include any notification received after hours by a City of Plano staff member. Employee nonparticipation with initial contact will not impede follow through of the claims process to ensure compliance of the DWC law. The adjuster must document in the file notes all attempts to make contact. If the adjuster continues to have a problem making contact the employees' supervisor or the Claims Coordinator, should be contacted for assistance.
- o. Upon contact with the claimant, the Adjuster will document the description of injury as provided by the employee or claimant, and obtain appropriate past medical history.
- p. All attempts to contact the injured employee or claimant will be documented in the Adjuster's Notes/notepad section of the electronic claim file record.
- q. Initial claimant contact should include, but not be limited to the following:
 - A description of the Adjuster's function
 - Confirmation of the accident/injury function
 - Securing of information relative to prior injuries, accidents, or related medical conditions involving the same body parts
 - Confirmation of alternative contact phone numbers and/or addresses for the claimant
 - Any information which may be relative to the liability of a third party
- r. Audio recorded statements of the injured employee or claimant must be secured on all claims, to memorialize accident facts and affected body parts on all

indemnity and major or questionable medical claims. Written statements will be secured on all other claims. Incident only claims do not require a recorded statement unless they subsequently result in medical treatment.

- s. City's Workers' Compensation Adjuster must maintain telephone or personal contact with all temporarily disabled employees, their supervisor, or other designated persons, no less frequently than once a week, to maintain rapport, monitor medical progress, and keep abreast of the employee's return to work status and/or modified duties. Confirmation of the weekly contacts must be reflected in the Adjuster's claim file notes at all times.
- t. An Injured Employee, prior to and immediately following Surgical/Hospitalization, will be contacted upon the Claims Adjuster receiving knowledge of the procedure.
- u. **All** claims must be indexed with the Central Index Bureau when the claim is initially set-up, and **every year thereafter (until closure)**, or more frequently if facts of the claim warrant. A copy of every index filing will be kept in the claim file, and documented in the Adjuster's Notes/notepad..

III. File Documentation/Claim File Notes

All indemnity files will contain reserve worksheets, which explain how the current reserves are calculated. A copy of the reserve worksheet will be placed in the file. Reserve worksheets are mandatory on any reportable claim, or request for authority.

All file activity, including telephone conversations and/or personal meetings, and diary reviews will be immediately and clearly documented in the claim file Adjuster's Notes/notepad. This documentation will include a minimum of the individuals involved, dates, content of discussions, and the Adjuster's plan of action.

Supervisory review of every open claim file should be clearly noted in the file notes/notepad at least once every **30** days.

Specific direction on the investigation and handling of all indemnity claims will be established within three **(3) working days** of receipt of the initial report and clearly documented in the file notepad.

The Adjuster's basis for acceptance or denial of compensability will be clearly documented in the Adjuster's Notes/notepad. The Claims Coordinator and Risk Manager must be notified immediately, prior to employee notification, upon the decision to deny a claim or treatment. The adjuster must contact the employee by phone to notify the employee about a denial of a claim or treatment.

The TPA will conduct annual internal audits, or quality control procedures, these audits will be continuously maintained in a central file set up specifically for internal audit results.

Claims adjuster can request a Peer Review, RME, or DD anytime.

Claims adjuster will secure a DWC 69 (Maximum Medical Improvement form) on all claims except minimal first aid claims.

IV. Claim Denial/Delay

Delays will be sent in accordance with State regulations.

A hard copy of any PLN forms must be forwarded to the Claims Coordinator at the time of creation and filing. Forwarding via email or electronic medium is acceptable. A copy of the first and the final draft/check for indemnity payments will be sent to the Claims Coordinator.

V. Claim Administration

Each file will contain a **complete** written chronology of all actions taken within the Adjuster's Notes/notepad section of the electronic claim record of any City Claim.

This shall include full documentation of information gained during the three-point contact, initial investigation, and documentation of settlement or other authority extended by the City or any other information pertaining to this claim.

Documentation in the Adjuster's Notes/notepad shall also include notes and actions taken regarding hearings, conversations with attorneys, and summaries of medical reports.

The Adjuster must closely monitor and record all litigation activity and maintain litigation files using the Riskmaster Litigation Module.

The Adjuster will administer, monitor, and control, within the jurisdiction of the Labor Code, all cost containment programs established, or approved by the City.

VI. Reserving

The Adjuster will advise the City immediately of any claim requiring an aggregate reserve of **\$25,000 or more** on Workers Compensation, via e-mail, with documentation entered in the Adjuster's Notes/notepad.

The Adjuster will advise the Risk Manager of any claim requiring a subsequent aggregate reserve of **\$50,000 or more (on any claim)** via email, with documentation entered in the Adjuster's Notes/notepad.

The Adjuster will advise the Risk Manager of any change in reserves for all indemnity claims with a total incurred in excess of \$25,000.00.

Reserves will be estimated and maintained on the basis of most probable final cost.

With the exception of Medical Only claims, reserve worksheets will be completed for all initial and revised incurred loss estimates, and a copy sent to the Risk Manager.

Reserve worksheets will be standardized among all City WC claim files, and will contain separate categories for indemnity, medical, and allocated expenses. Major subcategories of each shall be included. All worksheets must explain how current reserves were calculated.

Reserves must be evaluated at least once every 60 days, and documented in the Adjuster's Notes/notepad. If reserves are adjusted, a reserve worksheet will be completed and filed.

VII. Settlement Authority/Liability

Settlement Authority: For authority in excess of **\$2,500**, the Adjuster will submit a written Request for Authority to the City of Plano, explaining the request and include copies of any pertinent medical and/or legal documents. The City must be notified of any payment of \$25,000 or more prior to payment.

VIII. Claim Payments

City of Plano will issue all checks.

Stop Pay Procedure:

The Adjuster must contact the City of Plano Claims Coordinator and request the stop pay. The Claims Coordinator will send the Adjuster a confirmation of the stop pay. Once the Adjuster receives the confirmation, they must then void the check in the claim system.

IX. Vendors

The City reserves the right to require and designate any attorneys, medical groups, vocational rehabilitation vendors and other professionals and experts.

X. Claim Reporting to the insured

All claims must be reported via Captioned Report when the incurred reserve reaches 50% of the City's SIR/deductible. (Reference Section I)

Claims involving the following injuries must be reported to the City's Broker, Arthur J. Gallagher and City Risk Manager immediately following notice of claim required by excess carrier (Exhibit A)

- Spinal cord injury
- Amputations
- Brain damage
- Blindness
- Head injuries requiring hospitalization
- Serious burns

- Multiple fractures involving more than 1 limb or non union, brachial plexus nerve damage (nerve damage causing paralysis and loss of sensation in arm and hand)
- Massive internal injuries affecting body organs
- Fatalities
- Suits naming the City, City staff, or TPA as a defendant
- Any suit involving Punitive Damage or Bad Coverage Questions
- Any claim at or expected to exceed 50% of the retention (\$150,000 or above)
- Any disability which might exceed more than one year

XI. Claim Reviews

The City of Plano will audit any or all open files on a minimum of a quarterly basis.

TPA shall, to the extent permissible under applicable law, make available to representatives of the City of Plano for examination all of its records with respect to all matters covered by this Agreement, and will, to the extent permissible under applicable law, permit such representatives of the City of Plano 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 three (3) years from the date of City's acceptance of the final Services, or for such other or longer period, if any, as may be required by applicable statute or other lawful requirement.

Where possible, the City of Plano will provide advance notice to the TPA and a list of the claim files that will be audited.

XII. Report of Special Contact

If any governmental agency, broker, attorney, or agent, contacts the TPA/Adjuster for any reason, with respect to any claim, except for ordinary, customary contact, not in the nature of a complaint; the TPA/Adjuster must notify the City of Plano's Risk Manager. The City will then notify the Public Information department and any other City officials.

XIII. Allocated Loss Expense

The City reserves the right to monitor and/or audit all allocated expense fund usage. Each allocated expense will be designated to a specific allocation listed below. The following shall be paid as allocated loss expense except where specifically precluded by the Labor Code or State Regulations:

- Medical-Legal examinations of claimants, including transportation
- Reports from attending or examining physicians on disputed medical claims
- Attorneys' fees and disbursements
- Court Reporter Services and Transcripts

- Witness Fees
- Court Costs
- Appeal Bonds
- Printing Costs related to Trials & Appeals
- Testimony, opinions, appraisals, reports surveys & analyses of Professionals and Experts
- Trial and Hearing Attendance Fees
- Reports from Government Agencies or Branches
- Credit Bureau Reports
- Central Index Bureau
- Private Investigators
- Photographs
- Medical Cost Containment Services, including Utilization Review, Pre-Admission authorization, hospital bill audits, provider bill audit and medical case management, in each case incurred at the request of the City
- Extraordinary claim investigation and/or travel expense incurred at the request of the insurer
- Any similar service related to the investigation and defense of a particular claim
- Photocopy Services

XIV. Charges for Allocated Loss Expenses

Allocated loss expense shall not exceed the usual and customary local charges, and no payments for any such expenses shall be made to the TPA, or any of its affiliates, without prior authority from the City. With the exception of recurring monthly administrative charges, no allocated expenses, by category or vendor, shall individually or collectively exceed \$2,500 without the express consent of the Risk Manager.

XV. Computer Reports

The adjuster must complete all applicable fields in any claim administration software system approved by the City of Plano so that useful reports can be run. The TPA will obtain monthly reports from any allocated expense provider, as required by the City for any work performed by them.

XVIII. IRS Reporting

The City of Plano will furnish all 1099 payments required by IRS.

XIX. Forms, Data and Reporting

TPA agrees to furnish claim forms, posting notices, and data as may be necessary for proper claims administration, and index bureau and state reporting, as set forth in the Contract.

XX. Education and Training

TPA will provide to the City of Plano, pertinent information pertaining to developments in the Workers' Compensation field, including legislative updates and statutory developments/changes, as same occur, or become effective.

Additionally, TPA will participate in the education and training for the City of Plano's Risk Management staff as needed. Training is generally tailored for a specific need in terms of format and can include topics such as:

- Reporting Requirements
- Stress Claims
- Legal Claims
- Fraud
- Supervisor Reporting
- Medical Management
- Integrated Disability Management

XXII. Penalties

The TPA will be held responsible for any and all penalties assessed to the City or the TPA directly if the penalties occur due to the claims handling process. The TPA will also be held responsible for any loss the City has due to overpayment or excessive treatment due to a lack of Claims Management.

XXIII. Medical Management

The City of Plano will utilize designated vendors for bill review, pre-authorization, and/or medical case management services. Any other referrals will be handled on a case-by-case basis, and require the prior approval of the City.

All claims involving; soft tissue injuries still actively treating in excess of 12 weeks, occupational illness/disease, serious injuries, hospitalizations exceeding 48 hours, and/or questionable or potential for denial claims, should be reported to a City designated specialist for their review and/or recommendation. Any concerns on the part of the Adjuster as to which claims for review, should be directed to the Claims Coordinator or Risk Manager.

XXIV. Return To Work Program

All City of Plano locations participate in a return to work program. The City's Claim Coordinator will provide written bona-fide offers of light or modified duty to the City employee, with a copy to the WC Adjuster.

The Adjuster is responsible for documenting such offers in the Adjuster's Notes/notepad section of the electronic claim record, in addition to reporting on future activity relating to return to work, and subsequent status reports.

XXV. Data Integrity

The Adjuster/TPA is responsible for completing all fields in the Riskmaster system. They are to continually monitor and update the records as information becomes available if not in the initial claim report.

Adjuster/TPA will respond in writing before the end of the next business day, to any written notice from the City, or any City designee, regarding errors discovered in the electronic claim record; including coding, content, facts, and/or financial or reserve records.

The Adjuster/TPA will advise in writing as to the date by which such reported errors will be investigated, and subsequently corrected, modified, or deleted, as necessary.

SECTION 2 – LIABILITY SECTION

All Workers Compensation Guidelines also apply to Liability unless otherwise specified below or in the event that the guideline is not applicable.

I. Claim Investigation, Set Up and Processing

Initial claim investigations will be performed in accordance with Industry's Best Practices, and in compliance with provisions as specified in the Contract and applicable supplements (including on-site investigations) to provide the complete and necessary information to reserve and adjust all claims.

A daily assignment log will be maintained by both the TPA and verified by the Claims Rep.

All files will be created before the end of the next working day, and reserved within two (2) working days.

Diaries will be established, monitored, and maintained. All claimant contact must be documented in the file accordingly.

A Supervisory file review will occur at least once every 30 days and will document the review

Payments will be made promptly.

Copies of correspondence between the Adjuster and doctors, claimants, attorneys, rehabilitation counselors, case managers, investigators, and state agencies, must be documented immediately in the Adjuster's Notes/notepad, and hard copies kept in the claim file. Immediate shall mean all notes will be maintained and addressed on the same business day or within 24 hours of receipt.

Every claim should be immediately evaluated for possible subrogation potential. All claims involving potential subrogation should be brought to the attention of the

Adjuster, and cc'd to Claims Coordinator and Risk Manager. **No subrogation recovery less than 100% of the loss should be accepted without express authority from the** City of Plano's Risk Manager or designee. All claims will be reviewed for possible subrogation and the reasoning will be documented.

All claims requiring a referral to defense counsel will be submitted to the Claims Coordinator for forwarding to the City Attorney's Office.

All attempts to contact the claimant will be documented in the Adjuster's Notes/notepad section of the electronic claim file record.

Initial claimant contact should include, but not be limited to the following:

- A description of the Adjuster's function
- Confirmation of alternative contact phone numbers and/or addresses for the claimant
- Any information which may be relative to the liability of a third party

The adjuster will attend all appeals for denial of a claim or other claim related issues before the COP Risk Management Steering committee. The adjuster will be responsible for preparing and presenting a formal presentation to the committee.

II. File Documentation/Claim File Notes

All files will contain reserve worksheets, which explain how the current reserves are calculated. A copy of the reserve worksheet will be placed in the file. Reserve worksheets are mandatory on any reportable claim, or request for authority.

All file activity, including telephone conversations and/or personal meetings, and diary reviews will be immediately and clearly documented in the claim file Adjuster's Notes/notepad. This documentation will include a minimum of the individuals involved, dates, content of discussions, and the Adjuster's plan of action.

Supervisory review of every open claim file should be clearly noted in the file notes/notepad at least once every **30** days.

Specific direction on the investigation and handling of all claims will be established within three **(3) working days** of receipt of the initial report and clearly documented in the file notepad.

The TPA will conduct quarterly internal audits, or quality control procedures, these audits will be continuously maintained in a central file set up specifically for internal audit results.

III. Reserving

The Adjuster will advise the Risk Manager of any claim requiring a subsequent aggregate reserve of **\$50,000 or more** via email, with documentation entered in the Adjuster's Notes/notepad.

IV. Settlement Authority/Liability

Settlement Authority: For Auto & General Liability in excess of **\$2,500**, the Adjuster will submit a written Request for Authority to the Risk Manager, explaining the request and include copies of any pertinent medical and/or legal documents. The City must be notified of any payment of \$25,000 or more prior to payment.

No checks will be issued to the claimant without a full release signed, notarized and dated by the claimant, unless specifically approved by the Risk Manager.

There will be no third party payments made to vendors. All payments will be made directly to the claimant unless approved by the Risk Manager.

V. Claim Reporting to the insured

On all Liability claims with reserves in excess of \$5,000.00, a Claims Status Report (CSR) will be sent to the Risk Manager by the 10th of each month.

Copies of Claim Status Reports must be maintained in the original claim file.

All claims must be reported via Captioned Report when the incurred reserve reaches 50% of the City's SIR/deductible. (Reference Section I)

Claims involving the following injuries must be reported to the City's current Broker of Record and City Risk Manager immediately following notice of claim required by excess carrier (Exhibit A)

See section XII of the Workers Compensation section for the injuries.

VI. Subrogation Claims

- a. The department supervisor or manager completes a Risk Management Report of Incident (Risk Report) and emails to "riskreports@plano.gov (original sent interoffice)
- b. TPA's claims assistant will enter into the Riskmaster system. All fields that can be filled out must be completed.
- c. TPA's claims assistant will forward claim to adjuster for further handling
- d. The adjuster must determine at this point if an investigation is needed. All potential subrogation claims or personal property liability claims must be investigated. The extent of the investigation may vary depending on the type of claim.
- e. If subrogation is an option, the insurance company needs to be put on notice of a claim immediately upon determining that a 3rd party is responsible for the damage.
- f. If subrogation is an option, then a demand letter must be sent within 2 business days from receiving the subrogation amount.
- g. If within 30 days of the receipt of the original Risk Report, the adjuster has not received cost of damages from department (for Property Damage claims), the adjuster will contact the appropriate department manager or supervisor, and request the information.
- h. The assigned adjuster will follow-up with the department again, if the cost information for a Property Damage claim has not been received within 45 days.

- i. The assigned adjuster will advise the Claims Rep when cost information for a Property Damage claim has not been received within 60 days, and the Claims Rep will take the necessary steps in order to secure the required information from the department head, manager, or supervisor.
- j. When final costs are determined, the assigned adjuster will immediately issue a demand letter to the responsible third party, or their insurance carrier, and diary their file for a 30-day follow-up.
- k. Assigned adjuster will request a loss fund transfer from the Claims Coordinator
- l. Adjuster will give Claims Coordinator loss fund transfers to review and approve.
- m. If recovery is still outstanding at the 30-day mark from the first demand letter, the assigned adjuster will send a second demand letter, and diary their file for another 30-day follow-up.
- n. After the second letter to the responsible third party, with no response, the assigned adjuster will review file with the Claims Rep. Any file under \$500 will be reviewed by Risk Manager before referring the file to the City's Legal Department (property only).
- o. When Claims Rep receives a recovery check from the third party, a receipt will be processed, with the white copy and copy of check going to the assigned adjuster
- p. Claims Rep will enter the collection in Riskmaster and the pink copy with the original check attached will be forwarded to Accounting.
- q. The Claims Coordinator and the assigned adjuster will follow-up with Legal on a quarterly basis, until final resolution of the referred file is known, and appropriate entries have been made into the claim database records.

EXHIBIT B
FEE SCHEDULE
CITY OF PLANO, TEXAS
Twelve Month Period
From date of Contract Execution

Total Claim Service Fee	\$333,860.00
System Conversion One-Time Fee	20,000.00
MMSEA Reporting One-Time Setup Fee	727.22
MMSEA Reporting Annual Fee	1,920.00
Total	\$356,507.22

“Client” agrees to pay ASC:

1) Total Claim Service Fee: a flat fee of Three Hundred Fifty-six Thousand, Five Hundred and Seven Dollars, and twenty-two cents (\$356,507.22) for the administration of the Workers’ Compensation, Property & Casualty claims that are reported to “ASC” for the period of twelve months from date of contract execution; payment to be made in quarterly installments in arrears. ASC shall assign one claims supervisor and one claims adjuster, both licensed to adjust all lines of insurance claims in the State of Texas and one claims assistant residing at “Client’s” office to administer City of Plano Workers’ Compensation, and Property & Casualty claims in accordance with “Client’s” claim handling instructions.

ASC shall require the following level of experience from their employees working on City of Plano claims:

One (1) Claims Supervisor

- minimum of 10 years experience handling Texas claims;
- current multi-line Texas adjuster license

One (1) Claims Adjuster

- minimum of 3 years experience handling Texas Workers’ Compensation Claims
- current multi-line Texas Adjuster license, or the ability to obtain such license within six (6) months of assignment to “Client’s” account.

One (1) Claims Assistant

- minimum of 3 years experience in the clerical field

One (1) Account Manager (Assistant Vice President)

- minimum of 15 years experience in the insurance claims industry including supervisor and management experience.

2) System Conversion One-Time Fee: a one-time fee of Twenty Thousand Dollars (\$20,000.00) for the conversion of City of Plano data from their current claim system to STARS;

3) MMSEA Reporting One-Time Setup Fee: a one-time fee of Seven Hundred and Twenty-Seven Dollars, and twenty-two cents (\$727.22) for setup of City of Plano claims in preparation for reporting to the Centers for Medicare and Medicaid Services under the Section 111 of the Medicare, Medicaid & SCHIP Extensions Act (MMSEA);

4) MMSEA Reporting Annual Fee: an annual reporting fee (MMSEA) of One Thousand Nine Hundred Twenty Dollars (\$1,920.00).

ASC will administer litigated claims (caseload not to exceed 25 claims) as needed from the Oklahoma City office. ASC will pay mileage reimbursement to one adjuster in the form of a monthly car allowance, and ASC will pay for reasonable ASC travel expenses. ASC will provide said service for the fees listed above, based on the following assumptions:

5) Miscellaneous Expenses – Paid by City of Plano:

- Rent & Utilities
- Storage
- Basic Phone
- Long Distance
- Network Communications
- Mail/Courier
- Customary Office Supplies
- Office Furnishings (desk, computer, cell phone)
- Printing
- Copier/Fax/

6) Allocated Loss Expenses:

Allocated expenses will be charged to the claim file, payable as invoices are received, include fees for:

- Legal services
- State-mandated EDI
- Court reporters
- Expert witness statements
- Official documents and transcripts
- Experts' / rehabilitation services
- Subrogation collection cost payable to third party
- Medical records
- IMEs, MRIs, etc.
- Managed care
- Medical bill review
- Index Bureau Reporting
- Surveillance
- Any other expense requiring client approval

7) Medical Cost Management¹

Fee Scheduling	\$15.00 Per Bill
PPO Usage and other Non-Fee Schedule Savings.....	28% of Savings
Field Medical Case Management.....	\$75 Per Hour

8) STARS Costs:

STARS Web Additional User Access (6 included no charge).....	\$30.00 Per User
.....	Per month
One-time data conversion to STARS	\$see above
Report Recreation	\$125.00 per hour

Disclosure of Third Party Agreements:

¹Medical Bill Review Services – MCMC,LLC (medical bill review services)
Claims System – CS Stars
EDI Transmission to the State of Texas on FROI/SROI – Peak Performance

¹ Pricing for additional managed care services is available from ASC upon request.

City of Plano
Insurance Requirements

Requirements

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

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

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

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

Questions regarding this insurance should be directed to the City of Plano Purchasing Department,
 Glenna Hayes at (972) 941-7539.

A PURCHASE ORDER WILL NOT BE ISSUED WITHOUT EVIDENCE OF INSURANCE.

PRODUCER 877-945-7378 Willis HRH 26 Century Blvd. P. O. Box 305191 Nashville, TN 372305191	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
INSURED Alternative Service Concepts LLC 1101 Kermit Drive Suite 800 Nashville, TN 37217	
INSURERS AFFORDING COVERAGE	NAIC#
INSURER A: <u>Hartford Underwriters Insurance Company</u>	30104-003
INSURER B: <u>Sentinel Insurance Company, Ltd.</u>	11000-001
INSURER C: <u>Hartford Casualty Insurance Company</u>	29424-000
INSURER D: <u>Hartford Insurance Companies</u>	29424-076
INSURER E: <u>American International Specialty Lines In</u>	26883-003

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

Crime Coverage
 Carrier: Navigators Insurance Company
 NAIC: 42307
 Policy Number: NY09CCCN00500NV
 Effective Dates: 3/10/2009 - 03/10/2010
 \$250,000 Limit
 \$ 25,000 Deductible Per Loss

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

This Certificate of Insurance does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

AFFIDAVIT OF NO PROHIBITED INTEREST

I, the undersigned declare and affirm that no person or officer of _____
_____ (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 Contractor

By: _____
Signature

Print Name _____

Title

Date

STATE OF _____ §

COUNTY OF _____ §

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 200_____.

Notary



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		1/25/10		
Department:		Finance		
Department Head		Denise Tacke		
Agenda Coordinator (include phone #): Katherine Crumbley - ext. 7479				
CAPTION				
A Resolution of the City Council of the City of Plano, Texas approving the terms and conditions of a Second Amended Real and Business Personal Property Tax Abatement Agreement by and between the City of Plano, Texas and Diodes Incorporated, a Delaware corporation; authorizing its execution by the City Manager or his 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: 2009-2010	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: The real property is estimated to have an approximate taxable value of not less \$5,500,000 and the business personal property having a taxable value of not less than \$2,000,000. The proposed tax abatement on the improvements will begin January 1, 2013 and continue through December 31,2022, and will be equal to 50% for ten (10) years.				
SUMMARY OF ITEM				
This is related to Diodes Incorporated, a Delaware Corporation, amended request for tax abatement on reinvestment zone 114. This amendment modifies the periods of performance by two years.				
List of Supporting Documents: Amended Tax Abatement Agreement			Other Departments, Boards, Commissions or Agencies	

A Resolution of the City Council of the City of Plano, Texas approving the terms and conditions of a Second Amended Real and Business Personal Property Tax Abatement Agreement by and between the City of Plano, Texas and Diodes Incorporated, a Delaware corporation; authorizing its execution by the City Manager or his designee; and providing an effective date.

WHEREAS, the City Council approved a Tax Abatement Agreement with Diodes Incorporated, Inc., a Delaware Corporation, on June 9, 2008 with the passage of Resolution No. 2008-6-10(R); and

WHEREAS, before the commencement date of the Original Agreement, Owner requested an amendment to the Original Agreement, which requested amendment was approved by the City Council on February 17, 2009 with the passage of Resolution No. 2009-2-5(R); and

WHEREAS, because of the continued downturn in the economy, the Owner requests that the Original Agreement as amended be further amended to extend the date of occupancy by two additional years and to adjust the term and other requirements of the abatement accordingly; 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 of the Second Amended Agreement should be approved, and that the City Manager, or his designee, shall be authorized to execute it on behalf of the City of Plano.

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

Section I. The terms and conditions of the Second Amended Agreement, attached hereto as Exhibit "A", having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things approved.

Section II. The City Manager, or his designee, is hereby authorized to execute the Second Amended Agreement and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreement.

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

DULY PASSED AND APPROVED this the 25th day of January, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

THE STATE OF TEXAS §
 §
COUNTY OF COLLIN §

**TAX ABATEMENT AGREEMENT
(SECOND AMENDED)**

This Second Amended Agreement (“Agreement”) is entered into by and between the City of Plano, Texas, a home rule municipal corporation of Collin and Denton Counties, Texas, duly acting herein by and through its City Manager, hereinafter referred to as “**City**” and Diodes Incorporated, a Delaware corporation, duly acting by and through its officers, hereinafter “**Owner**.”

WITNESSETH:

WHEREAS, on the 9th day of June, 2008, the City Council of the City of Plano, Texas, passed Ordinance No. 2008-6-9 establishing Reinvestment Zone No. 114, for commercial/industrial tax abatement, hereinafter referred to as the “Ordinance,” as authorized by V.T.C.A. Tax Code, Chapter 312.001, et seq., cited as the Property Redevelopment and Tax Abatement Act, hereinafter referred to as “Act”; and

WHEREAS, on June 9, 2008, the City Council approved a tax abatement agreement (“Original Agreement”) for the Owner; and

WHEREAS, before the commencement date of the Original Agreement, Owner requested an amendment to the Original Agreement, which requested amendment was approved by the City Council on February 17, 2009; and

WHEREAS, because of the downturn in the economy, the Owner requests that the Original Agreement as amended be further amended to extend the date of occupancy until December 31, 2012 and to adjust the term of the abatement accordingly.

NOW THEREFORE, the parties hereto do mutually agree to amend the Original Agreement (as amended) to read in its entirety as follows:

1. The real property subject to this Agreement is described by metes and bounds in **EXHIBIT “A”** (the “Real Property”) and the Improvements as shown on **EXHIBIT “B”** thereon (the “Development”) attached hereto and made a part hereof.
2. The tangible personal property subject to this Agreement shall be personal property, excluding inventory and supplies, used within Reinvestment Zone No.114, which shall be hereinafter referred to as the “Personalty.” The Personalty will have an approximate investment value of **Two Million Dollars (\$2,000,000)** and is or will be owned by the Owner and/or their affiliates. Owner shall timely render their personal property value each year to the Central Appraisal District.

3. Owner may not relocate, for purposes of maintaining taxable situs of tangible personal property, the Personalty on the Real Property in other Reinvestment Zones in the City.

JOBS

4. The Owner estimates the proposed development of the Real Property as shown in **EXHIBIT "B"** (the "Development") will result in not less than 30 full-time jobs at the Development when the new office building is completed and increased to a total of not less than 110 full-time jobs by December 31, 2015.

IMPROVEMENTS

5. The Owner shall complete construction of improvements and/or repairs to the Real Property (hereinafter referred to as Improvements) consisting primarily of new buildings consisting of a total of not less than 40,000 gross square feet of office space with an initial expenditure of not less than **Five Million Five Hundred Thousand Dollars (\$5,500,000)** on or before December 31, 2012 provided that Owner shall have such additional time to complete the Improvements as may be required in the event of "force majeure," if Owner is diligently and faithfully pursuing the completion of the Improvements, or if in the reasonable opinion of the City, the Owner has made substantial progress toward completion of the initial phase of the Improvements. For this purpose, "force majeure" shall mean any contingency or cause beyond the reasonable control of Owner including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, governmental or de facto governmental action (unless caused by acts or omissions of Owner), fire, shortages of material and/or labor, explosion or flood, and labor disturbances. The date of completion of the Improvements shall be defined as the date a Certificate of Occupancy is issued by the City of Plano.

6. The Owner agrees and covenants that they will diligently and faithfully in a good and workmanlike manner pursue the substantial completion of the Improvements as a good and valuable consideration of this Agreement. Owner further covenants and agrees that all construction of the Improvements will be in accordance with all applicable federal, state and local laws and regulations or valid waiver thereof.

7. The Owner agrees and covenants that they shall occupy not less than 40,000 gross square feet of office space on the Real Property and employ thereon at least 30 full time jobs at time of occupancy and a total of not less than 110 full time jobs by December 31, 2015, referred to herein as the "Purposes."

DEFAULT

8. Any of the following events shall be deemed a breach of this agreement resulting in default:

- (a) The Improvements are not completed in accordance with this Agreement;

(b) Owner allows their real or personal property taxes owed the City on the Real Property, Improvements, or Personalty to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of any such ad valorem taxes;

(c) Owner fails to occupy the Improvements for the Purposes set forth in paragraph 7 above on or before December 31, 2012 or

(d) The initial investment value of the Improvements to Real Property and the initial investment value of Personalty placed on the improved Real Property on or before December 31, 2012 and maintained on the Real Property during the term of this Agreement is less than the minimum amounts set forth in paragraphs 2 and 5 above; or

(e) Owner fails to employ at least 75% of their employee commitments on or before December 31, 2012 and December 31, 2015, as provided in paragraph 4 above;

(f) Owner fails to provide annual certification as required in paragraph 11 below; or

(g) Owner or Lessee has been convicted of a violation under 8 U.S.C. Section 1324a (f) regarding the unlawful employment of aliens.

9. In the event that the Owner defaults under this Agreement then the City shall give the Owner written notice of such default and if the Owner has not cured such default, or obtained a waiver thereof, within thirty (30) days of said written notice, this Agreement may be terminated; provided, however, that such 30 day period shall be extended if the default is of a nature that cannot be cured within such 30-day period and Owner is diligently pursuing such remedy. Notice shall be in writing as provided below. Upon the occurrence of an event of default other than under Paragraph 8(b) or 8(g) above and after Owner fails to cure same in accordance herewith, this Agreement shall immediately terminate and all taxes due after the event of default shall be paid in full without the benefit of any abatement. The parties acknowledge that actual damages in the event of default and termination would be speculative and difficult to determine.

10. Upon the occurrence of an event of default under Paragraph 8(b) above or upon the occurrence of an event of default under Paragraph 8(g), then the City shall give the Owner written notice of such default and if the Owner has not cured such default, or obtained a waiver thereof within thirty (30) days of said written notice, this Agreement may be terminated and all taxes, including previously abated taxes which would have been paid to the City without the benefit of this Agreement, shall become due and owing to the City, together with interest charged from the date of this Agreement at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 33.01, but without the addition of penalty other than that mandated by V.T.C.A., § 33.01 or 33.07.

ANNUAL CERTIFICATION

11. On or before the 1st day of November of each calendar year during the term of this Agreement, the Owner, or its successors or assigns, must provide annual certification (substantially in the form attached as **EXHIBIT “C”** hereto) to the Governing Body of the City certifying compliance with each applicable term of the Agreement.

ASSIGNMENT

12. The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto. This Agreement cannot be assigned by Owner unless written permission is first granted by City, which permission shall be at the reasonable discretion of the City, except under the following conditions:

(a) Assignment to an affiliate of Owner is permissible;

(b) A transfer or assignment of the Real Property and Improvements, or an assignment of this Agreement, by Owner to successors or assigns is permissible wherein the successors or assigns agree to be bound by the terms of this Agreement and Owner shall continue to conduct business on the subject premises.

However, Owner agrees to give written notice to the City of any assignment or transfer of interest allowed pursuant to subparagraphs (a) and (b) hereof.

ABATEMENT PROVISIONS

13. Subject to the terms and conditions of this Agreement, a portion of ad valorem real and personal property taxes from the Real Property, Improvements, and Personalty otherwise owed to the City shall be abated as follows:

(a) The tax abatements as to the Real Property, Improvements, and Personalty, as provided for herein, shall be for a period of ten (10) tax years, from January 1, 2013, through December 31, 2022.

(b) In accordance with all applicable federal, state, and local laws and regulations, the City's abatement shall be based on amounts equal to fifty percent (50%) of the improved value of the Real Property and Improvements and fifty percent (50%) of the Personalty for each tax year from January 1, 2013, through December 31, 2022.

(c) The Owner shall have the right to protest and/or contest any assessment of the Real Property, Improvements or Personalty, and the abatement shall be applied to the amount of taxes finally determined to be due as a result of any such protest and/or contest.

NOTICE

14. Notices required to be given to any party to this Agreement shall be given personally or by registered or certified mail, return receipt requested, postage prepaid, addressed

to the party at its address as set forth below, and, if given by mail, shall be deemed delivered as of the date deposited in the United States mail:

For City by notice to:

City of Plano
Attention: Mr. Thomas H. Muehlenbeck
City Manager
P.O. Box 860358
Plano, Texas 75086-0358

With copy to:

City of Plano
Attention: Ms. Diane C. Wetherbee
City Attorney
P.O. Box 860358
Plano, Texas 75086-0358

For Owner by notice to:

Diodes Incorporated
Attn: Rick White
15660 North Dallas Parkway, Suite 850
Dallas, TX 75248

Any party may change the address to which notices are to be sent by giving the other parties written notice in the manner provided in this paragraph.

MISCELLANEOUS PROVISIONS

15. The Owner further agrees that the City, its agents and employees, shall have reasonable right (upon reasonable prior notice to Owner) to access the Real Property to inspect the Improvements and Personalty in order to insure that the construction of the Improvements and locations of the Personalty are in accordance with this Agreement and all applicable federal, state, and local laws and regulations. After completion of the Improvements, the City shall have the continuing right (upon reasonable prior notice to Owner) to inspect the Real Property and Personalty to insure that the Real Property and Personalty is thereafter maintained, operated and occupied in accordance with this Agreement.

16. IT IS UNDERSTOOD AND AGREED BETWEEN THE PARTIES THAT THE OWNER, IN PERFORMING ITS OBLIGATIONS HEREUNDER, IS ACTING INDEPENDENTLY, AND THE CITY ASSUMES NO RESPONSIBILITIES OR LIABILITIES IN CONNECTION THEREWITH TO THIRD PARTIES AND OWNER AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY FROM ANY AND ALL CLAIMS, SUITS, AND CAUSES OF ACTIONS, INCLUDING ATTORNEYS' FEES, OF ANY NATURE WHATSOEVER ARISING OUT OF OWNER'S DEFAULT OF ITS OBLIGATIONS HEREUNDER.

17. The City represents and warrants that the Real Property, Improvements and Personalty do not include any property that is owned by a member of the city council.

18. This Agreement was authorized by Resolution of the City Council at its Council meeting on the 25th day of January, 2010, authorizing the City Manager to execute the Agreement on behalf of the City.

19. This Amended Agreement was entered into by Owner pursuant to authority granted by its officer, whereby the officer of the corporation was authorized to execute this Agreement on behalf of Owner.

20. This instrument shall constitute a valid and binding agreement between the **City** and **Owner** when executed.

21. Severability. If any term or provision of this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement (or the application of such term or provision, to persons or circumstances other than those in respect of which it is invalid or unenforceable) except those terms or provisions, which are made subject to or conditioned upon such invalid or unenforceable term or provision, shall not be affected thereby, and each other term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

This Agreement is performable in Collin County, Texas. Signed this 25th day of January, 2010.

ATTEST:

CITY OF PLANO, TEXAS, a home-rule
municipal corporation

Diane Zucco, CITY SECRETARY

Thomas H. Muehlenbeck, CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ATTEST:

DIODES INCORPORATED, a Delaware
corporation

By: _____

Name
Title

EXHIBIT "A"
LEGAL DESCRIPTION
REINVESTMENT ZONE NO. 114
Real Property
Metes and Bounds

BEING a tract of land out of the Henry Cook Survey, Abstract No. 180 in the City of Plano, Collin County, Texas, being part of the 35.80 acre tract of land described as Tract 12 in deed to West Plano Land Company, L.P., recorded in Collin County Clerk's File No 20060920001358250 of the Land Records of Collin County, Texas and being more particularly described as follows:

BEGINNING at a 5/8" iron rod set with a red plastic cap stamped "KHA" (hereinafter called 5/8" iron rod set) for the north corner of a corner clip at the intersection of the south right-of-way line of Legacy Drive dedicated to the City of Plano according to the plat recorded in Cabinet C, Page 774 of the Map Records of Collin County, Texas and the west right-of-way line of Communications Parkway, dedicated to the City of Plano according to the plat recorded in Cabinet M, Page 30 of the Map Records of Collin County, Texas;

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

South 45°07'49" East, a distance of 39.63 feet to a 5/8" iron rod set for corner;
South 00°10'36" East, a distance of 182.00 feet to a 5/8" iron rod set for corner;
South 01°47'58" East, a distance of 150.06 feet to a 5/8" iron rod set for corner;
South 00°10'35" East, a distance of 485.64 feet to a 5/8" iron rod set for corner;

THENCE leaving the west right-of-way line of Communications Parkway, South 89°49'25" West, a distance of 843.58 feet to a 5/8" iron rod set in the 36.22 acre tract of land described in deed to Ericsson, recorded in Volume 4549, Page 2263 of the Land Records of Collin County, Texas;

THENCE with the east line of 36.22 acre tract, the following courses and distances to wit:

NORTH a distance of 177.84 feet to a 5/8" iron rod found for the beginning of a non-tangent curve to the left with a radius of 335.00 feet, a central angle of 88°03'13", and a chord bearing and distance of North 02°43'52" East, 374.92 feet;
Northeasterly, with said curve, an arc distance of 397.90 feet to a 5/8" iron rod found for the beginning of a reverse curve to the right with a radius of 280.00 feet, a central angle of 31°17'44", and a chord bearing and distance of North 15°38'52" West, 151.05 feet;
Northwesterly, with said curve, an arc distance of 152.94 feet to a 5/8" iron rod found for corner;
NORTH, a distance of 149.31 feet to a 5/8" iron rod set in the south right-of-way line of said Legacy Drive for the beginning of a non-tangent curve to the left with a radius of 2023.56 feet, a central angle of 0°47'06", and a chord bearing and distance of South 89°41'46" East, 27.73 feet;

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

Southeasterly, with said curve, an arc distance of 27.73 feet to a 5/8" iron rod set for corner;
North 89°54'41" East, a distance of 803.87 feet to the POINT OF BEGINNING and containing 698,083 square feet or 16.0258 acres of land.

EXHIBIT "B"
THE DEVELOPMENT
REINVESTMENT ZONE NO. 114

Site Plan/Map of Project

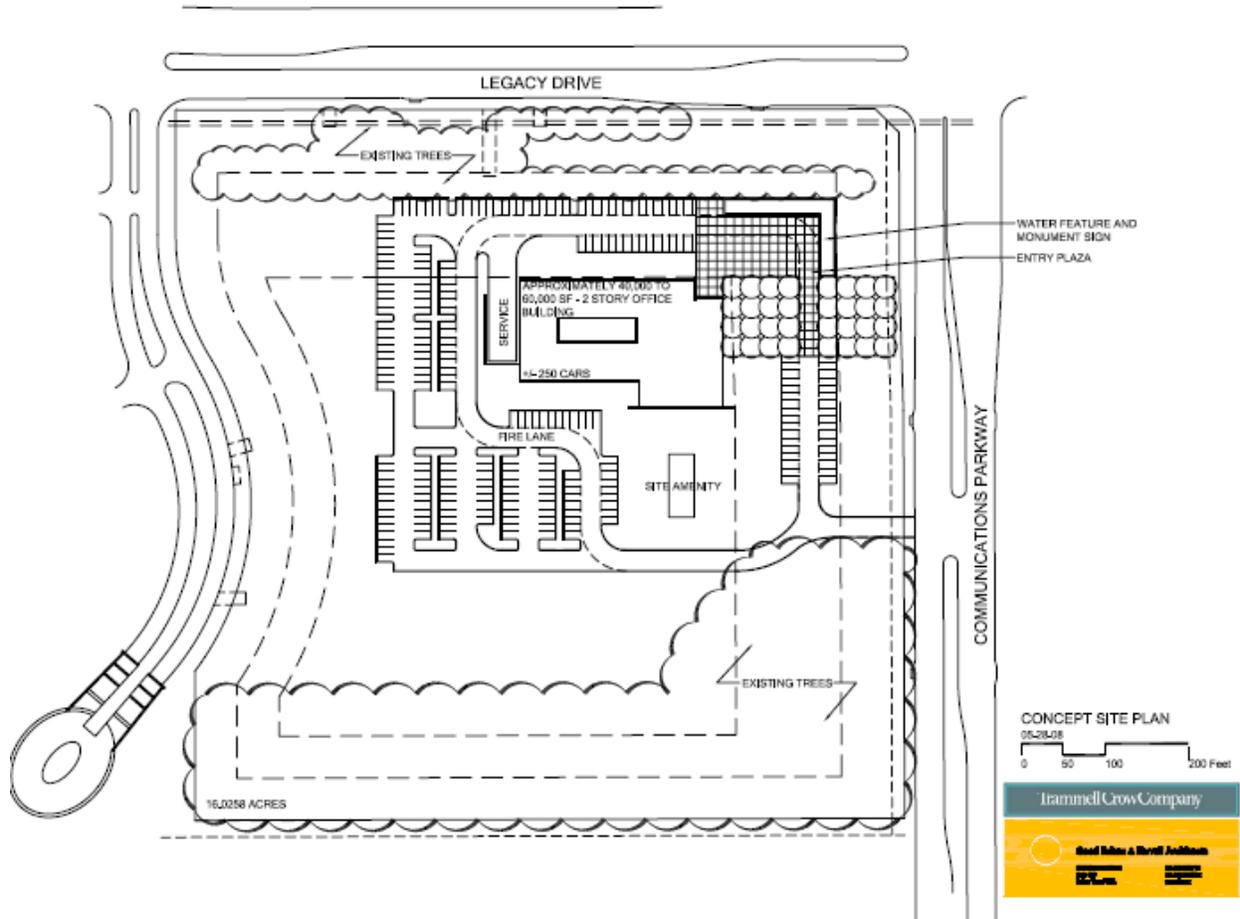


EXHIBIT "C"
CERTIFICATION FORM
REINVESTMENT ZONE NO. 114

This letter certifies that Diodes Incorporated is in compliance with each applicable term as set forth in the Agreement to Resolution No. _____(R) as of _____, 20___. The term of this agreement is January 1, 2013 through December 31, 2022. This form is due on November 1 of each year this tax abatement is in force.

ATTEST:

DIODES INCORPORATED, a Delaware corporation

By: _____

Name
Title

NOTE: This certification form should be mailed to:

**City of Plano
Finance Department
P.O. Box 860358
Plano, Texas 75086-0358**



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		1/25/10		
Department:		Finance		
Department Head		Denise Tacke		
Agenda Coordinator (include phone #): Katherine Crumbley - x 7479				
CAPTION				
A Resolution of the City Council of the City of Plano, Texas approving the terms and conditions of a Second Amended Economic Development Incentive Agreement by and between the City of Plano, Texas and Diodes Incorporated, a Delaware corporation; authorizing its execution by the City Manager or his designee; and providing an effective date.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 2009-2010	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		12,391,869	0	12,391,869
Encumbered/Expended Amount	0	-5,427,125	-3,471,950	-8,899,075
This Item	0	0	-760,000	-760,000
BALANCE	0	6,964,744	-4,231,950	2,732,794
FUND(S):				
COMMENTS:				
SUMMARY OF ITEM				
An amended resolution for a request from Diodes Incorporated for an Economic Development Incentive to relocate its business and commercial activities to the City, thereby generating additional local sales tax revenues and increasing ad valorem tax values to the City. Diodes Incorporated agrees to occupy not less than 40,000 square feet. They agree to retain, transfer or create 30 full time jobs by 12/21/12 and increase that number to 110 by 12/31/2015. This amendment modifies the periods of performance by two years.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
Economic Development Incentive Agreement				

A Resolution of the City Council of the City of Plano, Texas approving the terms and conditions of a Second Amended Economic Development Incentive Agreement by and between the City of Plano, Texas and Diodes Incorporated, a Delaware corporation; authorizing its execution by the City Manager or his designee; and providing an effective date.

WHEREAS, the City Council approved an economic incentive agreement with Diodes Incorporated, Inc., a Delaware Corporation, on June 9, 2008 with the passage of Resolution No. 2008-6-11(R); and

WHEREAS, before the commencement date of the Original Agreement, Owner requested an amendment to the Original Agreement, which requested amendment was approved by the City Council on February 17, 2009 with the passage of Resolution No. 2009-2-4(R); and

WHEREAS, because of the continued downturn in the economy, the Owner requests that the Original Agreement as amended be further amended to extend the date of occupancy by two additional years and to adjust the term and other requirements of the agreement accordingly; 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 of the Second Amended Agreement should be approved, and that the City Manager, or his designee, shall be authorized to execute it on behalf of the City of Plano.

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

Section I. The terms and conditions of the Second Amended Agreement, attached hereto as Exhibit "A", having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things approved.

Section II. The City Manager, or his designee, is hereby authorized to execute the Second Amended Agreement and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreement.

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

DULY PASSED AND APPROVED this the 25th day January, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

**ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT
(SECOND AMENDED)**

This Second Amended Economic Development Incentive Agreement (“Agreement”) is made by and between the City of Plano, Texas (the “City”), and Diodes Incorporated, a Delaware Corporation, (hereinafter referred to as the “Company”), acting by and through its respective authorized officers and representatives.

WITNESSETH:

WHEREAS, the Company is engaged in the business of the manufacture and supply of high-quality application specific standard products within the broad discrete and analog semiconductor markets; and

WHEREAS, the Company has advised the City that a contributing factor that would induce the Company to relocate its business and commercial activities to the City, thereby generating additional local sales tax revenues and increasing ad valorem tax values for the City, would be an agreement by the City to provide an economic development grant to the Company; and

WHEREAS, Company agrees to occupy 40,000 square feet of office space to be located on 15.5 acres at the southwest corner of Communications Parkway and Legacy Drive in the City of Plano, Texas (the “Property”); construct real property improvements on the Property having a minimum taxable value of not less than Five Million Five Hundred Thousand Dollars (\$5,500,000.00); add Two Million Dollars (\$2,000,000.00) in new business personal property improvements to the facility; and

WHEREAS, Company agrees to transfer or create at least 30 full time jobs on the Property by December 31, 2012 and a total of not less than 110 full time jobs by December 31, 2015, and thereafter maintain those positions on the Property for the full term of this Agreement; and

WHEREAS, the investment in real and personal property improvements and the creation or transfer full time jobs will promote economic development, stimulate commercial activity and enhance the tax base and economic vitality of the City; and

WHEREAS, the City has adopted programs for promoting economic development; and

WHEREAS, the City is authorized by TEX. LOC. GOV’T CODE §380.001 *et seq.* to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the City has determined that making an economic development grant to the Company in accordance with the terms and conditions set forth in this Agreement will further the

objectives of the City, will benefit the City and the City's inhabitants and will promote local economic development and stimulate business and commercial activity in the City;

NOW THEREFORE, in consideration of the foregoing and the premises, mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby covenant and agree as follows:

Article I Definitions

For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

“Commencement Date” shall mean the earlier of the occupancy of the Property or December 31, 2012, whichever occurs first.

“Effective Date” shall mean the last date on which all of the parties hereto have executed this Agreement.

“Event of Force Majeure” shall mean any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the party), fires, explosions or floods, strikes, slowdowns or work stoppages any of which event(s) directly impact the Company's operations in Plano.

“Job Equivalent” shall mean one or more Company job positions located at the Property which individually or when combined total 2080 hours annually.

Article II Term

The term of this Agreement shall begin on the Commencement Date and continue until December 31, 2022, unless sooner terminated as provided herein.

Article III Obligations of Company

In consideration for the grant of public funds as set forth in Section 4.01 below, the Company agrees to the following:

(a) Invest Five Million Five Hundred Thousand Dollars (\$5,500,000.00) in new real property improvements associated with a 40,000 square foot office space facility on or before December 31, 2012;

(b) Invest Two Million Dollars (\$2,000,000.00) in new personal property improvements on the Property on or before December 31, 2012;

(c) Create or transfer at least 30 Job Equivalents to the Property on or before December 31, 2012, employ not less than a total of 110 Job Equivalents on the Property by December 31, 2015, and to maintain these Job Equivalents on the Property for the full term of this Agreement;

(d) Use reasonable efforts to utilize Plano hotels as preferred locations for any Company sponsored events that involve over-night stays; and

(e) Use reasonable efforts to relocate all company managed employees from California and Dallas to residential units within the City of Plano.

Article IV Economic Development Grant

4.01 **Grant.** The City agrees to provide the Company a cash grant of up to Seven Hundred and Sixty Thousand Dollars (\$760,000.00) for the transfer or creation of Job Equivalents as described below in Section 4.02.

4.02 **Grant Payments.** Payment of the cash grant shall be made as follows: An initial payment shall be made to Company of Two Hundred and Seven Thousand Two Hundred and Seventy Three Dollars (\$207,273.00) to be paid within thirty (30) days after the Company completes the real and personal property improvements to the Property and verifies to the City on the Initial Certification attached hereto as Exhibit "A" that it has created or transferred 30 Job Equivalents to the Property. **In order to receive payment under this Agreement, Company's Initial Certification verifying completion of the real and personal property improvements and creation or transfer of 30 Job Equivalents to the Property must be filed with the City no later than April 1, 2013.** The Company shall verify on the Certification attached hereto as Exhibit "B" that it is entitled to receive additional payments for each group of not less than 20 new Job Equivalents (above the initial base number of 30) that are added to the Property at a rate of Six Thousand Nine Hundred and Nine Dollars (\$6,909.00) per Job Equivalent up to a maximum of 80 additional Job Equivalents created prior to December 31, 2015. **In order to receive additional payments under this Agreement, Company's certification verifying addition of Job Equivalents above the initial base of 30 to the Property must be filed with the City no later than April 1, 2016.**

4.03 **Refunds.**

(a) In the event the Company, for any 180 consecutive days during the term of this Agreement, allows new Job Equivalents at the Property to fall below the number for which they have received grant funds under this Agreement, and such drop is not the result of an Event of Force Majeure, Company shall refund to City an amount equal to Six Thousand Nine Hundred and Nine Dollars (\$6,909.00) for each job equivalent that falls below the required number. For the purposes of determining whether the City is due a refund under this section, the Company's

Chief Financial Officer shall certify to the City by January 31, 2013 and by January 31 of each year thereafter during the term of this agreement the actual number of Job Equivalents at the Property for the preceding calendar year using the Certificate Form attached as Exhibit "C". All refunds under this Agreement shall be due within 30 days of written demand for payment.

(b) In the event the Company, at any time during the term of this Agreement, is convicted of a violation under 8 U.S.C. Section 1324a(f) regarding the unlawful employment of undocumented workers, it shall reimburse the City all grant funds paid pursuant to this Agreement together with interest charged from the date of payment of the funds at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 33.01, but without the addition of penalty. Repayment of grant funds and interest shall be due not later than 120 days after the date the City notifies the Company of the violation.

Article V Termination

5.01 This Agreement terminates upon any one or more of the following:

(a) By mutual written agreement of the parties;

(b) Upon expiration of the Term;

(c) By either party, if the other party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof (provided that such 30 day period shall be extended if the default is of a nature that cannot reasonably be cured within such 30 day period and further provided that the remedy is being diligently pursued); and

(d) By either party if any subsequent federal or state legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable, provided, that such termination notice shall set forth an explanation of the terminating party's basis for termination under this subsection (d).

5.02 **Effect of Termination.** The rights, responsibilities and liabilities of the Parties under this Agreement shall be extinguished upon the applicable effective date of termination of this Agreement, except for any obligations that accrue prior to such termination or as otherwise provided herein. All rights and obligations set forth above shall survive the termination of this Agreement.

Article VI Miscellaneous

6.01 **Binding Agreement.** The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the parties hereto. This Agreement may not be assigned without the express written consent of the non-assigning party, except that the Company may assign this Agreement without obtaining the City's consent (a) to one of its affiliates, or (b) to any person or entity that directly or indirectly acquires, through merger, sale of stock, purchase or otherwise, all or substantially all of the assets of the Company.

6.02 **No Joint Venture.** It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties. Neither party shall have any authority to act on behalf of the other party under any circumstances by virtue of this Agreement.

6.03 **Authorization.** Each party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

6.04 **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below (or such other address as such party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered.

If intended for the City:
City of Plano, Texas
Attention: Thomas H. Muehlenbeck
City Manager
1520 Avenue K
P.O. Box 860358
Plano, TX 75086-0358

With a copy to:
City of Plano, Texas
Attention: Diane Wetherbee
City Attorney
1520 Avenue K
P. O. Box 860358
Plano, TX 75086-0358

If intended for the Company: (if before relocation)
Diodes Incorporated
Attention: Mr. Rick White
15660 North Dallas Parkway, Suite 850
Dallas, TX 75248

6.05 **Entire Agreement.** This Agreement is the entire Agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or

written Agreement between the parties that in any manner relates to the subject matter of this Agreement.

6.06 **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction. Venue for any action concerning this Agreement, the transactions contemplated hereby or the liabilities or obligations imposed hereunder shall be in the State District Court of Collin County, Texas.

6.07 **Amendment.** This Agreement may only be amended by the mutual written agreement of the parties.

6.08 **Legal Construction.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

6.09 **Recitals.** The recitals to this Agreement are incorporated herein.

6.10 **Counterparts.** This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

6.11 **Survival of Covenants.** Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

6.12 **Dispute Resolution.** Any controversy or claim arising from or relating to this Agreement, or a breach thereof shall be subject to non-binding mediation, as a condition precedent to the institution of legal or equitable proceedings by any party. The parties shall endeavor to resolve their claims by mediation that, unless the parties mutually agree otherwise, shall be in accordance with the American Arbitration Association's Commercial Mediation Rules in effect at the time of mediation. Request for mediation shall be filed concurrently with the other party. Mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing for mediation, unless stayed for a longer period of time by agreement of the parties. The party requesting the mediation shall bear all costs related to the mediation. The mediation shall be held in Collin County, Texas, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any Court having jurisdiction thereof.

EXECUTED on this 25th day of January, 2010.

[signatures on following page]

ATTEST:

CITY OF PLANO, TEXAS, a home rule
municipal corporation

Diane Zucco, CITY SECRETARY

By: _____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ATTEST:

DIODES INCORPORATED,
a Delaware Corporation

By: _____
Name
Title

EXHIBIT "A"

CERTIFICATE OF COMPLIANCE

I hereby certify that DIODES INCORPORATED has complied with the requirements of Article III (a) and (b) of the Agreement to Resolution NO. _____ and has transferred or created 30 Job Equivalents on the Property as of _____, and is entitled to receive payment under the terms of the Agreement.

ATTEST:

DIODES INCORPORATED,
a Delaware Corporation

By: _____
Name
Title

Date

NOTE:

This Certificate of Compliance should be mailed to:

City of Plano
Finance Department
P.O. Box 860358
Plano, Texas 75086-0358

EXHIBIT "B"

**CERTIFICATE OF COMPLIANCE
(Additional Job Equivalents)**

I hereby certify that DIODES INCORPORATED has, pursuant to the provisions of Section 4.02 of the Agreement to Resolution NO. _____ transferred or created _____ additional Job Equivalents on the Property as of _____, and is entitled to receive payment under the terms of the Agreement.

ATTEST:

DIODES INCORPORATED,
a Delaware Corporation

By: _____
Name
Title

Date

NOTE:

This Certificate of Compliance should be mailed to:

City of Plano
Finance Department
P.O. Box 860358
Plano, Texas 75086-0358

EXHIBIT "C"

ANNUAL CERTIFICATE OF COMPLIANCE

I hereby certify that Diodes Incorporated is in compliance with each applicable term as set forth in the Agreement to Resolution No. _____(R) as of _____. Job Equivalents on the Premises for which a grant payment was received have not fallen below _____ for any 180 consecutive day period since the commencement of this Agreement. If the number herein reported is below the number required to be maintained pursuant the Agreement I certify that the City of Plano has been refunded the appropriate amount as required by Section 4.03 of the Agreement. This form is due on January 31st of each year this Agreement is in force.

ATTEST:

DIODES INCORPORATED
a Delaware Corporation

By: _____

Name

Title

Date

NOTE:

This Certificate of Compliance should be mailed to:

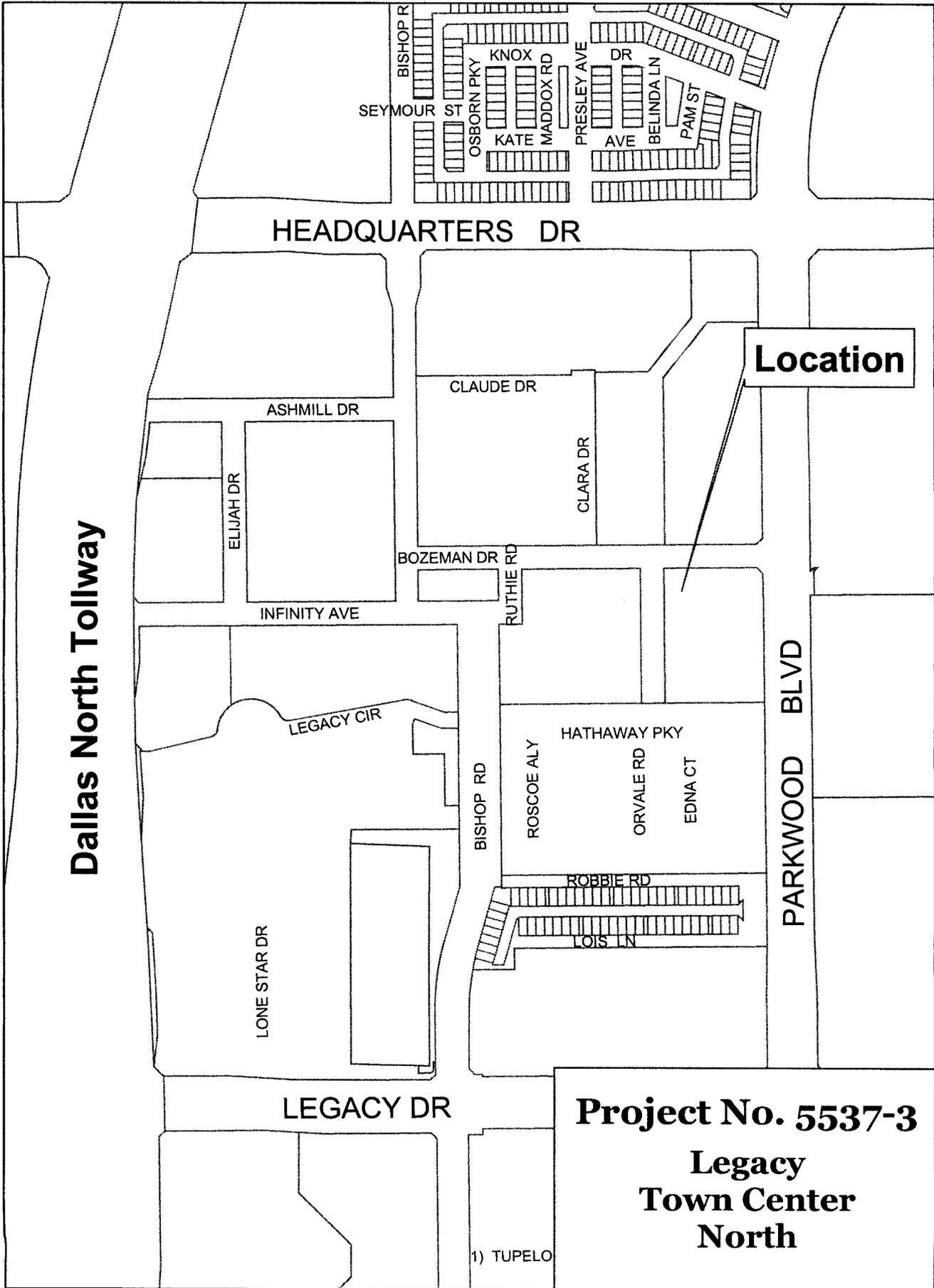
City of Plano
Finance Department
P.O. Box 860358
Plano, Texas 75086-0358



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		1/25/10		
Department:		Public Works & Engineering		
Department Head		Alan L. Upchurch		
Agenda Coordinator (include phone #):			Irene Pegues (7198)	
			Project No. 5537-3	
CAPTION				
A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Easement for Encroachments by and between Legacy North PT MFA II, L.P., and the City of Plano; 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: This item has no fiscal impact.				
SUMMARY OF ITEM				
The construction of the apartments in Legacy Town Center North, bounded by Hathaway Parkway, Orvale Road, Bozeman Drive and Parkwood Boulevard, resulted in six encroachments into the public rights of way. The encroachments are typically seven inches or less. Staff has reviewed the encroachments and determined that they will not impact the public use of the rights of way. The developer has requested that the City grant them an easement for the encroachments. Staff has reviewed the easement and recommends that Council approve the attached resolution which authorizes the City Manager to execute the easement.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
Location Map		N/A		

Dallas North Tollway



Location

Project No. 5537-3

**Legacy
Town Center
North**

1) TUPELO

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Easement for Encroachments by and between Legacy North PT MFA II, L.P. and the City of Plano; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

WHEREAS, the City Council has been presented a proposed Easement for Encroachments between Legacy North PT MF II, L.P., and the City of Plano, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and,

WHEREAS, upon full review and consideration of the Agreement, and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the City Manager or his authorized designee shall be authorized to execute it on behalf of the City of Plano.

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

Section I. The terms and conditions of the Agreement, having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things approved.

Section II. The City Manager or his authorized designee is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreement.

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

DULY PASSED AND APPROVED this the 25th day of January, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

EXHIBIT "A"

EASEMENT FOR ENCROACHMENTS

THIS EASEMENT FOR ENCROACHMENTS ("Agreement") is entered into this _____ day of January, 2010, by and between the **CITY OF PLANO, TEXAS** (the "City") and **LEGACY NORTH PT MFA II, L.P.**, a Delaware limited partnership (the "Property Owner"), and is as follows:

WHEREAS, Property Owner is the owner of the real property (the "Property") described on Exhibit "A" attached hereto and incorporated herein by reference.

WHEREAS, certain improvements constructed on the Property encroach into public rights of way which are adjacent to the Property, which Encroachments (herein so called) are more particularly described on Exhibit "B" attached hereto and incorporated herein by reference.

WHEREAS, the governing body of the City has expressed their consent and approval for the Encroachments, and has agreed to grant an easement for the Encroachments, under the terms and conditions set forth below, which terms and conditions the Property Owner hereby agrees to accept.

NOW, THEREFORE, in consideration of the promises and covenants of the Property Owner as set forth below, the City hereby consents and agrees to allow the Encroachments and hereby grants to Property Owner an easement to permit continuation of the Encroachments, subject to the following requirements and conditions which shall be binding upon the Property Owner, and which shall run with the Property such that it will also be binding upon any future owners of the Property, to wit:

1. This consent for such encroachment and easement is strictly limited to the existing Encroachments, and does not extend to any other future structures or encroachments, and does not confer permission to enlarge or expand the Encroachments in the future. The granting of this consent and easement is given on a one-time-only basis and shall not constitute any precedent or entitlement to make any other future encroachments of a like kind or to any greater or lesser extent or degree.

2. The City shall not be liable to the Property Owner or its successors in interest for any damage to or destruction of such structures, or to any contents thereof, or to any restriction in the usefulness of such structure, by virtue of any lawful activities of the City within or as to such easement. The Property Owner and its successors in interest assume any and all risks associated therewith.

3. In the event of the removal or destruction (whether partial or complete) of Encroachments by any cause whatsoever, this Agreement shall not confer any right or privilege to the Property Owner or to its successors in interest to construct or reconstruct this or another structure in the same or another encroaching location. Any such construction or reconstruction shall require the separate permission and agreement of the governing body of the City, which such permission and agreement may be denied or withheld for any reason whatsoever.

4. The covenants, conditions and agreements contained in this Agreement shall run with the land and be binding upon and benefit the Property Owner and all future owners of the Property.

5. This Agreement shall expire and be null and void if not recorded in the Land Records of Collin County, Texas within thirty (30) days of its full execution.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above shown.

CITY:

CITY OF PLANO, TEXAS

By: _____
Name: _____
Title: _____

THE STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of January, 2010, by _____ of CITY OF PLANO, TEXAS, a _____, on behalf of said _____.

My Commission Expires:

Notary Public, State of Texas
Printed Name: _____

PROPERTY OWNER:

LEGACY NORTH PT MFA II, L.P.,
a Delaware limited partnership

By: Columbus LN II GP, LLC,
a Texas limited liability company

By: _____
Name: _____
Title: _____

THE STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of January, 2010, by _____, _____ of Columbus LN II GP, LLC, a Texas limited liability company, on behalf of said limited liability company acting in its capacity as the general partner of Legacy North PT MFA II, L.P., a Delaware limited partnership.

My Commission Expires:

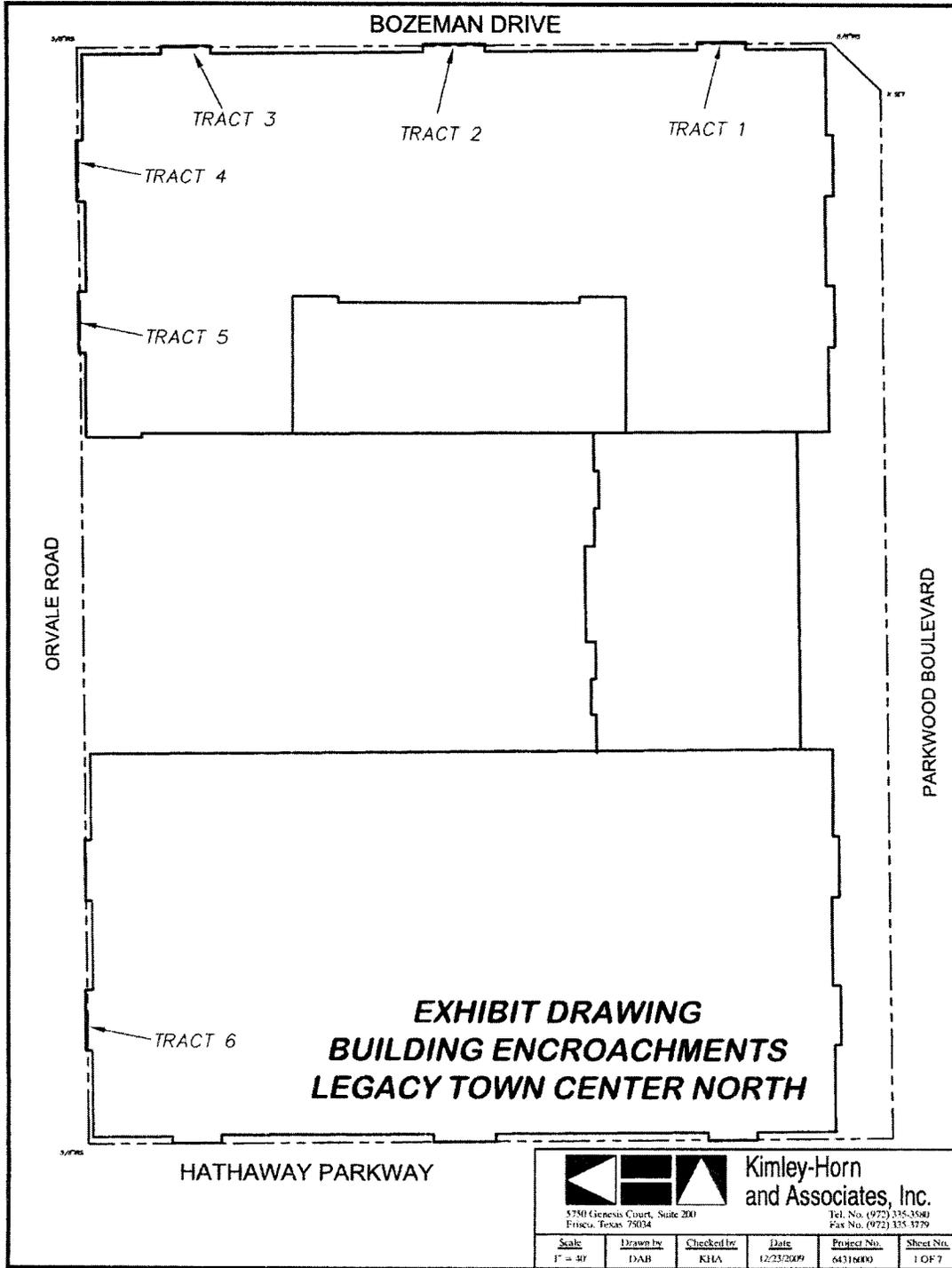
Notary Public, State of Texas
Printed Name: _____

EXHIBIT "A"

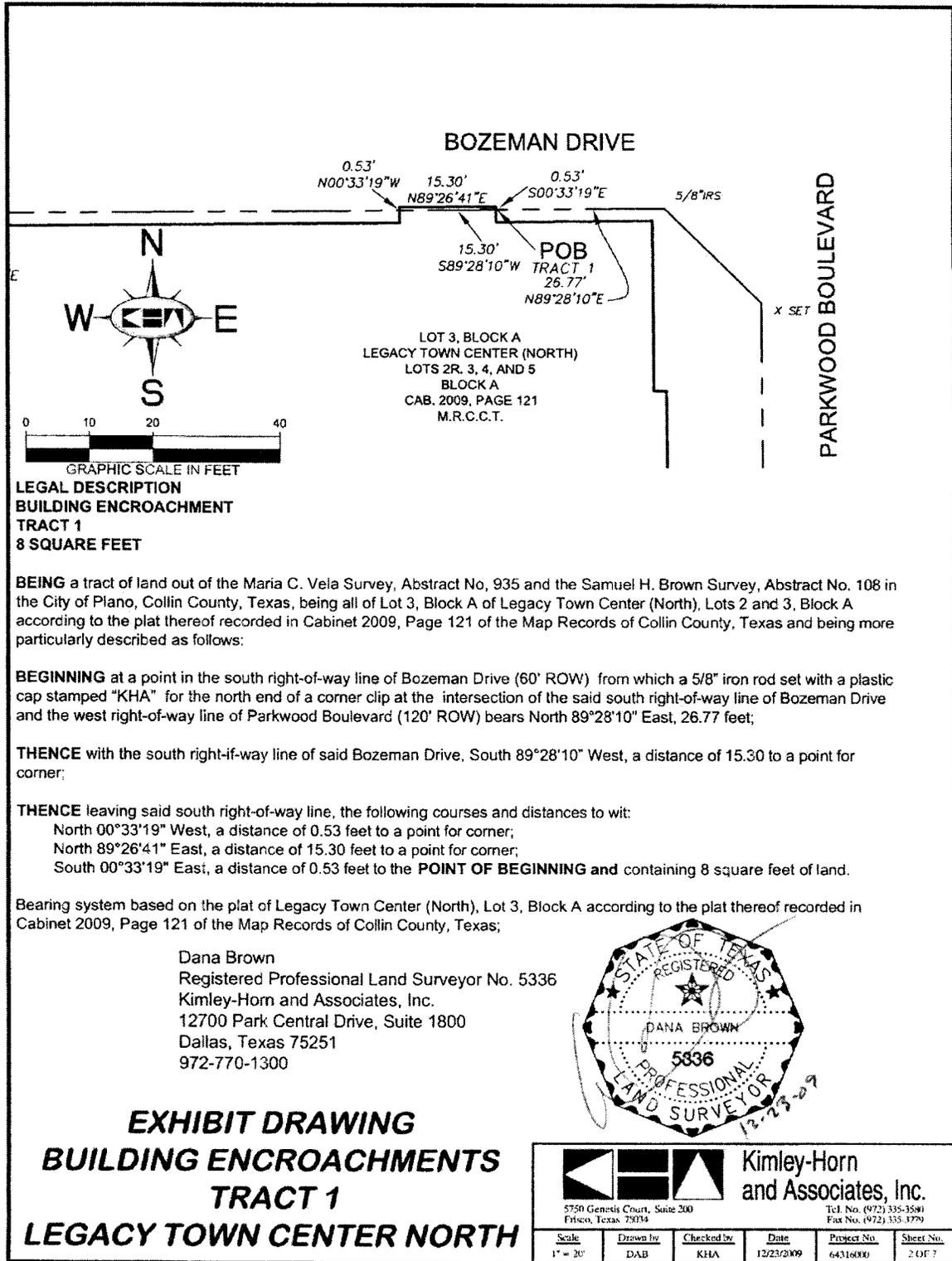
BEING a tract of land out of the Maria C. Vela Survey, Abstract No. 935 and the Samuel H. Brown Survey, Abstract No. 108 in the City of Plano, Collin County, Texas, being all of Lot 3, Block A of Legacy Town Center (North), Lots 2 and 3, Block A according to the plat thereof recorded in Cabinet 2009, Page 121 of the Map Records of Collin County, Texas.

EXHIBIT "B"

ENCROACHMENT
SURVEYS



PLOTTED BY BROWN, DANA 12/23/2009 8:45 AM DWG NAME: K:\DAL_SURVEY\64310000\PHASE II ASBUILT_LDD PHASE II DWG\BLDG ENCROACHMENT EXHIBIT DWG.LAST
 SAVED 12/23/2009 8:28 AM



**LEGAL DESCRIPTION
BUILDING ENCROACHMENT
TRACT 1
8 SQUARE FEET**

BEING a tract of land out of the Maria C. Vela Survey, Abstract No. 935 and the Samuel H. Brown Survey, Abstract No. 108 in the City of Plano, Collin County, Texas, being all of Lot 3, Block A of Legacy Town Center (North), Lots 2 and 3, Block A according to the plat thereof recorded in Cabinet 2009, Page 121 of the Map Records of Collin County, Texas and being more particularly described as follows:

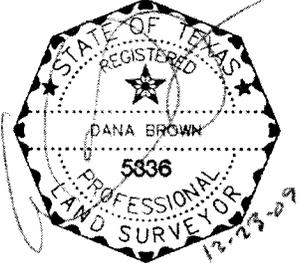
BEGINNING at a point in the south right-of-way line of Bozeman Drive (60' ROW) from which a 5/8" iron rod set with a plastic cap stamped "KHA" for the north end of a corner clip at the intersection of the said south right-of-way line of Bozeman Drive and the west right-of-way line of Parkwood Boulevard (120' ROW) bears North 89°28'10" East, 26.77 feet;

THENCE with the south right-of-way line of said Bozeman Drive, South 89°28'10" West, a distance of 15.30 to a point for corner;

THENCE leaving said south right-of-way line, the following courses and distances to wit:
 North 00°33'19" West, a distance of 0.53 feet to a point for corner;
 North 89°26'41" East, a distance of 15.30 feet to a point for corner;
 South 00°33'19" East, a distance of 0.53 feet to the **POINT OF BEGINNING** and containing 8 square feet of land.

Bearing system based on the plat of Legacy Town Center (North), Lot 3, Block A according to the plat thereof recorded in Cabinet 2009, Page 121 of the Map Records of Collin County, Texas;

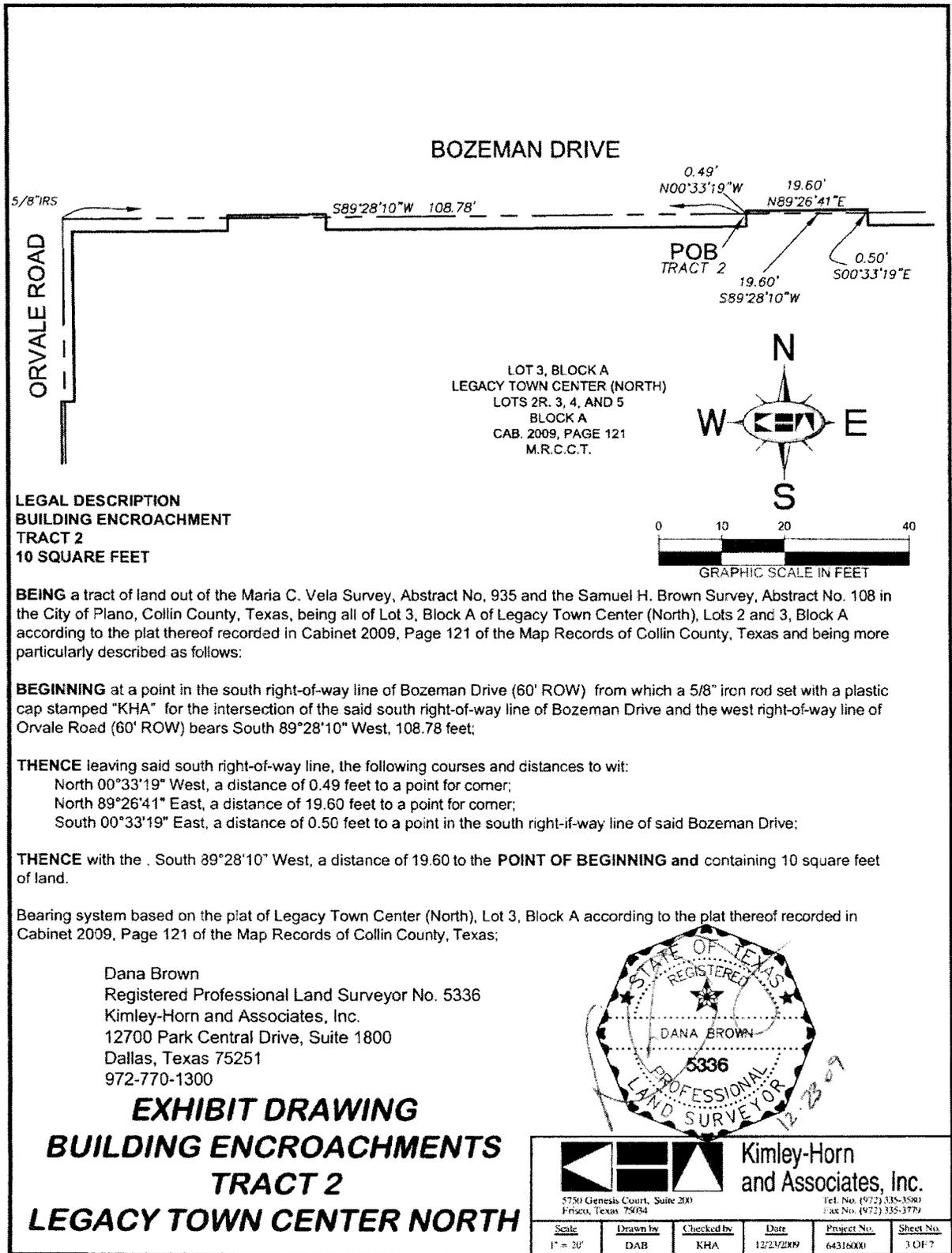
Dana Brown
 Registered Professional Land Surveyor No. 5336
 Kimley-Horn and Associates, Inc.
 12700 Park Central Drive, Suite 1800
 Dallas, Texas 75251
 972-770-1300



**EXHIBIT DRAWING
BUILDING ENCROACHMENTS
TRACT 1
LEGACY TOWN CENTER NORTH**

		Kimley-Horn and Associates, Inc.	
5750 Genesis Court, Suite 200 Frisco, Texas 75034		Tel. No. (972) 335-3590 Fax No. (972) 335-3799	
Scale 1" = 20'	Drawn by DAB	Checked by KHA	Date 12/23/2009
Project No. 64316000		Sheet No. 2 OF 7	

PLOTTED BY BROWN, DANA 12/23/2009 8:45 AM DWG NAME: K:\DAL_SURVEY\64316000\PHASE II ASBUILT\1_LDD PHASE II\DWG\BLDG ENCROACHMENT EXHIBIT.DWG LAST SAVED 12/23/2009 8:28 AM



LEGAL DESCRIPTION
BUILDING ENCROACHMENT
TRACT 2
10 SQUARE FEET

BEING a tract of land out of the Maria C. Vela Survey, Abstract No. 935 and the Samuel H. Brown Survey, Abstract No. 108 in the City of Plano, Collin County, Texas, being all of Lot 3, Block A of Legacy Town Center (North), Lots 2 and 3, Block A according to the plat thereof recorded in Cabinet 2009, Page 121 of the Map Records of Collin County, Texas and being more particularly described as follows:

BEGINNING at a point in the south right-of-way line of Bozeman Drive (60' ROW) from which a 5/8" iron rod set with a plastic cap stamped "KHA" for the intersection of the said south right-of-way line of Bozeman Drive and the west right-of-way line of Orvale Road (60' ROW) bears South 89°28'10" West, 108.78 feet;

THENCE leaving said south right-of-way line, the following courses and distances to wit:

- North 00°33'19" West, a distance of 0.49 feet to a point for corner;
- North 89°26'41" East, a distance of 19.60 feet to a point for corner;
- South 00°33'19" East, a distance of 0.50 feet to a point in the south right-of-way line of said Bozeman Drive;

THENCE with the . South 89°28'10" West, a distance of 19.60 to the **POINT OF BEGINNING** and containing 10 square feet of land.

Bearing system based on the plat of Legacy Town Center (North), Lot 3, Block A according to the plat thereof recorded in Cabinet 2009, Page 121 of the Map Records of Collin County, Texas;

Dana Brown
 Registered Professional Land Surveyor No. 5336
 Kimley-Horn and Associates, Inc.
 12700 Park Central Drive, Suite 1800
 Dallas, Texas 75251
 972-770-1300

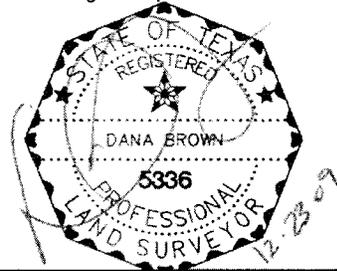
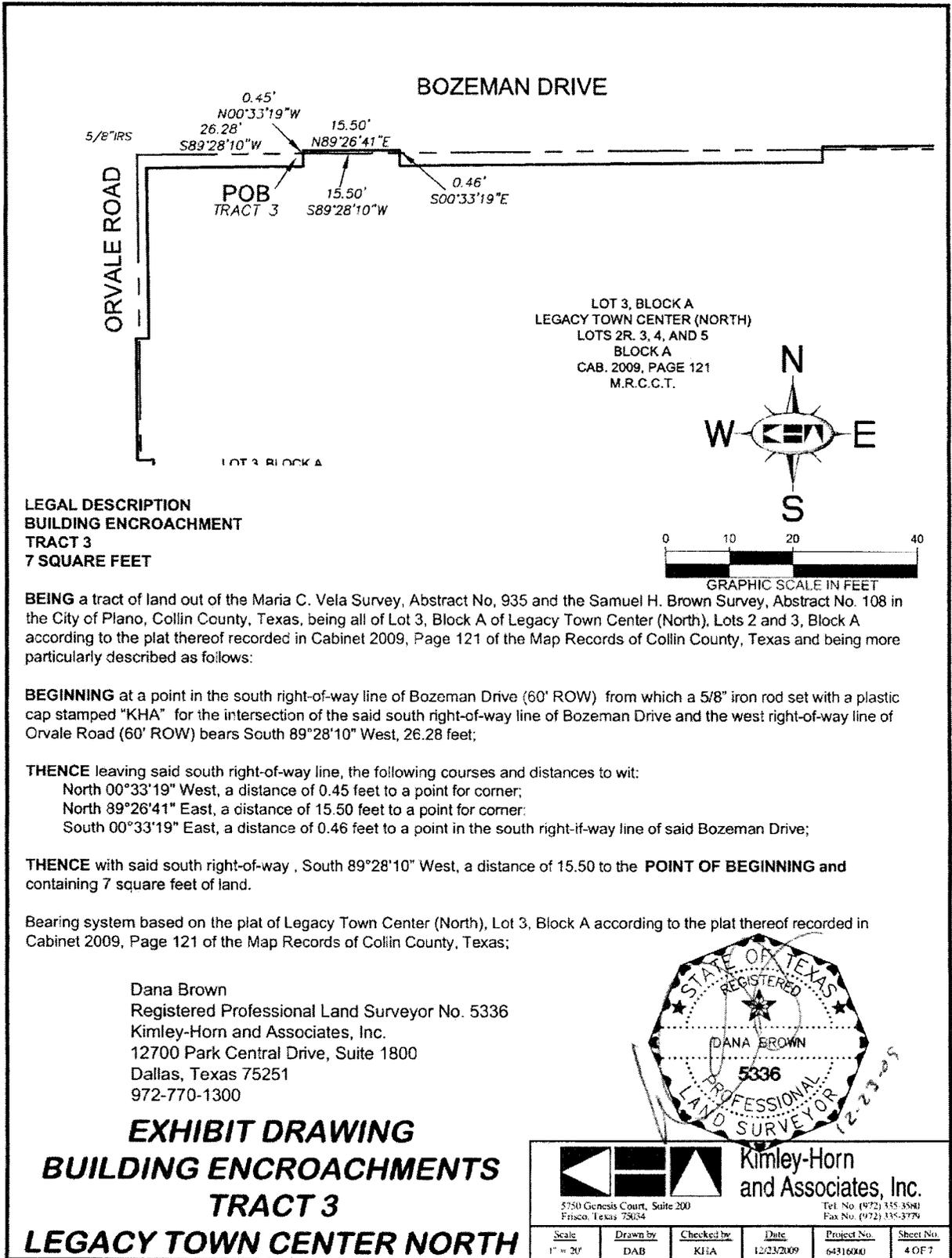


EXHIBIT DRAWING
BUILDING ENCROACHMENTS
TRACT 2
LEGACY TOWN CENTER NORTH

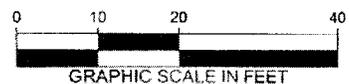
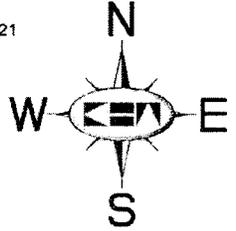
		Kimley-Horn and Associates, Inc. <small>5750 Genesis Court, Suite 200 Frisco, Texas 75034 Tel. No. (972) 335-3580 Fax No. (972) 335-3779</small>			
<small>Scale</small> 1" = 20'	<small>Drawn by</small> DAB	<small>Checked by</small> KHA	<small>Date</small> 12/23/2009	<small>Project No.</small> 64316000	<small>Sheet No.</small> 3 OF 7

PLotted BY BROWN, DANA 12/23/2009 8:45 AM DWG NAME: K3DAL_SURVEY\64316000\PHASE II ASBUILT\DD PHASE II\DWG\BLDG ENCROACHMENT EXHIBIT.DWG LAST
 SAVED 12/23/2009 8:28 AM



**LEGAL DESCRIPTION
BUILDING ENCROACHMENT
TRACT 3
7 SQUARE FEET**

LOT 3, BLOCK A
LEGACY TOWN CENTER (NORTH)
LOTS 2R, 3, 4, AND 5
BLOCK A
CAB. 2009, PAGE 121
M.R.C.C.T.



BEING a tract of land out of the Maria C. Vela Survey, Abstract No. 935 and the Samuel H. Brown Survey, Abstract No. 108 in the City of Plano, Collin County, Texas, being all of Lot 3, Block A of Legacy Town Center (North), Lots 2 and 3, Block A according to the plat thereof recorded in Cabinet 2009, Page 121 of the Map Records of Collin County, Texas and being more particularly described as follows:

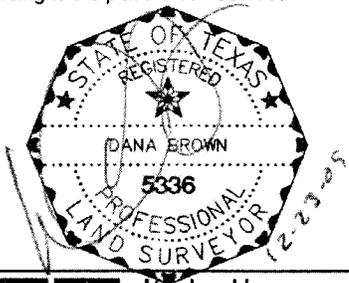
BEGINNING at a point in the south right-of-way line of Bozeman Drive (60' ROW) from which a 5/8" iron rod set with a plastic cap stamped "KHA" for the intersection of the said south right-of-way line of Bozeman Drive and the west right-of-way line of Orvale Road (60' ROW) bears South 89°28'10" West, 26.28 feet;

THENCE leaving said south right-of-way line, the following courses and distances to wit:
 North 00°33'19" West, a distance of 0.45 feet to a point for corner;
 North 89°26'41" East, a distance of 15.50 feet to a point for corner;
 South 00°33'19" East, a distance of 0.46 feet to a point in the south right-of-way line of said Bozeman Drive;

THENCE with said south right-of-way, South 89°28'10" West, a distance of 15.50 to the **POINT OF BEGINNING** and containing 7 square feet of land.

Bearing system based on the plat of Legacy Town Center (North), Lot 3, Block A according to the plat thereof recorded in Cabinet 2009, Page 121 of the Map Records of Collin County, Texas;

Dana Brown
Registered Professional Land Surveyor No. 5336
Kimley-Horn and Associates, Inc.
12700 Park Central Drive, Suite 1800
Dallas, Texas 75251
972-770-1300

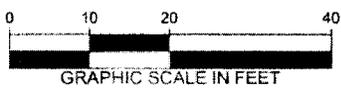
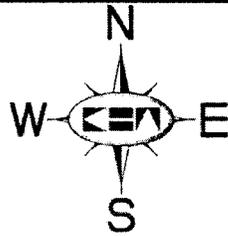
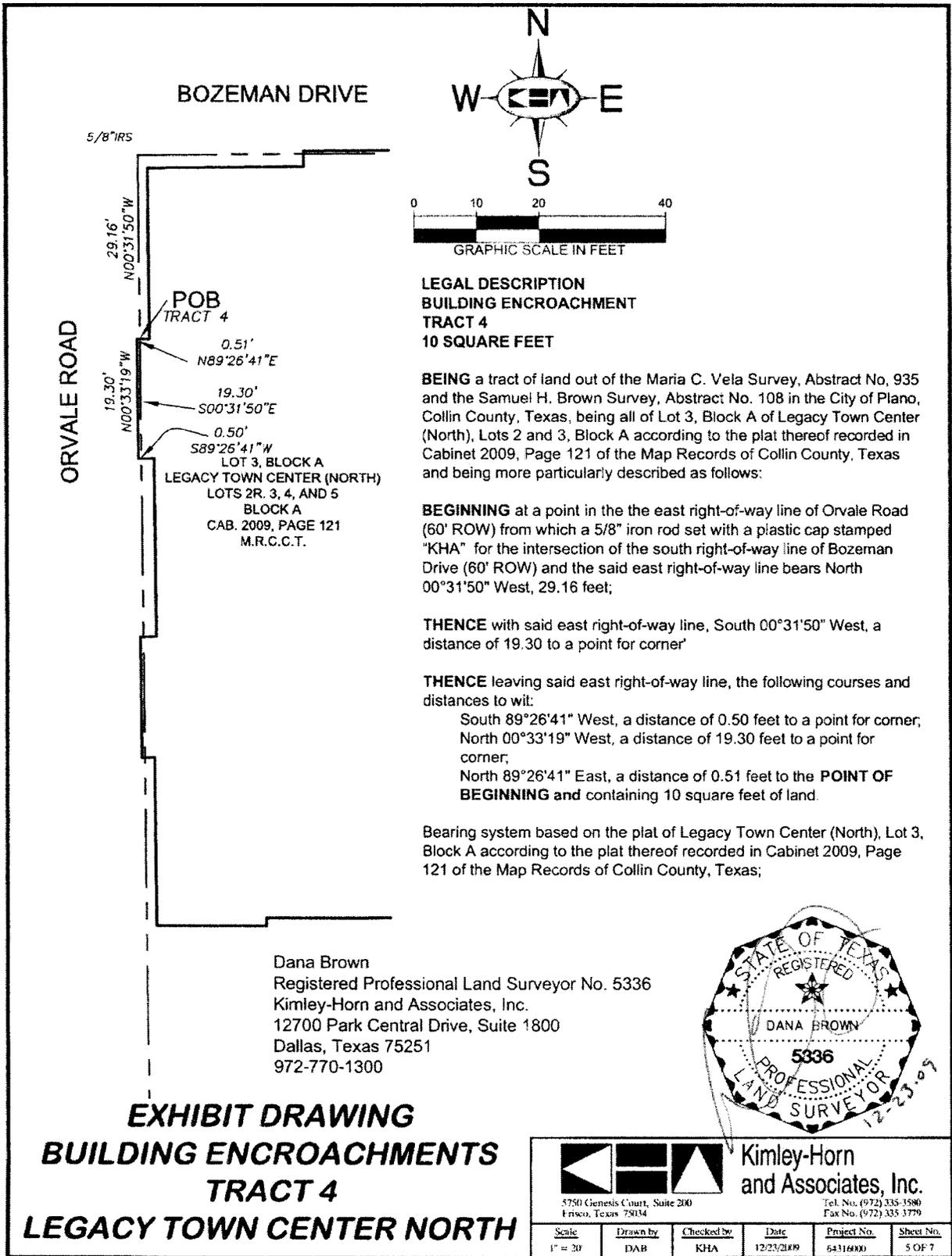


**EXHIBIT DRAWING
BUILDING ENCROACHMENTS
TRACT 3**

LEGACY TOWN CENTER NORTH

								Kimley-Horn and Associates, Inc.	
<small>5750 Genesis Court, Suite 200 Frisco, Texas 75034</small>		<small>Scale 1" = 20'</small>		<small>Drawn by DAB</small>		<small>Checked by KHA</small>		<small>Date 12/23/2009</small>	
<small>Project No. 64316000</small>		<small>Sheet No. 4 OF 7</small>		<small>Tel No (972) 335-3581</small>		<small>Fax No (972) 335-3779</small>			

PLOTTED BY BROWN, DANA 12/23/2009 8:45 AM DWG NAME KADAL_SURVEY\64316000\PHASE II ASBUILT_LDD PHASE II\DWG\BLDG ENCROACHMENT EXHIBIT.DWG LAST
 SAVED 12/23/2009 8:28 AM



**LEGAL DESCRIPTION
BUILDING ENCROACHMENT
TRACT 4
10 SQUARE FEET**

BEING a tract of land out of the Maria C. Vela Survey, Abstract No. 935 and the Samuel H. Brown Survey, Abstract No. 108 in the City of Plano, Collin County, Texas, being all of Lot 3, Block A of Legacy Town Center (North), Lots 2 and 3, Block A according to the plat thereof recorded in Cabinet 2009, Page 121 of the Map Records of Collin County, Texas and being more particularly described as follows:

BEGINNING at a point in the the east right-of-way line of Orvale Road (60' ROW) from which a 5/8" iron rod set with a plastic cap stamped "KHA" for the intersection of the south right-of-way line of Bozeman Drive (60' ROW) and the said east right-of-way line bears North 00°31'50" West, 29.16 feet;

THENCE with said east right-of-way line, South 00°31'50" West, a distance of 19.30 to a point for corner'

THENCE leaving said east right-of-way line, the following courses and distances to wit:
 South 89°26'41" West, a distance of 0.50 feet to a point for corner;
 North 00°33'19" West, a distance of 19.30 feet to a point for corner;
 North 89°26'41" East, a distance of 0.51 feet to the **POINT OF BEGINNING** and containing 10 square feet of land.

Bearing system based on the plat of Legacy Town Center (North), Lot 3, Block A according to the plat thereof recorded in Cabinet 2009, Page 121 of the Map Records of Collin County, Texas;

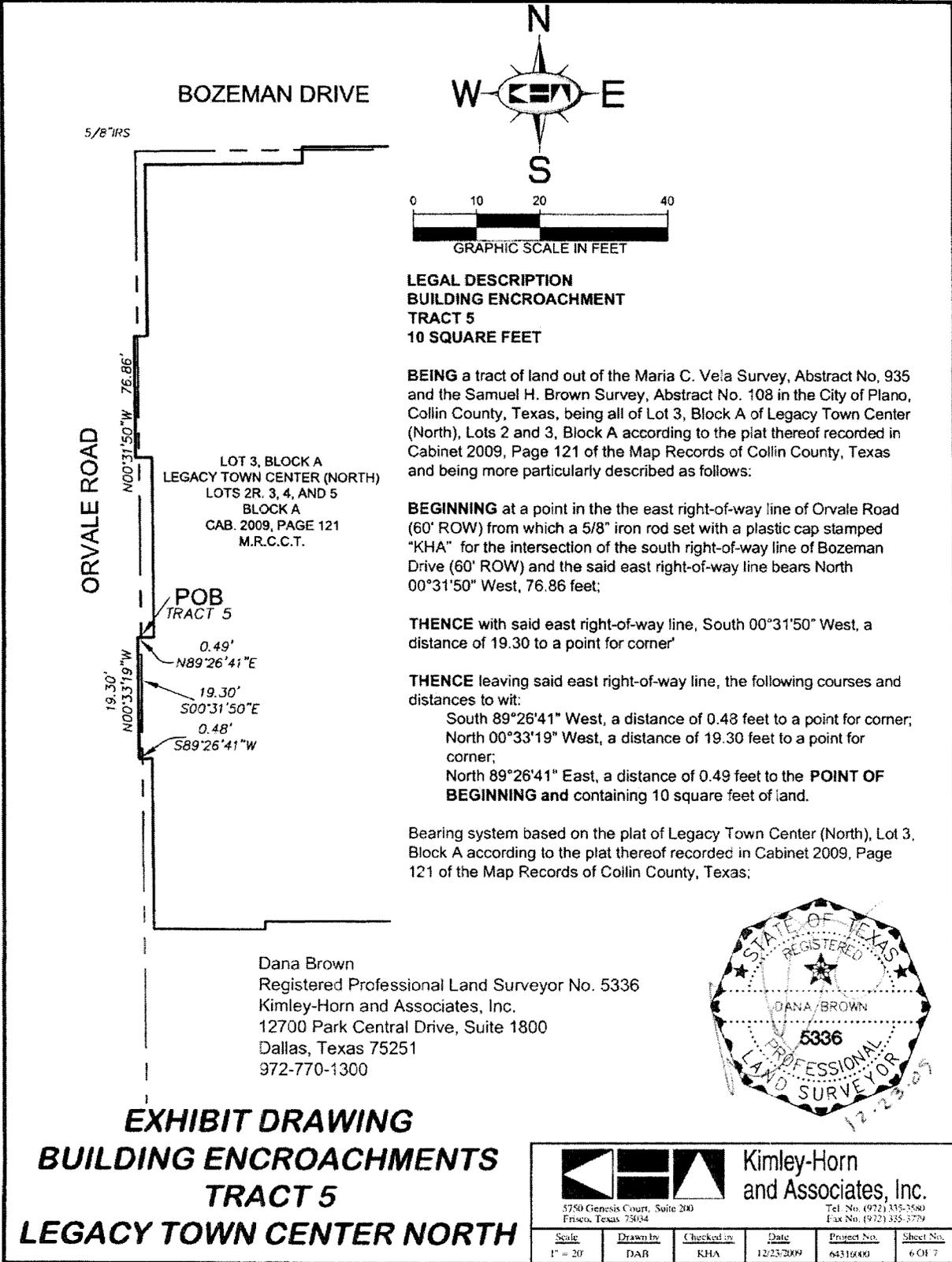
Dana Brown
 Registered Professional Land Surveyor No. 5336
 Kimley-Horn and Associates, Inc.
 12700 Park Central Drive, Suite 1800
 Dallas, Texas 75251
 972-770-1300



**EXHIBIT DRAWING
BUILDING ENCROACHMENTS
TRACT 4
LEGACY TOWN CENTER NORTH**

		Kimley-Horn and Associates, Inc. <small>5750 Genesis Court, Suite 200 Frisco, Texas 75034</small>		<small>Tel. No. (972) 335-3580 Fax No. (972) 335-3779</small>	
Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 30'	DAB	KHA	12/23/2009	64316000	5 OF 7

PLOTTED BY BROWN, DANA 12/23/2009 8:45 AM DWG NAME: KADAL_SURVEY\64316000\PHASE II AS BUILT\T_1.LDD PHASE II DWG: BLDG ENCROACHMENT EXHIBIT.DWG LAST SAVED 12/23/2009 8:28 AM



**LEGAL DESCRIPTION
BUILDING ENCROACHMENT
TRACT 5
10 SQUARE FEET**

BEING a tract of land out of the Maria C. Vela Survey, Abstract No. 935 and the Samuel H. Brown Survey, Abstract No. 108 in the City of Plano, Collin County, Texas, being all of Lot 3, Block A of Legacy Town Center (North), Lots 2 and 3, Block A according to the plat thereof recorded in Cabinet 2009, Page 121 of the Map Records of Collin County, Texas and being more particularly described as follows:

BEGINNING at a point in the the east right-of-way line of Orvale Road (60' ROW) from which a 5/8" iron rod set with a plastic cap stamped "KHA" for the intersection of the south right-of-way line of Bozeman Drive (60' ROW) and the said east right-of-way line bears North 00°31'50" West, 76.86 feet;

THENCE with said east right-of-way line, South 00°31'50" West, a distance of 19.30 to a point for corner'

THENCE leaving said east right-of-way line, the following courses and distances to wit:
 South 89°26'41" West, a distance of 0.48 feet to a point for corner;
 North 00°33'19" West, a distance of 19.30 feet to a point for corner;
 North 89°26'41" East, a distance of 0.49 feet to the **POINT OF BEGINNING** and containing 10 square feet of land.

Bearing system based on the plat of Legacy Town Center (North), Lot 3, Block A according to the plat thereof recorded in Cabinet 2009, Page 121 of the Map Records of Collin County, Texas;

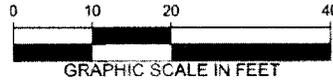
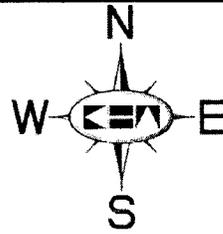
Dana Brown
 Registered Professional Land Surveyor No. 5336
 Kimley-Horn and Associates, Inc.
 12700 Park Central Drive, Suite 1800
 Dallas, Texas 75251
 972-770-1300



**EXHIBIT DRAWING
BUILDING ENCROACHMENTS
TRACT 5
LEGACY TOWN CENTER NORTH**

		Kimley-Horn and Associates, Inc. <small>5750 Genesis Court, Suite 200 Frisco, Texas 75034</small>		<small>Tel. No. (972) 355-3580 Fax No. (972) 355-3779</small>	
Scale: 1" = 20'	Drawn by: DAB	Checked by: KHA	Date: 12/23/2009	Project No.: 64319400	Sheet No.: 6 OF 7

PLOTTED BY BROWN, DANA 12/23/2009 8:45 AM DWG NAME K:\DAL_SURVEY\64316000\PHASE II ASBUILT_LDD PHASE I\DWG\BLDG ENCROACHMENT\EXHIBIT.DWG LAST SAVED 12/23/2009 8:28 AM



**LEGAL DESCRIPTION
BUILDING ENCROACHMENT
TRACT 6
11 SQUARE FEET**

BEING a tract of land out of the Maria C. Vela Survey, Abstract No. 935 and the Samuel H. Brown Survey, Abstract No. 108 in the City of Plano, Collin County, Texas, being all of Lot 3, Block A of Legacy Town Center (North), Lots 2 and 3, Block A according to the plat thereof recorded in Cabinet 2009, Page 121 of the Map Records of Collin County, Texas and being more particularly described as follows:

BEGINNING at a point in the the east right-of-way line of Orvale Road (60' ROW) from which a 5/8" iron rod set with a plastic cap stamped "KHA" for the intersection of the north right-of-way line of Hathaway Parkway (60' ROW) and the said east right-of-way line bears South 00°31'50" East, 29.37 feet;

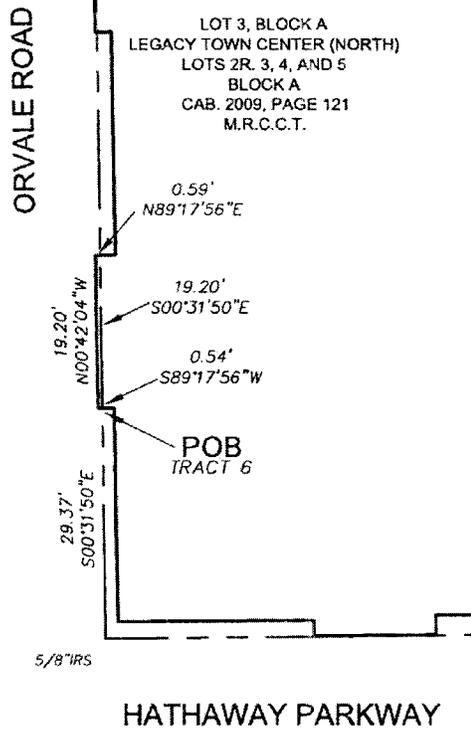
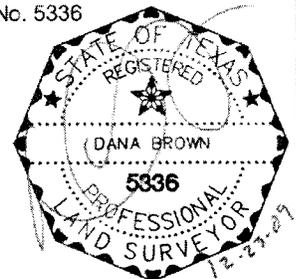
THENCE leaving said east right-of-way line, the following courses and distances to wit:

- South 89°17'56" West, a distance of 0.54 feet to a point for corner;
- North 00°42'04" West, a distance of 19.20 feet to a point for corner;
- North 89°17'56" East, a distance of 0.59 feet to a point in the east right-of-way line of said Orvale Road;

THENCE with said east right-of-way line, South 00°31'50" West, a distance of 19.20 to the **POINT OF BEGINNING** and containing 11 square feet of land.

Bearing system based on the plat of Legacy Town Center (North), Lot 3, Block A according to the plat thereof recorded in Cabinet 2009, Page 121 of the Map Records of Collin County, Texas;

Dana Brown
Registered Professional Land Surveyor No. 5336
Kimley-Horn and Associates, Inc.
12700 Park Central Drive, Suite 1800
Dallas, Texas 75251
972-770-1300



**EXHIBIT DRAWING
BUILDING ENCROACHMENTS
TRACT 6
LEGACY TOWN CENTER NORTH**

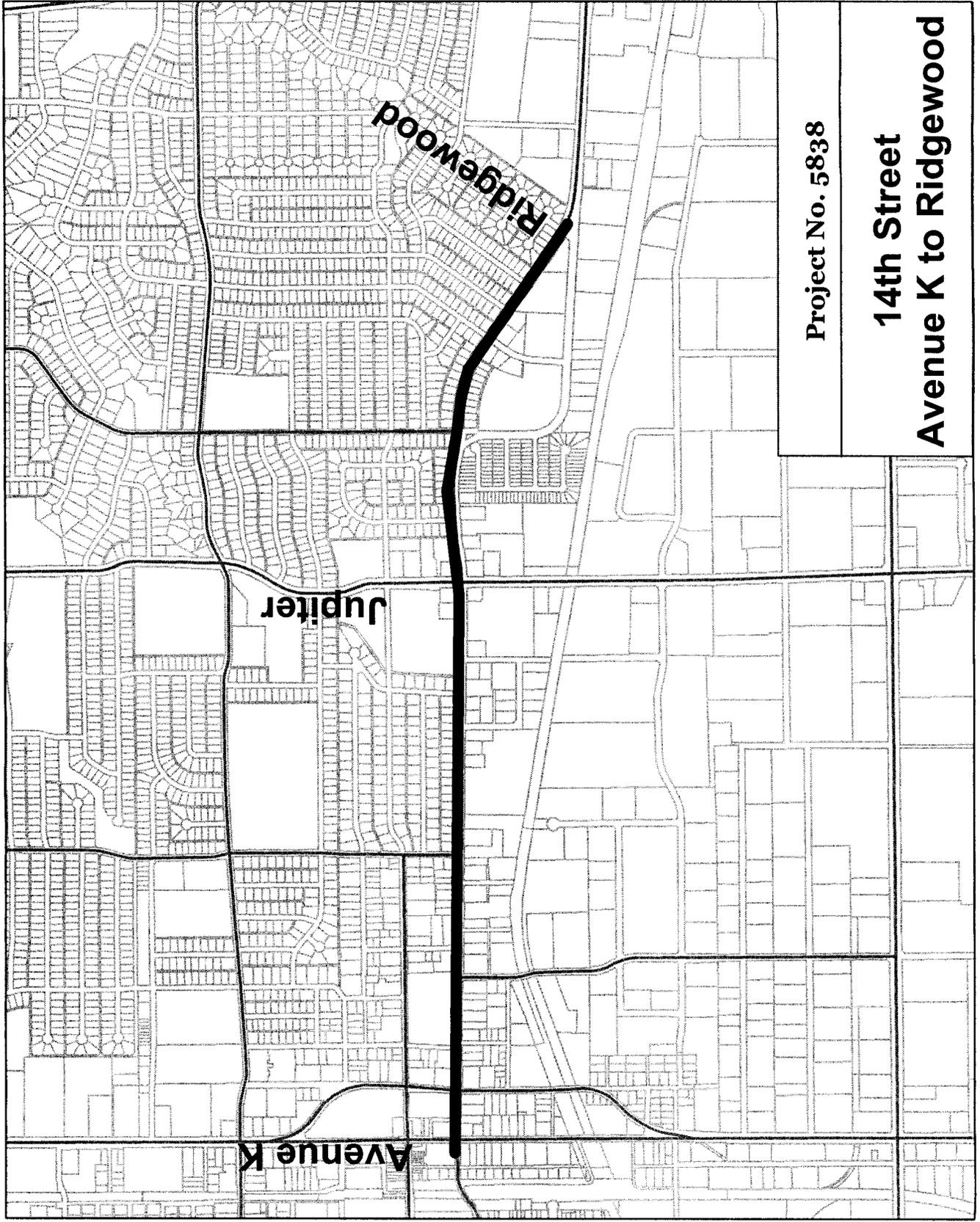
		Kimley-Horn and Associates, Inc.		
<small>5750 Genesis Court, Suite 200 Frisco, Texas 75034</small>		<small>Tel. No. (972) 335 3580 Fax No. (972) 335 3779</small>		
Scale	Drawn by	Checked by	Date	Project No.
1" = 20'	DAB	RHA	12/23/2009	64310001
				Sheet No.
				7 OF 7

PLOTTED BY BROWN, DANA 12/23/2009 8:45 AM DWG NAME K:\DAL_SURVEY\64310000\PHASE II AS\RESULT_LDD\PHASE I\DDWG\BLDG ENCROACHMENT EXHIBIT.DWG LAST SAVED 12/23/2009 8:28 AM



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		1/25/10		
Department:		Public Works & Engineering		
Department Head		Alan L. Upchurch		
Agenda Coordinator (include phone #):			Irene Pegues (7198)	
			Project No. 5838	
CAPTION				
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 reconstruction of 14 th Street from K Avenue to Ridgewood Drive; 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 checked="" type="checkbox"/> CIP				
FISCAL YEAR:	2009-10	Prior Year (CIP Only)	Current Year	Future Years
		TOTALS		
Budget		0	0	0
Encumbered/Expended Amount		0	0	0
This Item		0	1,550,000	0
BALANCE		0	1,550,000	0
FUND(S): STREET IMPROVEMENT CIP				
COMMENTS: This item allows the City to enter into an interlocal agreement with Collin County for the 14 th Street – K Avenue to Ridgewood Drive project. If this request is approved, Collin County will remit to the City \$1,550,000 for reconstruction of 14 th Street from K Avenue to Ridgewood Drive.				
STRATEGIC PLAN GOAL: Interlocal agreements for street reconstruction relate to the City's Goal of Financially Strong City with Service Excellence.				
SUMMARY OF ITEM				
This Agreement provides for Collin County to remit to the City the sum of \$1,550,000 for the reconstruction of 14 th Street from K Avenue to Ridgewood Drive. Half of the County funds will be provided after a Notice to Proceed is issued, the remaining half when the project is half completed. These funds were allocated from the 2003 Collin County Bond Program.				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Location Map			N/A	



Project No. 5838

**14th Street
Avenue K to Ridgewood**

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 reconstruction of 14th Street from K Avenue to Ridgewood Drive; 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 reconstruction of 14th Street from K Avenue to Ridgewood Drive, 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 25th day of January, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

EXHIBIT "A"

**INTERLOCAL AGREEMENT
BETWEEN COLLIN COUNTY AND THE CITY OF PLANO
CONCERNING THE RECONSTRUCTION OF 14TH STREET
FROM K AVENUE TO RIDGEWOOD DRIVE**

2007 BOND PROJECT #07-061

WHEREAS, the County of Collin, Texas ("County"), and the City of Plano, Texas ("City"), desire to enter into an agreement concerning the reconstruction of 14th Street from K Avenue to Ridgewood Drive (the "Project"), in Plano, Collin County, Texas; and

WHEREAS, the City of Plano has obtained funding from the Texas Department of Transportation from Regional Tollroad Revenue funds in the amount of \$3,500,000.00 for the Project; and

WHEREAS, the total project cost is estimated to be \$5,050,000.00, for which \$3,500,000.00 will come from the Texas Department of Transportation Regional Tollroad Revenue funds and \$1,550,000.00 from Collin County funds; and

WHEREAS, the 2007 County Bond Program included \$900,000.00 for the 14th Street project but the bonds have not been sold; and

WHEREAS, the US 75 Ramp Improvement Project, #03-45, is completed and has \$2,942,616.10 remaining in unallocated funds of which Plano would request to reallocate \$1,550,000.00 to the 14th Street Project, leaving \$1,392,616.10 to be reallocated to a mutually agreed upon project; and

WHEREAS, the Interlocal Cooperation Act (Texas Government Code Chapter 791) authorizes any local government to contract with one or more 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 reconstruct 14th Street from K Avenue to Ridgewood Drive. The improvements include reconstructing 14th Street as a four-lane undivided thoroughfare from K Avenue to west of Jupiter and a six-lane divide thoroughfare from

west of Jupiter Road to Ridgewood Drive. The project will include additional underground storm sewer 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 no real property for use as right-of-way.

ARTICLE IV.

The City estimates the total actual cost of the project to be \$5,050,000.00. The City is receiving \$3,500,000.00 in Regional Tollroad Revenue funds for the project. The County agrees to fund a portion of the total cost to construct the improvements in an amount not to exceed \$1,550,000.00. The County shall remit 50 percent of this amount, \$775,000.00, 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 percent within thirty (30) days after receipt of notice from the City that the Project is 50 percent 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 deduct the actual Regional Tollroad Revenue funding; and if the remainder is less than \$1,550,000.00, the difference shall be refunded to the County. 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, and construction administration costs including contingencies.

ARTICLE V.

The County's participation in the Project shall not exceed \$1,550,000.00 unless this agreement is amended by mutual consent.

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 _____, 2010, 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. _____

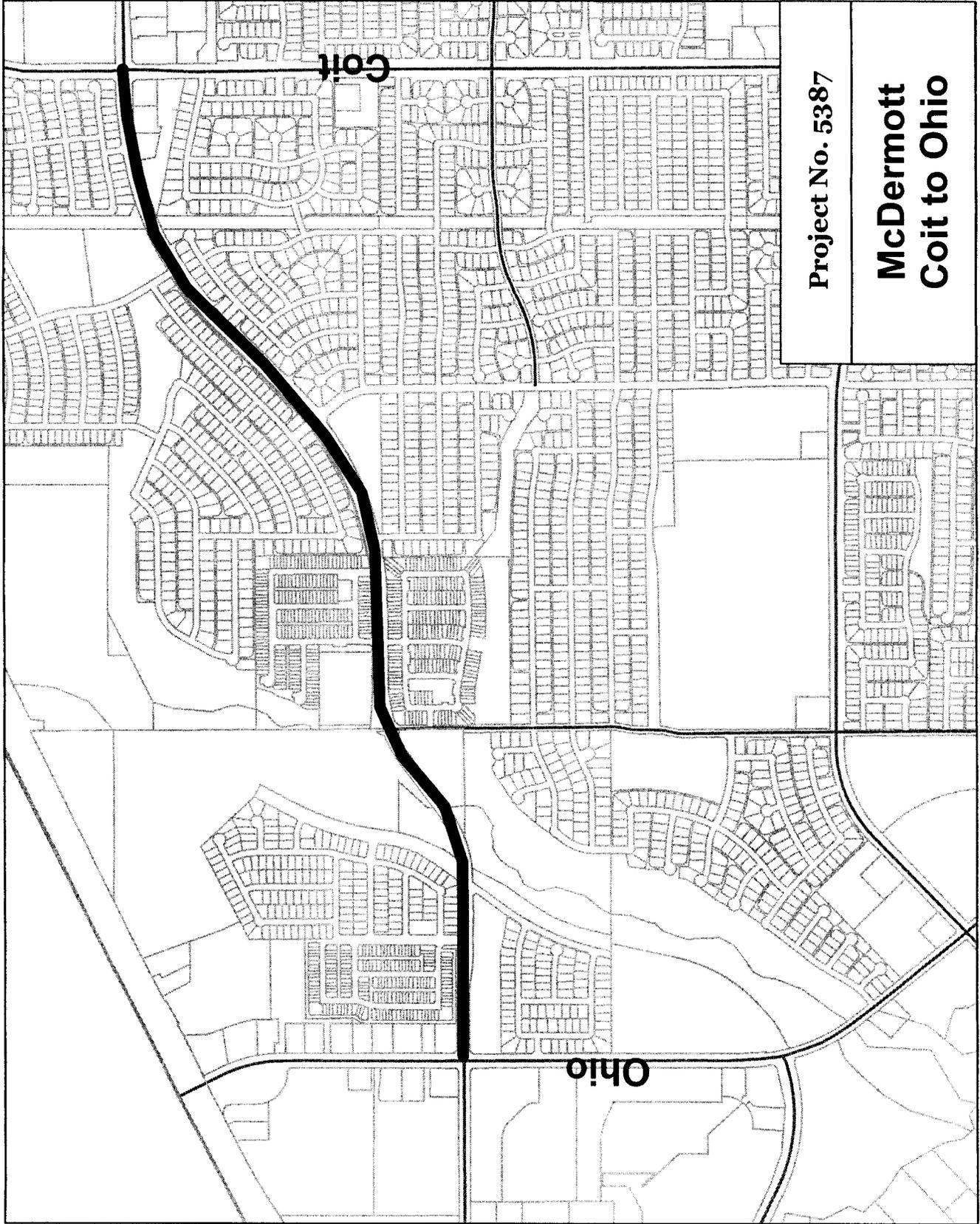
APPROVED AS TO FORM:

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



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		1/25/10		
Department:		Public Works & Engineering		
Department Head		Alan L. Upchurch		
Agenda Coordinator (include phone #):			Irene Pegues (7198)	
			Project No. 5387	
CAPTION				
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 McDermott Road from Coit Road to Ohio Drive; 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 checked="" type="checkbox"/> CIP				
FISCAL YEAR:	2009-10	Prior Year (CIP Only)	Current Year	Future Years
		TOTALS		
Budget		0	0	0
Encumbered/Expended Amount		0	0	0
This Item		0	800,000	0
BALANCE		0	800,000	0
FUND(S): STREET IMPROVEMENT CIP				
COMMENTS: This item allows the City to enter into an interlocal agreement with Collin County for the McDermott Road – Coit Road to Ohio Drive project. If this request is approved, Collin County will remit to the City \$800,000 for widening of McDermott Road – Coit Road to Ohio Drive.				
SUMMARY OF ITEM				
This Agreement provides for Collin County to remit to the City the sum of \$800,000 for the widening of McDermott Road from Coit Road to Ohio Drive. Half of the County funds will be provided after a Notice to Proceed is issued, the remaining half when the project is half completed. These funds were allocated from the 2003 and 2007 Collin County Bond Program.				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Location Map			N/A	



Project No. 5387

**McDermott
Coit to Ohio**

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 McDermott Road from Coit Road to Ohio Drive; 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 McDermott Road from Coit Road to Ohio Drive, 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 25th day of January, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

EXHIBIT "A"

**INTERLOCAL AGREEMENT
BETWEEN COLLIN COUNTY AND THE CITY OF PLANO
CONCERNING THE WIDENING OF MCDERMOTT ROAD
FROM COIT ROAD TO OHIO DRIVE**

03-55 and 07-074 BOND PROJECTS

WHEREAS, the County of Collin, Texas ("County"), and the City of Plano, Texas ("City"), desire to enter into an agreement concerning the widening of McDermott Road from Coit Road to Ohio Drive (the "Project"), in Plano, Collin County, Texas; and

WHEREAS, the Interlocal Cooperation Act (Texas Government Code Chapter 791) authorizes any local government to contract with one or more 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 McDermott Road from Coit Road to Ohio Drive. The project will widen McDermott Road to a six-lane divided thoroughfare from Coit Road to Razor Road, a distance of approximately 7500 feet, and widen to a four-lane divided thoroughfare from Razor Road to Ohio Drive, a distance of 1500 feet. The total distance is approximately 9,000 feet. The improvements shall also include construction of underground storm sewers and a bridge over White Rock Creek 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 no real property for use as right-of-way.

ARTICLE IV.

The City estimates the total actual cost of the project to be \$2,900,000. The Texas Department of Transportation is funding approximately \$2,100,000 toward the project. The County agrees to fund the non TxDOT funding to construct the improvements in an amount not to exceed \$800,000. The County shall remit 50 percent of this amount, \$400,000, 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 percent within thirty (30) days after receipt of notice from the City that the Project is 50 percent 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 deduct the actual TxDOT funding; and if the remainder is less than \$800,000, the difference shall be refunded to the County. 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, and construction administration costs including contingencies.

ARTICLE V.

The County's participation in the Project shall not exceed \$800,000. The County funding includes \$400,000 from 03-55 and \$400,000 from 07-074. The City and County agree that any remaining funds allocated to the Project will be reallocated to a mutually agreed upon project.

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 _____, 2010, 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. _____

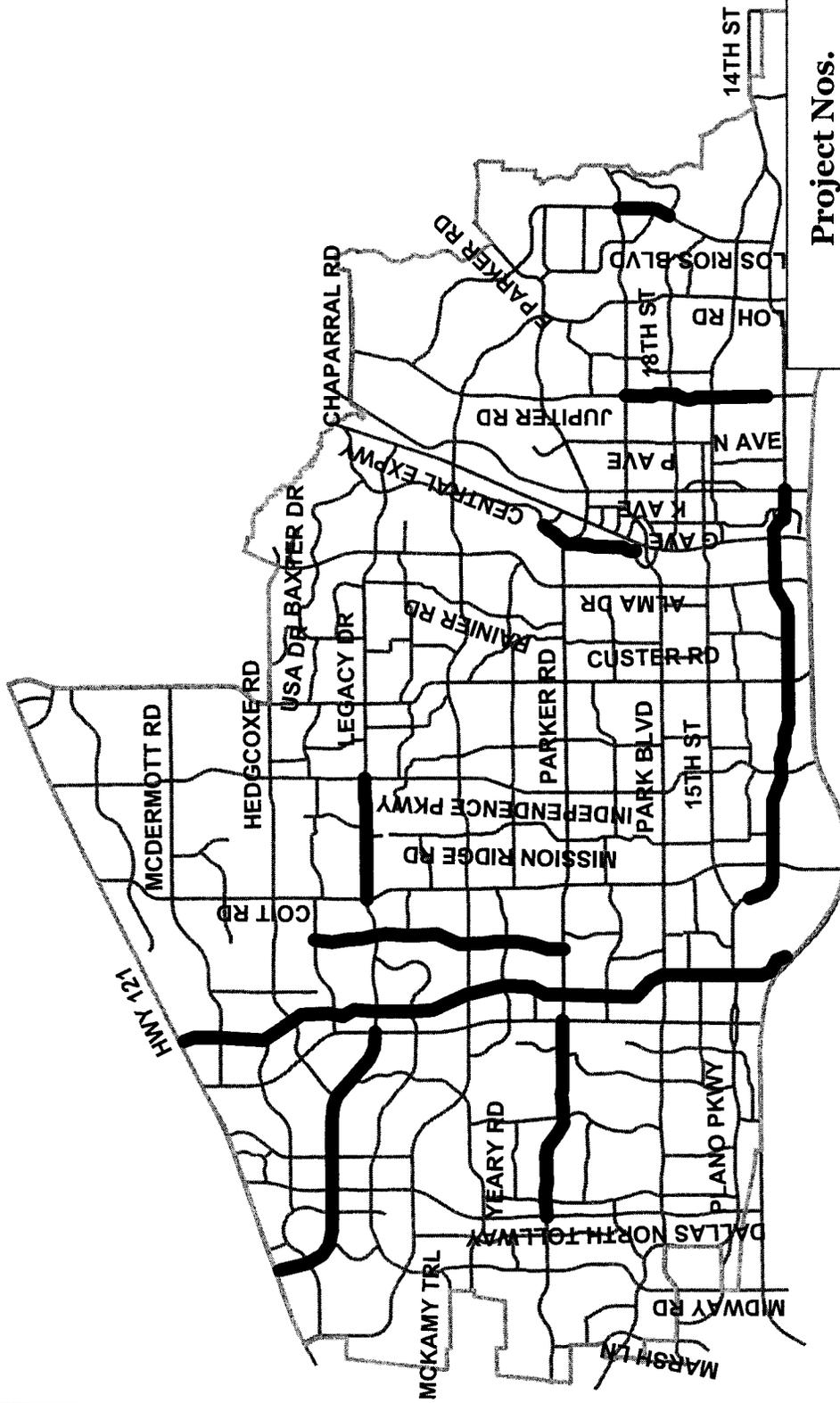
APPROVED AS TO FORM:

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



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		1/25/10		
Department:		Public Works & Engineering		
Department Head		Alan L. Upchurch		
Agenda Coordinator (include phone #): Irene Pegues (7198) Project Nos. 5975, 5974, 5979, 5942, 5984, 5982				
CAPTION				
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 major thoroughfare rehabilitation improvements on Plano Parkway, Preston Meadow Drive, Legacy Drive, Jupiter Road, Parker Road, Los Rios Boulevard, Ohio Drive and Premier Drive; 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 checked="" type="checkbox"/> CIP				
FISCAL YEAR:	2009-10	Prior Year (CIP Only)	Current Year	Future Years
		TOTALS		
Budget		0	0	0
Encumbered/Expended Amount		0	0	0
This Item		0	1,360,000	0
BALANCE		0	1,360,000	0
FUND(S): CAPITAL RESERVE				
COMMENTS: This item allows the City to enter into an interlocal agreement with Collin County for the Arterial Concrete Repair project. If this request is approved, Collin County will remit to the City \$1,360,000 for major thoroughfare rehabilitation improvements.				
STRATEGIC PLAN GOAL: Interlocal agreements for arterial concrete repairs relate to the City's Goal of Financially Strong City with Service Excellence.				
SUMMARY OF ITEM				
This Agreement provides for Collin County to remit to the City the sum of \$1,360,000 for major thoroughfare rehabilitation improvements on Plano Parkway, Preston Meadow Drive, Legacy Drive, Jupiter Road, Parker Road, Los Rios Boulevard, Ohio Drive and Premier Drive. Half of the County funds will be provided after a Notice to Proceed is issued, the remaining half when the project is half completed. These funds were allocated from the 2007 Collin County Bond Program.				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Location Map			N/A	



Project Nos.
 5942, 5974, 5975,
 5979, 5982 & 5984

Location Map

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 major thoroughfare rehabilitation improvements on Plano Parkway, Preston Meadow Drive, Legacy Drive, Jupiter Road, Parker Road, Los Rios Boulevard, Ohio Drive and Premier Drive; 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 major thoroughfare rehabilitation improvements on Plano Parkway, Preston Meadow Drive, Legacy Drive, Jupiter Road, Parker Road, Los Rios Boulevard, Ohio Drive and Premier Drive, 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 25th day of January, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

EXHIBIT "A"

**INTERLOCAL AGREEMENT
BETWEEN THE CITY OF PLANO AND COLLIN COUNTY, TEXAS,
CONCERNING MAJOR THOROUGHFARE REHABILITATION IMPROVEMENTS ON
PLANO PARKWAY, PRESTON MEADOW DRIVE, LEGACY DRIVE, JUPITER ROAD,
PARKER ROAD, LOS RIOS BOULEVARD, OHIO DRIVE AND PREMIER DRIVE**

**2007 COLLIN COUNTY BOND PROJECT #07-057; PLANO10
2009 FUNDING**

WHEREAS, the County of Collin, Texas ("County"), and the City of Plano, Texas ("City"), desire to enter into an agreement concerning major thoroughfare rehabilitation improvements on Plano Parkway, Preston Meadow Drive, Legacy Drive, Jupiter Road, Parker Road, Los Rios Boulevard, Ohio Drive, and Premier Drive in Plano, Collin County, Texas; and

WHEREAS, the Interlocal Cooperation Act (Texas Government Code Chapter 791) authorizes any local government to contract with one or more 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 major thoroughfare rehabilitation improvements in four contracts on the following road sections:

1. Plano Parkway from Commerce Drive to K Avenue
2. Parker Road from Preston Road to Dallas North Tollroad
3. Legacy Drive from Independence Parkway to Coit Road and Preston Meadow Drive from Parker Road to Quincy Lane
4. Jupiter Road from Park Boulevard to Summit Avenue and Los Rios Boulevard from Country Club Drive to Park Boulevard
5. Ohio Drive from Mapleshade Lane to SH 121
6. Premier Drive from Enterprise Drive to Ruisseau Drive
7. Legacy Drive from Preston Road to SH 121

These sections are hereinafter called the "2009 Project". The 2009 Project shall consist of removal of deteriorated pavement and the installation of new concrete pavement. 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 contracts for the 2009 Project.

ARTICLE III.

The City will acquire no 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 2009 Project to be \$2,720,000. The County agrees to fund up to one half of the total cost to construct the improvements in an amount not to exceed \$1,360,000. The County shall remit 50 percent of this amount, \$680,000, to the City within thirty (30) days after the City issues a Notice to Proceed to the lowest responsible bidders and the City requests payment. The County will remit the remaining 50 percent within thirty (30) days after receipt of notice from the City that the 2009 Project is 50 percent complete. Following completion of the 2009 Project, the City shall provide a final accounting of expenditures for the 2009 Project. If the actual cost to construct the 2009 Project is less than the estimated amount set forth herein, the City shall remit the County 50 percent 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 2009 Project. The "total cost of the 2009 Project" shall include land acquisition, engineering, construction, inspection, testing, street lighting, and construction administration costs including contingencies.

ARTICLE V.

The County's participation in the 2009 Project shall not exceed \$1,500,000.

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 costs and progress reports every thirty (30) days until the 2009 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 2009 Project. This agreement shall automatically renew annually during this period.

APPROVED AS TO FORM:

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

COUNTY OF COLLIN, TEXAS

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

Executed on this _____ date of _____, 2010, by the County of Collin, pursuant to Commissioners' Court Order No. _____

ATTEST:

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

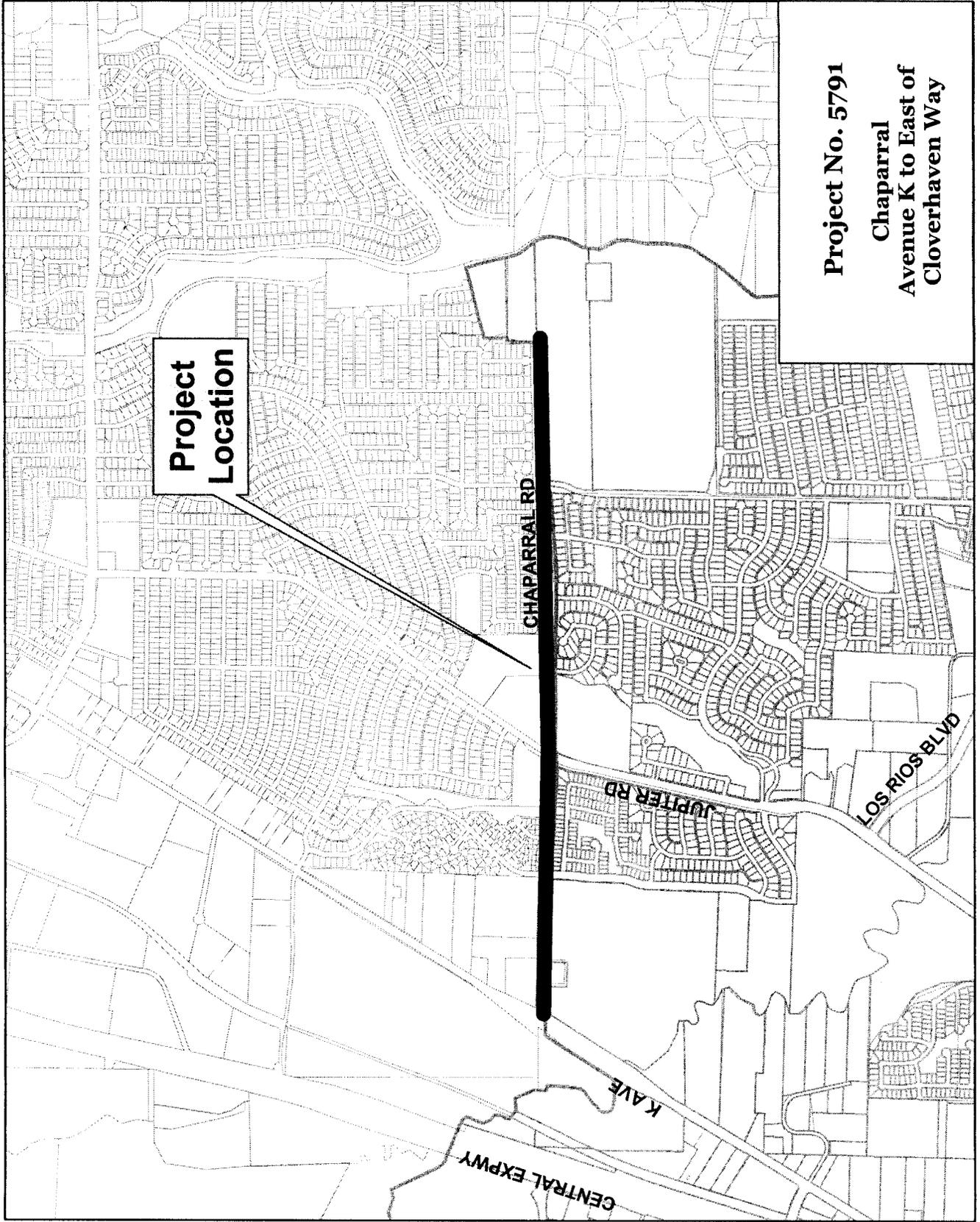
CITY OF PLANO, TEXAS

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: _____



**Project
Location**

Project No. 5791
Chaparral
Avenue K to East of
Cloverhaven Way

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 Chaparral Road from K Avenue to east of Cloverhaven Way; 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 Chaparral Road from K Avenue to east of Cloverhaven Way, 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 25th day of January, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

EXHIBIT "A"

**INTERLOCAL AGREEMENT
BETWEEN COLLIN COUNTY AND THE CITY OF PLANO
CONCERNING THE WIDENING OF CHAPARRAL ROAD
FROM K AVENUE TO EAST OF CLOVERHAVEN WAY**

03-56 BOND PROJECT

WHEREAS, the County of Collin, Texas ("County"), and the City of Plano, Texas ("City"), desire to enter into an agreement concerning the widening of Chaparral Road from K Avenue to east of Cloverhaven Way (the "Project"), in Plano, Collin County, Texas; and

WHEREAS, the Interlocal Cooperation Act (Texas Government Code Chapter 791) authorizes any local government to contract with one or more 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 Chaparral Road from K Avenue to east of Cloverhaven Way. The project will widen Chaparral Road to a six-lane divided thoroughfare from K Avenue to Jupiter Road a distance of approximately 2,730 feet and widen to a four-lane divided thoroughfare from Jupiter Road to Cloverleaf Drive, a distance of 880 feet, and from Cloverhaven Way east approximately 1,200 feet. The total distance is approximately 4,810 feet. The improvements shall also include construction of 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 six acres of real property for use as right-of-way.

ARTICLE IV.

The City estimates the total actual cost of the project to be \$1,900,000. The County agrees to fund a portion of the total cost to construct the improvements in an amount not to exceed \$950,000. The County shall remit 50 percent of this amount, \$425,000, 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 percent within thirty (30) days after receipt of notice from the City that the Project is 50 percent 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 percent 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, and construction administration costs including contingencies.

ARTICLE V.

The County's participation in the Project shall not exceed \$950,000. There is a total of \$1,450,000 in County funding allocated to this Project. The City and County agree that any remaining funds allocated to the Project will be reallocated to a mutually agreed upon project.

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 _____, 2010, 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: _____



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY	
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory	
Council Meeting Date:	1-25-10
Department:	Public Works & Engineering
Department Head	Alan L. Upchurch
Agenda Coordinator (include phone #): Irene Pegues X-7152	

CAPTION

An ordinance of the City of Plano, Texas, amending Section 12-102(e) and adding Section 12-102(f) to Chapter 12 (Traffic Code) of the City of Plano Code of Ordinances to prohibit the stopping, standing, or parking of motor vehicles on a certain section of Gifford Drive and to prohibit the parking of vehicles on a certain section of Gifford Drive, within the City limits of the City of Plano; declaring it unlawful and a misdemeanor to park motor vehicles upon such sections of such roadways within the limits herein defined; providing a fine for criminal penalties not to exceed \$200.00 for each offense; and providing a repealer clause, a severability clause, a savings clause, a publication clause, and an effective date.

FINANCIAL SUMMARY

NOT APPLICABLE
 OPERATING EXPENSE
 REVENUE
 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: Any revenue received via fines as a result of this Ordinance is undeterminable at this time.

SUMMARY OF ITEM

After reviewing and testing various student drop-off and pick-up strategies for reducing traffic congestion in front of Rice Middle School, Plano Independent School District staff has requested a change in the utilization of the east curb of Gifford Drive between Russell Creek Drive and Kalgan Circle from No Parking, Stopping, or Standing from 8:00 to 8:45 A.M. and from 3:00 to 4:00 P.M. to No Parking from 8:00 to 8:45 A.M. and from 3:00 to 4:00 P.M. This change will allow parents to use the street curb along the frontage of the school for dropping off and picking up students on school days and should result in reduced traffic congestion on Gifford Drive. In order to effectuate this change, Transportation Engineering Division staff have prepared the attached ordinance revising Section 12-102 of the Plano City Code for City Council consideration. The Transportation Engineering Division supports adoption of this ordinance.

List of Supporting Documents: Location Map	Other Departments, Boards, Commissions or Agencies N/A
---	---

An ordinance of the City of Plano, Texas, amending Section 12-102(e) and adding Section 12-102(f) to Chapter 12 (Traffic Code) of the City of Plano Code of Ordinances to prohibit the stopping, standing, or parking of motor vehicles on a certain section of Gifford Drive and to prohibit the parking of vehicles on a certain section of Gifford Drive, within the City limits of the City of Plano; declaring it unlawful and a misdemeanor to park motor vehicles upon such sections of such roadways within the limits herein defined; providing a fine for criminal penalties not to exceed \$200.00 for each offense; and providing a repealer clause, a severability clause, a savings clause, a publication clause, and an effective date.

WHEREAS, the Transportation Engineering Division of the City of Plano and the staff of Rice Middle School of the Plano Independent School District have cooperatively studied measures to reduce the chronic traffic congestion in front of the school during student drop-off and pick-up periods; and

WHEREAS, the current no parking, stopping, or standing zones along Gifford Drive in front of Rice Middle School contributes to chronic traffic congestion; and

WHEREAS, permitting the stopping or standing of motor vehicles along the east side of Gifford Drive in front of Rice Middle School will expedite the drop-off and pick-up of students during the school day and assist in ameliorating the chronic traffic congestion on Gifford Drive in front of Rice Middle School; and

WHEREAS, the City Council of the City of Plano finds it necessary to distinguish between the limits of where the parking of motor vehicles is prohibited and the stopping and standing of motor vehicles is prohibited along Gifford Drive within the City limits of the City of Plano in order to provide for the safety of the general public within the area; and

WHEREAS, the City Council of the City of Plano finds it necessary to prohibit parking of motor vehicles along a certain section of Gifford Drive within the City limits of the City of Plano in order to provide for the safety of the general public within the area.

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

Section I. It shall be unlawful for any person to stop, stand, or park a motor vehicle along the section of Gifford Drive described herein, except when necessary to avoid conflict with other traffic or in compliance with law or directions of a police officer.

Section II. It shall be unlawful for any person to park a motor vehicle along the section of Gifford Drive described herein, except when necessary to avoid conflict with other traffic or in compliance with law or directions of a police officer.

Section III. Section 12-102(e) of Chapter 12 (Traffic Code) of the City of Plano Code of Ordinances is hereby amended by the repeal of the following Subsection:

Gifford Drive along the east and west sides of Gifford Drive from its intersection with Russell Creek Drive north to Kalgan Circle for Rice Middle School between the hours of 8:00 a.m. to 8:45 a.m. and 3:00 p.m. to 4:00 p.m. on school days.

Section IV. Section 12-102(e) of Chapter 12 (Traffic Code) of the City of Plano Code of Ordinances is hereby amended by the addition of the following Subsection entitled and to read as follows:

“Gifford Drive, along the west side of Gifford Drive from its intersection with Russell Creek Drive north to Kalgan Circle for Rice Middle School between the hours of 8:00 a.m. to 8:45 a.m. and 3:00 p.m. to 4:00 p.m. on school days.”

Section V. Section 12-102(f) of Chapter 12 (Traffic Code) of the City of Plano Code of Ordinances is hereby enacted to read in its entirety as follows:

“(f) When signs are erected or curbs marked giving notice to such effect, it shall be unlawful for any person to park a motor vehicle, except when necessary to avoid conflict with other traffic or in compliance with law or directions of a police officer, along the following portions of the following streets on school days during the times specified below:

Gifford Drive, along the east side of Gifford Drive from its intersection with Russell Creek Drive north to Kalgan Circle for Rice Middle School between the hours of 8:00 a.m. to 8:45 a.m. and 3:00 p.m. to 4:00 p.m. on school days.”

Section VI. The Traffic Engineer of Plano is hereby authorized and directed to cause placement of traffic control signs at each approach to the portions of the roadways described herein, and such sign shall give notice to all persons of the prohibition against stopping, standing, or parking in this area.

Section VII. All provisions of the ordinances of the City of Plano, codified or uncodified, in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the ordinances of the City of Plano, codified or uncodified, not in conflict with the provisions of this Ordinance shall remain in full force and effect.

Section VIII. It is the intention of the City Council that this Ordinance, and every provision hereof, 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 IX. Any person, firm, or corporation violating any of the provisions of this Ordinance shall be guilty of a misdemeanor and, upon conviction in the Municipal Court, shall be subject to a fine not to exceed TWO HUNDRED AND NO/100 DOLLARS (\$200.00) for each offense. Each and every violation shall be deemed to constitute a separate offense.

Section X. The repeal of any ordinance or part of an ordinance effectuated by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying, or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions of any ordinances at the time of passage of this Ordinance.

Section XI. This Ordinance shall become effective from and after its passage and publication as required by law.

DULY PASSED AND APPROVED this 25th day of January, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input checked="" type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		1/25/10		
Department:		Budget & Research		
Department Head		Karen Rhodes-Whitley		
Agenda Coordinator (include phone #): Anita Bell, x5420				
CAPTION				
<p>An Ordinance of the City of Plano, Texas, transferring the sum of \$49,000 from the Convention & Tourism Fund unappropriated fund balance to the Convention & Tourism Fund operating appropriation for Fiscal Year 2009-10 for the purpose of providing additional funds for the costs associated with conducting a Plano Convention Center feasibility and market study; amending the budget of the City and Ordinance 2009-9-13, Section 1, Item "H" to reflect the actions taken herein; declaring this action to be a case of public necessity; and providing an effective date.</p>				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" 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	8,238,607	0	8,238,607
Encumbered/Expended Amount	0	0	0	0
This Item	0	49,000	0	49,000
BALANCE	0	8,287,607	0	8,287,607
FUND(s): CONVENTION & TOURISM				
<p>COMMENTS: Supplemental appropriations approved to date for the Convention & Tourism Fund, including this item, total \$49,000. The current Convention & Tourism Fund balance supports this supplemental appropriation. There is a companion agenda item in the amount of \$49,000 for Award of Contract to North Star Research Corporation.</p> <p>STRATEGIC PLAN GOAL: Conducting a Plano Convention Center feasibility and market study relates to the City's Goal of Strong Local Economy.</p>				
SUMMARY OF ITEM				
Supplemental Appropriation No. 2				
<p>This supplemental appropriation will allow the City to enter into an Agreement with North Star Research Corporation to conduct a Plano Convention Center feasibility and market study. This supplemental appropriation will cover all costs associated with the study including retainer fee, project costs, and any travel costs.</p>				



**CITY OF PLANO
COUNCIL AGENDA ITEM**

List of Supporting Documents: Supplmental Appropriations Log	Other Departments, Boards, Commissions or Agencies

An Ordinance of the City of Plano, Texas, transferring the sum of \$49,000 from the Convention & Tourism Fund unappropriated fund balance for Fiscal Year 2009-10 to the Convention & Tourism Fund operating appropriation for the purpose of providing additional funding for the costs associated with conducting a Plano Convention Center feasibility and market study; amending the budget of the City and Ordinance 2009-9-13, as amended, to reflect the actions taken herein; declaring this action to be a case of public necessity; and providing an effective date.

WHEREAS, The City Council of the City of Plano approved and adopted the budget for the City for Fiscal Year 2009-10 setting the appropriations for the Convention & Tourism Fund at \$8,238,607; and

WHEREAS, additional funding is required in order for the City of Plano to provide funding for unbudgeted costs related to a Plano Convention Center feasibility and market study; and

WHEREAS, the City Council deems it to be in the best interest of the City of Plano and its citizens to expend public funds for costs associated with conducting a Plano Convention Center feasibility and market study; and

WHEREAS, such necessary and essential costs cannot be fully met through appropriations in the existing budget; and

WHEREAS, the City Council now finds that additional appropriations to the Convention & Tourism Fund Operating Appropriation should be made in order to provide additional funding for this Plano Convention Center feasibility and market study, and that such action is a public necessity.

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

SECTION I. The sum of FORTY-NINE THOUSAND DOLLARS (\$49,000) is hereby transferred from the Convention & Tourism Fund Unappropriated Fund Balance to the Convention & Tourism Fund Operating Appropriation.

SECTION II. The budget of the City of Plano for Fiscal Year 2009-10 as adopted by Ordinance No. 2009-9-13 is amended to reflect the action taken herein.

SECTION III. The actions taken herein are found and declared to be a case of public necessity.

SECTION IV. This supplemental appropriation Ordinance No. 2 shall become effective immediately from and after the date of its passage.

DULY PASSED AND APPROVED THIS THE 25th DAY OF January, 2010.

Phil Dyer, **MAYOR**

ATTEST:

Diane Zucco, **CITY SECRETARY**

Diane C. Wetherbee, **CITY ATTORNEY**

FY 2009-10
SUPPLEMENTAL APPROPRIATIONS

Description	Department	Amount
Supplemental Appropriation for Special Election for City Council Place 3.	City Secretary	79,954
TOTAL GENERAL FUND APPROPRIATIONS		<u>\$ 79,954</u>
TOTAL CATV FUND APPROPRIATIONS		<u>\$ -</u>
TOTAL MUNICIPAL DRAINAGE FUND APPROPRIATIONS		<u>\$ -</u>
TOTAL WATER & SEWER FUND		<u>\$ -</u>
TOTAL SUSTAINABILITY & ENVIRONMENTAL FUND APPROPRIATIONS		<u>\$ -</u>
Supplemental Appropriation for Plano Convention Center market study.	Conv. & Visitors Bureau	49,000
TOTAL CONVENTION & TOURISM FUND APPROPRIATIONS		<u>\$ 49,000</u>
TOTAL PROPERTY/LIABILITY FUND APPROPRIATIONS		<u>\$ -</u>
TOTAL PROPERTY MANAGEMENT FUND APPROPRIATIONS		<u>\$ -</u>
TOTAL GOLF COURSE FUND APPROPRIATIONS		<u>\$ -</u>
TOTAL RECREATION FUND APPROPRIATIONS		<u>\$ -</u>
TOTAL INTERNAL SERVICE FUNDS AND OTHER FUNDS APPROPRIATIONS		<u>\$ -</u>
GRAND TOTAL ALL FUNDS		<u>\$ 128,954</u>



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input checked="" type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		01/25/10		
Department:		Public Services/Operations		
Department Head		James R. Hogan		
Agenda Coordinator (include phone #): Sherry Jackson - Ext. 7122				
CAPTION				
A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Agreement by and between North Star Research Corporation, a division of HVS Convention, Sports and Entertainment and the City of Plano; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.				
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	49,000	0	49,000
Encumbered/Expended Amount	0	0	0	0
This Item	0	-49,000	0	-49,000
BALANCE	0	0	0	0
FUND(S): CONVENTION & TOURISM				
<p>COMMENTS: There is a companion Supplemental Appropriation agenda item in the amount of \$49,000 to appropriate the required funding from the Convention & Tourism Fund balance to the Convention & Visitors Bureau operating budget. Approval of this item will allow the City to enter into an Agreement with North Star Research Corporation for a Plano Convention Center feasibility and market study.</p> <p>STRATEGIC PLAN GOAL: Conducting a Plano Convention Center feasibility and market study relates to the City's Goal of Strong Local Economy.</p>				
SUMMARY OF ITEM				
Plano Convention Center feasibility and market study.				
List of Supporting Documents: Exhibit "A" - Agreement			Other Departments, Boards, Commissions or Agencies	

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Agreement by and between North Star Research Corporation, a division of HVS Convention, Sports and Entertainment and the City of Plano; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

WHEREAS, the City Council has been presented a proposed agreement for a Plano Convention Center feasibility and market study between North Star Research Corporation, a division of HVS, and the City of Plano, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and,

WHEREAS, upon full review and consideration of the Agreement, and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the City Manager or his authorized designee shall be authorized to execute it on behalf of the City of Plano.

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

Section I. The terms and conditions of the Agreement, having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things approved.

Section II. The City Manager or his authorized designee is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreement.

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

DULY PASSED AND APPROVED this the 25th day of January, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

**PROFESSIONAL SERVICES AGREEMENT
BY AND BETWEEN THE CITY OF PLANO, TEXAS AND
NORTH STAR RESEARCH CORPORATION, A DIVISION OF HVS CONVENTION,
SPORTS AND ENTERTAINMENT FACILITIES CONSULTING**

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 **NORTH STAR RESEARCH CORPORATION, A DIVISION OF HVS CONVENTION, SPORTS AND ENTERTAINMENT FACILITIES CONSULTING**, an Illinois corporation, hereinafter referred to as "Contractor" to be effective from and after the date as provided herein.

W I T N E S S E T H:

WHEREAS, the City desires to engage the services of Contractor to provide a Plano Convention Center feasibility and market study, hereinafter referred to as the "Project"; and

WHEREAS, Contractor desires to render such 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. Engagement

The City hereby agrees to retain Contractor to perform professional services in connection with the Plano convention center feasibility and market study and Contractor agrees to perform such services in accordance with the terms and conditions of this Agreement.

II. Scope of Services

The parties agree that Contractor shall perform such services as are described in the proposal attached hereto and incorporated herein as Exhibit "A." The parties understand and agree that deviations or modifications in the services may be authorized from time to time by the City, but the authorization must be in writing.

III. Schedule of Work

Contractor agrees to commence work immediately upon execution of this Agreement, and to proceed diligently until completion and in accordance with the time schedule set forth in Exhibit "A." However, if additional work is requested by City beyond what is contained in the proposal, the time schedule may be extended by written agreement of the parties.

IV. Compensation/Payments/Expenses

Upon execution of this Agreement, City will pay a retainer of **TWENTY-THREE THOUSAND AND 00/100 DOLLARS (\$23,000.00)** for the authorized phases. Total compensation for Contractor's work on the Project including the retainer shall not exceed the sum of **FORTY-SIX THOUSAND AND 00/100 DOLLARS (\$46,000.00)** not including expenses.

Contractor shall invoice the City every thirty (30) days for work performed to date. The invoice shall reflect the work done, hourly rate and time spent, as well as any expenses incurred. After exhaustion of the retainer, payments shall be made within thirty (30) days of receipt of invoice unless the City has any objection or question to any charge(s). Any disputes on charges shall be communicated to the Contractor as soon as reasonable.

Expenses for items such as shipping, copies, research, long distance telephone charges, and travel shall be billed at net out-of-pocket cost to the City. Contractor agrees that all expenses for this Project shall not exceed **THREE THOUSAND AND 00/100 DOLLARS (\$3,000.00)** for the Project. Contractor anticipates that the expenses include three on-site trips to Plano.

V. Insurance

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

VI. Indemnity

THE CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL

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

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

VII. Independent Contractor

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

VIII. Assignment and Subletting

Contractor 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. Contractor 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 Contractor from its full obligations to the City as provided by this Agreement.

IX. Audits and Records

Contractor agrees that at any time during normal business hours and as often as City may deem necessary, Contractor 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 three (3) years from the date of City's acceptance of the final Project, or for such other or longer period, if any, as may be required by applicable statute or other lawful requirement.

X. Prohibited Interest

Contractor 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 Contractor shall execute the affidavit shown in Exhibit "C". Contractor understands and agrees that the existence of a prohibited interest during the term of this Agreement will render the Agreement voidable.

XI. Contract Termination

The parties agree that City shall have the right to terminate this Agreement without liability and with or without cause upon ten (10) days written notice to Contractor. Upon notice of termination, the Contractor shall cease all work and shall deliver to City all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items prepared by Contractor in connection with this Agreement. Contractor shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement and expenses incurred prior to notice of termination.

Contractor may suspend or terminate this contract if City fails to pay for services when they become due and if City has not notified Contractor of the dispute.

XII. Ownership of Documents

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

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

With the exception of the logo developed for the City, any conceptual work done by Contractor is intended for demonstrational purposes only. Stock photography used for the demonstration of creative concepts is not to be reproduced or published in any way without first negotiating usage rights with the appropriate stock image provider.

XIII. Trade Secrets

In the scope of performing its duties with Contractor it may be necessary for the City to share trade secrets and/or other confidential and/or proprietary information or matter with Contractor. The parties agree that such information and the materials referenced in the Agreement, the results and developments there from are confidential and/or proprietary information belonging to the City. Contractor agrees not to disclose to any third party any such trade secrets and/or confidential or proprietary information for its own separate benefit. Contractor will be responsible for its employees or agents complying with the provisions of this Agreement.

XIV. Complete Agreement

This Agreement, including the Exhibits lettered "A" through "C", 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, Contractor 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, Texas
Attn: Rod Hogan, Executive Director
P.O. Box 860358
Plano, TX 75086-0358

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

HVS Convention, Sports & Entertainment Facilities Consulting
Attn: Thomas Hazinski
205 W. Randolph, #1650
Chicago, IL 60606

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. Agreement Interpretation:

This is a negotiated Agreement, should any part be in dispute, the parties agree that the terms of 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 Contractor 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.

**NORTH STAR RESEARCH
CORPORATION, A DIVISION OF HVS
CONVENTION, SPORTS AND
ENTERTAINMENT FACILITIES
CONSULTING**
an Illinois corporation

DATE: _____

BY: _____
NAME: _____
TITLE: _____

CITY OF PLANO, TEXAS

DATE: _____

BY: _____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, City Attorney



December 21, 2009

205 West Randolph, Suite 1650
Chicago, Illinois 60606
Phone (312) 587-9900
Fax (312) 587-9908
www.hvs.com
Email: thazinski@hvs.com

James R. (Rod) Hogan
Executive Director
Public Services and Operations Business Center
City of Plano
P.O. Box 860358
Plano, TX 75386-0358

Dear Rod:

Pursuant to our discussion, HVS is pleased to present this scope of work to provide a site analysis and an economic and fiscal impact analysis for the proposed new convention center in Plano. TVS Design will team with HVS to provide these services. TVS will be a subconsultant to HVS and these services will be provided as an extension of our contract with the City of Plano.

TVS Design is an architecture and design firm with specialized experience in the planning for and designing of convention centers.

HVS and TVS will provide the following tasks:

Site Analysis/Site Concept – HVS and TVS staff will:

1. Participate in a meeting in Plano and inspect the potential sites. (Sites under consideration are located near the existing Legacy Town Center development adjacent to the Dallas Tollway)
2. Prepare a site analysis for two sites including:
 - a. Connections to existing and future planned development based on information projected by the City
 - b. Possible footprints of an adjacent 400-room hotel
 - c. One concept plan diagram (plans) for the convention center on each site.
3. Recommend a preferred site.
4. Prepare a concept diagram (plan) for the preferred site as selected by the City
5. Prepare budget cost estimates based on historic data for square foot costs from database

New York
San Francisco
Boulder
Denver
Boston
Miami
Dallas
Chicago
Washington, DC
Newport, RI
Atlanta
Mexico City
Vancouver
Toronto
London
Madrid
Athens
New Delhi
Singapore
Hong Kong
São Paulo
Buenos Aires
Shanghai



6. Prepare a written report summarizing the conclusions and recommendations of the site analysis and site concept analysis.
7. Participate in a presentation meeting in Plano to present the findings.
8. Participate in conference calls as requested.

Economic and Fiscal Impact Analysis – HVS will:

1. Participate in a meeting in Plano and inspect the potential sites.
2. Estimate net new demand generated by the new convention center.
3. Estimate four types of net new spending impacts:
 - i. overnight visitor spending,
 - ii. day visitor spending,
 - iii. exhibitor spending, and
 - iv. event organizer spending.
4. Estimate three types of spending impacts in the analysis:
 - i. Direct impacts include the visitor expenditures, payroll, and employment resulting from the events and operations occurring at the convention center.
 - ii. Indirect impacts are the supply of goods and services resulting from the initial direct facility-related spending.
 - iii. Induced impacts represent the change in local consumption due to the personal spending by employees whose incomes are affected by direct and indirect spending.
5. Estimate fiscal impacts. HVS will estimate the impact on a variety of state and local taxes, including sales, income, hotel, food & beverage, car rental, property, and others as applicable. The analysis will result in an estimate of new tax revenue associated with the project in inflated dollars for a stabilized year of demand.
6. Participate in a presentation meeting in Plano to present the findings.



Timing and Fees

Our team will require 5 weeks to provide the scope of services outlined above.

Fees for these services are as follows:

Site Analysis/Site Concept	\$34,000
Economic and Fiscal Impact Analysis	\$12,000

In addition to our professional fees, you agree to reimburse us for reasonable out-of-pocket travel and data expenses incurred on your behalf. Expenses will be billed at cost. You will be billed periodically for expenses, which will be due and payable upon presentation of our bills.

If you wish to engage us for this assignment, please sign and return one copy of the attached confirmation page. Your signature on the confirmation page signifies your agreement to employ North Star Research Corp., a division of HVS Global Hospitality Services for these services. If you have any questions regarding the contents of this document, please do not hesitate to contact me.

We appreciate the opportunity to submit this proposal/contract and look forward to working with you.

Sincerely,

Thomas Hazinski
Managing Director
HVS - Chicago

CONFIRMATION

Client: Rod Hogan, City of Plano, Texas

Date: December 21, 2009

Your signature beneath the words "Agreed to and Accepted" signifies your agreement to employ HVS for the services described in the accompanying proposal titled "Proposal for Site Analysis and Impact Study". A summary of the proposal's salient data is as follows:

Type of Assignment:	Site, Concept, and Impact Analysis for New Convention Center
Project Name:	Plano Convention Center Feasibility
Site Location:	Plano, Texas
Total Timing:	Seven weeks
Total Fee:	Site Analysis/Concept Analysis \$34,000, Impact Analysis \$12,000, plus expenses
Report Copies:	Electronic; hard copies upon request
Retainer:	50% of the fees for the authorized phases
Additional Services (Optional)	As authorized

In order to schedule our assignments and perform your study in accordance with the timing set forth above, we ask that you return an executed copy of this agreement as authorization to proceed with the proposed scope of work. This proposal will remain effective for 30 days from the date at the top of this page.

Payment must be made in U.S. dollars, using either a check drawn on a U.S. bank or a wire transfer of funds to the account of North Star Research Corp. (a division of HVS). In the event that after completing the fieldwork phase of this assignment it becomes necessary to alter the parameters of the study, such as the property description, financial, management or ownership structure, or any other factor which could change the final projections, HVS will be entitled to charge an additional fee based on our current per diem rates and the time required to incorporate the necessary changes into our analysis and reports. In addition, the estimate of timing will be extended by an amount equal to the added work. Notwithstanding the fee payment schedule set forth above, if, at any time while performing this assignment, it becomes necessary to suspend work for a period of 30 days or more, then HVS will be entitled to bill for the portion of the assignment completed up to the suspension (less any retainer paid) at its current per diem rates.

It is agreed that the liability of HVS, its employees and anyone else associated with this assignment is limited to the amount of the fee paid as liquidated damages. You acknowledge that any opinions, recommendations, and conclusions expressed during this assignment will be rendered by the staff of HVS acting solely as employees and not as individuals. Any responsibility of HVS is limited to the client, and use of our product by third parties shall be solely at the risk of the client and/or third parties. The study described in this proposal will be made subject to certain assumptions and limiting conditions. A copy of our normal assumptions and limiting conditions will be provided upon request.



President, North Star Research Corp.
Managing Director, HVS Global Hospitality Services- Chicago

AGREED TO AND ACCEPTED: ,

By: _____ Date: _____

205 West Randolph, Suite 1650 Chicago, IL 60606 ♦ Phone 312-587-9900 ♦ Fax 312-587-9908

EXHIBIT A
PAGE 4 **OF** 4

City of Plano
Insurance Requirements

Requirements

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

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

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

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

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

A PURCHASE ORDER WILL NOT BE ISSUED WITHOUT EVIDENCE OF INSURANCE.



CERTIFICATE OF LIABILITY INSURANCE

OP ID EB
NORT-39DATE (MM/DD/YYYY)
01/11/10

PRODUCER Associated Agencies, Inc. 1701 Golf Rd, Tower 3, 7th Flr Rolling Meadows IL 60008-4267 Phone: 847-427-8400 Fax: 847-427-3430		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED North Star Research Corp. HVS Convention, Sports, & Entertainment Facilities Consulting Tom Hazinski 205 W. Randolph St., Ste. 1650 Chicago IL 60606		INSURERS AFFORDING COVERAGE	NAIC #
		INSURER A: Hartford Fire Insurance Co	19682
		INSURER B: Twin City Fire Insurance Co.	29459
		INSURER C: Houston Casualty Company	42374
		INSURER D:	
		INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A		GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	83SBANI3181	05/18/09	05/18/10	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COM/POP AGG \$ 2,000,000
A		AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	83SBANI3181	05/18/09	05/18/10	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
A		EXCESS / UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$10,000	83SBANI3181	05/18/09	05/18/10	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 \$ \$ \$
B		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N If yes, describe under SPECIAL PROVISIONS below	83WECGK4071	05/18/09	05/18/10	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 100,000 E.L. DISEASE - EA EMPLOYEE \$ 100,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
C		OTHER Professional Liab.	H71016179	01/08/10	01/08/11	Liability 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Proof of Coverage

CERTIFICATE HOLDER

Preferred Customer

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Mark R. Smith

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

This Certificate of Insurance does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

AFFIDAVIT OF NO PROHIBITED INTEREST

I, the undersigned declare and affirm that no person or officer of _____ (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 Contractor

By: _____
Signature

Print Name

Title

Date

STATE OF _____ §

COUNTY OF _____ §

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 20____.

Notary Public, State of _____

DATE: January 5, 2010
TO: Honorable Mayor & City Council
FROM: James Duggan, Chairman, Planning & Zoning Commission
SUBJECT: Results of Planning & Zoning Commission Meeting of January 4, 2010

**AGENDA ITEM NO. 5 - PUBLIC HEARING
ZONING CASE 2009-24
APPLICANT: BILL SQUIRIC**

Request to rescind a portion of the H-05 Heritage Resource Designation on 0.1± acre located on the west side of K Avenue, 355± feet south of 18th Street. Zoned Downtown Business/Government with Heritage Resource Designation #5.

APPROVED: 7-0 **DENIED:** _____ **TABLED:** _____

LETTERS RECEIVED WITHIN 200 FOOT NOTICE AREA: SUPPORT: 1 OPPOSE: 0

LETTERS RECEIVED OUTSIDE 200 FOOT NOTICE AREA: SUPPORT: 0 OPPOSE: 0

PETITION(S) RECEIVED: N/A # OF SIGNATURES: N/A

STIPULATIONS:

Recommended for approval as submitted.

FOR CITY COUNCIL MEETING OF: January 25, 2010 (To view the agenda for this meeting, see www.planotx.org)

PUBLIC HEARING - ORDINANCE

TF/dw

xc: Bill Squiric
Gwen Workman

CITY OF PLANO
PLANNING & ZONING COMMISSION

January 4, 2010

Agenda Item No. 5

Public Hearing: Zoning Case 2009-24

Applicant: Bill Squiric

DESCRIPTION:

Request to rescind a portion of the H-05 Heritage Resource Designation on 0.1± acre located on the west side of K Avenue, 355± feet south of 18th Street. Zoned Downtown Business/Government with Heritage Resource Designation #5.

REMARKS:

Removal of a Heritage Resource Designation is a zoning process that requires action by the Heritage Commission, as well as the Planning & Zoning Commission and City Council. The Heritage Commission considered this request on October 27, 2009, and recommended removal of a portion of the designation on this property.

Heritage Resource Designation #5, the Forman House (also known as the Wooden Spoon), is located at 1617 K Avenue. The site once belonged to one of Plano's oldest families, the Forman's. Joseph Forman was Plano's first mayor. This site was designated in 1983 because of its significance to Plano's history. At that time, the house was not included in the designation because of several inappropriate alterations that had been made to the structure. Only the land was designated. In 1998, after restoration had been completed, the house was designated. The Forman House is documented as Plano's oldest existing structure.

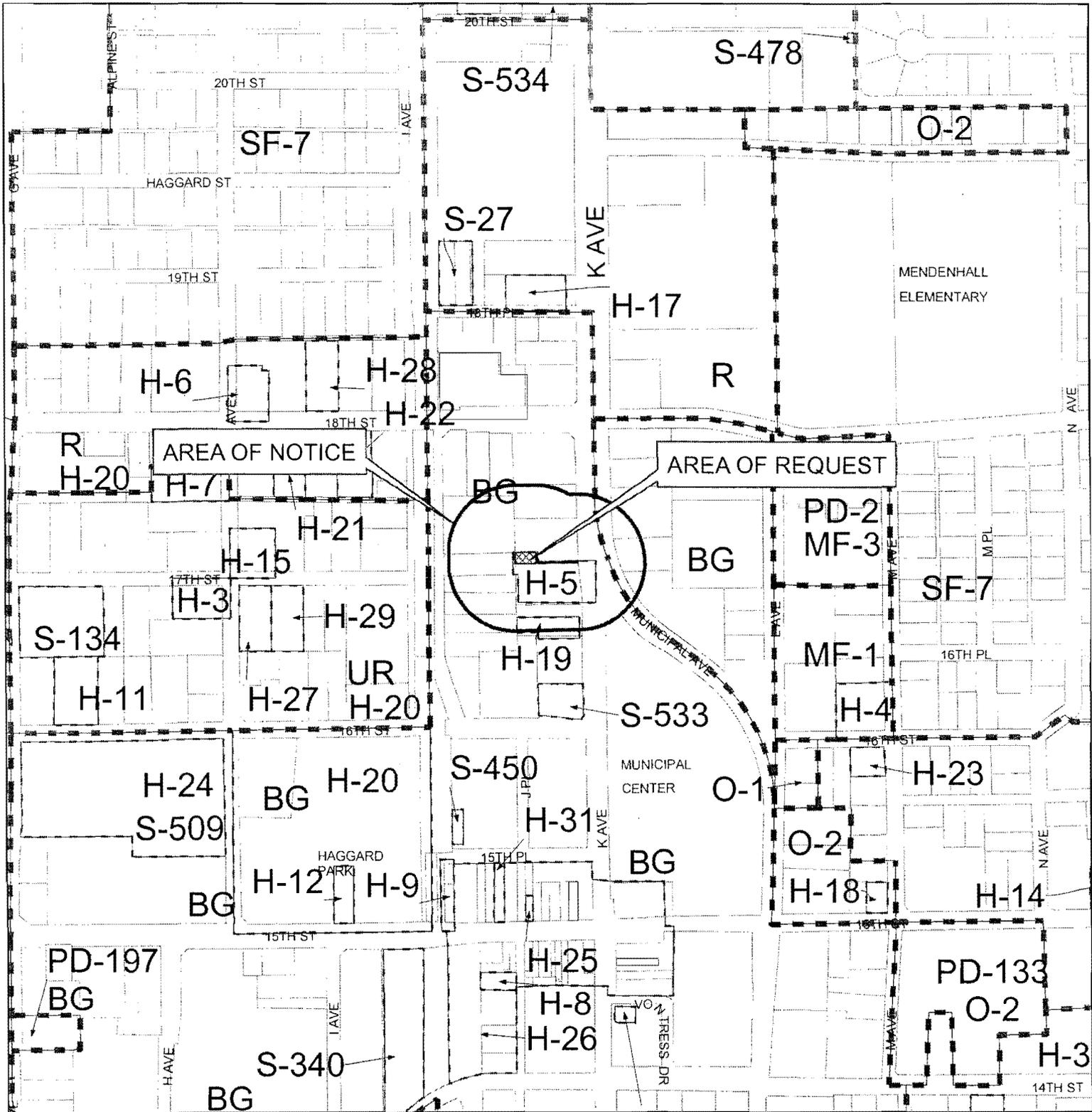
Recently, the owner of the Forman House (1617 K Avenue) sold the northwest portion (0.1± acre) of the lot to the adjacent property owner at 1705 K Avenue (Ad Pages). This portion has been replatted as part of 1705 K Avenue known as Original Donation Addition, Block 2, Lot 5R. 1705 K Avenue is not locally designated. The owner of 1705 K Avenue is requesting removal of the H-05 Heritage Resource Designation from this 0.1± acre portion of his property, and an amendment to the heritage resource designation boundary at 1617 K Avenue to exclude this 0.1± acre area.

A non-historic garage/outbuilding was formerly located on this 0.1± acre parcel. During the October 27, 2009, meeting, the Heritage Commission approved the demolition of the garage due to its non-historic status and hazardous condition. Both this 0.1± acre

portion of the property and the garage that had previously existed there do not meet any of the criteria for designation and do not contribute to the overall character of the historic Forman House site. Also, the garage structure did not contribute to the initial designation of the 1617 K Avenue site. Therefore, the removal of the Heritage Resource Designation on this 0.1± acre parcel will not affect the historic status of the Forman House site. The Forman House site will continue to remain designated as H-05.

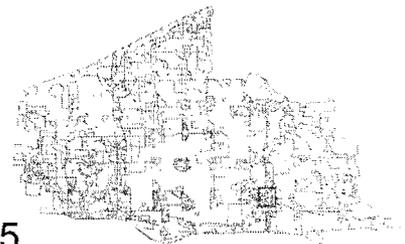
RECOMMENDATION:

Recommended for approval as submitted.



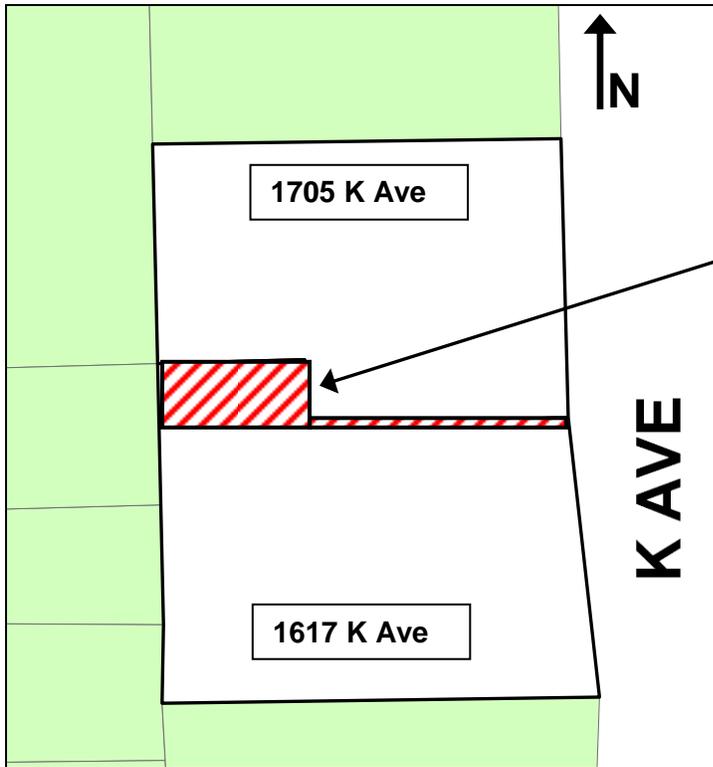
Zoning Case #: 2009-24

Existing Zoning: Downtown Business/Government
w/Heritage Resource Designation #5



○ 200' Notification Buffer

Supplemental Information: 1617 & 1705 K Avenue



0.1± acre area in question.
The shaded area was formerly part of 1617 K Ave, but now belongs to 1705 K Avenue. The detached garage as shown below was located here. Applicant would like to remove the H-05 designation from the shaded area.





**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		1/25/10		
Department:		Finance		
Department Head		Denise Tacke		
Agenda Coordinator (include phone #): Katherine Crumbley - x7479				
CAPTION				
A resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano, Texas and ADS Alliance Data Systems, Inc., a Delaware corporation; authorizing its execution by the City Manager or his designee and providing an effective date.				
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		12,391,869	0	12,391,869
Encumbered/Expended Amount	0	-5,424,125	-4,231,950	-9,656,075
This Item	0	-770,600	-78,400	-849,000
BALANCE	0	6,197,144	-4,310,350	1,886,794
FUND(S):				
COMMENTS: Strategic Plan Goal: Providing economic development incentives relates to the City's goal of Diverse Business Center.				
SUMMARY OF ITEM				
A request from ADS Alliance Data Systems, Inc. for an Economic Development Incentive Agreement to relocate its business and commercial activities to the City, thereby generating additional local sales tax revenues and increasing ad valorem tax values to the City. ADS Alliance Data Systems agrees to occupy not less than 84,200 square feet and agrees to retain, transfer or create 216 full time jobs by 9/1/10 and adding up to an additional 49 by 12/31/12.				
List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies		
Economic Development Incentive Agreement				

A resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano, Texas and ADS Alliance Data Systems, Inc., a Delaware corporation; authorizing its execution by the City Manager or his designee and providing an effective date.

WHEREAS, the City Council has been presented a proposed Economic Development Incentive Agreement By and Between the City of Plano, Texas and ADS Alliance Data Systems, Inc., a Delaware corporation, 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 designee shall be authorized to execute it on behalf of the City of Plano.

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

Section I. The terms and conditions of the Agreement, having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things approved.

Section II. The City Manager or his 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 25th day of January, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

This Economic Development Incentive Agreement (“Agreement”) is made by and between the City of Plano, Texas (the “City”), and ADS Alliance Data Systems, Inc. a Delaware Corporation, (“Company”) acting by and through its respective authorized officers and representatives.

WITNESSETH:

WHEREAS, Company is a loyalty and marketing company; and

WHEREAS, the Company has advised the City that a contributing factor that would induce the Company to relocate its business and commercial activities to the City, thereby generating additional local sales tax revenues and increasing ad valorem tax values for the City, would be an agreement by the City to provide an economic development grant to the Company; and

WHEREAS, the Company agrees to occupy not less than a total of 84,200 square feet of commercial space located at One Legacy Circle, 7500 Dallas Parkway, Suite 800, Plano, Texas 75024, (the “Property”); install Business Personal Property of a value of not less than Two Million Five Hundred Thousand Dollars (\$2,500,000.00); retain, transfer or create at least 216 Job Equivalents on the Property; and maintain occupancy of the Property and the Job Equivalents for the remainder of the term of this Agreement; and

WHEREAS, the occupancy of commercial space at the Property and the retention, creation or transfer of at least 216 Job Equivalents at the Property within the City will promote economic development, stimulate commercial activity and enhance the tax base and economic vitality of the City; and

WHEREAS, the City has adopted programs for promoting economic development; and

WHEREAS, the City is authorized by TEX. LOC. GOV’T CODE §380.001 *et seq.* to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the City has determined that making an economic development grant to the Company in accordance with the terms and conditions set forth in this Agreement will further the objectives of the City, will benefit the City and the City’s inhabitants and will promote local economic development and stimulate business and commercial activity in the City.

NOW THEREFORE, in consideration of the foregoing and the premises, mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby covenant and agree as follows:

Article I Definitions

For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

“Commencement Date” shall mean the earlier of the date of occupancy of the Property by the Company or September 1, 2010, whichever occurs first.

“Effective Date” shall mean the last date on which all of the parties hereto have executed this Agreement.

“Event of Force Majeure” shall mean any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the party), fires, explosions or floods, strikes, slowdowns or work stoppages any of which event(s) directly impact the Company’s operations in the City.

“Job Equivalent” shall mean one or more Company job positions located at the Property which individually or when combined total 2080 hours (inclusive of holidays, vacation and sick leave) annually.

Article II Term

The term of this Agreement shall begin on the Commencement Date and continue until August 31, 2020, unless sooner terminated as provided herein.

Article III Obligations of Company

In consideration for the grant of public funds as set forth in Section 4.01 below, the Company agrees to the following:

- (a) Occupy not less than 84,200 square feet of commercial space on the Property on or before September 1, 2010;
- (b) Retain, create or transfer 216 Job Equivalents (“Base Job Equivalents”) on the Property on or before September 1, 2010;
- (c) Maintain occupancy and the Job Equivalents created in Article III (a) and (b) above for the remainder of the term of this agreement; and

- (d) Use reasonable efforts to place all Company-managed hotel room nights, related to the Company's business activities, at facilities located in the City of Plano.

Article IV Economic Development Grant

4.01 **Grant.** The City agrees to provide the Company a total cash grant of up to Eight Hundred and Forty Nine Thousand Dollars (\$849,000.00) as follows: Four Hundred and Twenty Five Thousand Dollars (\$425,000.00) for the occupancy of not less than 84,200 square feet of commercial space on the Property on or before September 1, 2010; Three Hundred Forty Five Thousand Six Hundred Dollars (\$345,600.00) for the transfer or creation of the Base Job Equivalents on the Property by September 1, 2010; and Sixteen Hundred Dollars (\$1,600.00) for the creation or transfer of each additional Job Equivalents ("Additional Job Equivalents") on the Property by December 31, 2012 up to a maximum of 49 Additional Job Equivalents (up to an additional \$78,400.00). The Company agrees to maintain the occupancy and transferred or created Base Job Equivalents on the Property throughout the term of this Agreement as provided in Section 4.03 below

4.02 **Grant Payments.** Except as otherwise indicated, the Company shall be entitled to a payment of Seven Hundred Seventy Thousand Six Hundred Dollars (\$770,600.00) from the City under this Agreement within thirty (30) days after the Company verifies to the City using the Initial Certification form attached hereto as Exhibit "A" that the Company has met its obligations as set forth in Article III (a) and (b) above. In order to receive the \$770,600.00 payment, Company's initial certification verifying compliance with Article III (a) and (b) above must be filed with the City no later than December 1, 2010. The Company shall be entitled to an additional payment from the City under this Agreement equal to that number of Additional Job Equivalents (not to exceed 49) multiplied by Sixteen Hundred Dollars (\$1,600.00) (up to an additional \$78,400.00) within thirty (30) days after the Company verifies to the City using the Initial Certification attached hereto as Exhibit "A" that the Company has hired such Additional Job Equivalents. In order to receive payment under this Agreement for the Additional Job Equivalents, Company's certification must be filed with the City no later than March 31, 2013.

4.03 **Refunds.**

(a) In the event the Company fails to occupy the Property for the entire term of the agreement the Company shall refund to the City Four Hundred and Twenty Five Thousand Dollars (\$425,000.00). In the event the Company continues to occupy the Property for the full term of the Agreement but allows the Company's Job Equivalents at the Property to fall below the number of Base Job Equivalents or Additional Job Equivalents for which it has received a grant payment for more than 180 consecutive days during the term of this Agreement, not the result of an Event of Force Majeure, the Company shall refund to the City an amount equal to one thousand six hundred dollars (\$1,600.00) for each lost Job Equivalent. For the purposes of determining whether the City is due a refund under this section, an officer of the Company shall certify to the City by January 31, 2011 and by January 31 of each year thereafter during the term of this agreement the continued occupancy of the Property in accordance with Article III (a) and the actual number of Job Equivalents at the Property for the preceding calendar year using the Certificate Form attached as Exhibit "B". All refunds under this Agreement shall be due within 30

days of written demand for payment. Notwithstanding the foregoing, the Company shall never be required to refund to the City, in the aggregate, any amount in excess of the total grant amount set forth in Section 4.01.

(b) In the event the Company, at any time during the term of this Agreement, is convicted of a violation under 8 U.S.C. Section 1324a(f) regarding the unlawful employment of undocumented workers, it shall reimburse the City all grant funds paid pursuant to this Agreement together with interest charged from the date of payment of the funds at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 33.01, but without the addition of penalty. Repayment of grant funds and interest shall be due not later than 120 days after the date the City notifies the Company of the conviction.

Article V Termination

5.01 This Agreement terminates upon any one or more of the following:

- (a) By mutual written agreement of the parties;
- (b) Upon expiration of the term of this Agreement;
- (c) By either party upon written notice to the other, if the other party defaults or breaches any of the material terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof (provided that such 30 day period shall be extended if the default is of a nature that cannot reasonably be cured within such 30 day period and further provided that the remedy is being diligently pursued); and
- (d) By either party upon written notice to the other if any subsequent federal or state legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable, provided, that such termination notice shall set forth an explanation of the terminating party's basis for termination under this subsection (d).

5.02 **Effect of Termination.** The rights, responsibilities and liabilities of the parties under this Agreement shall be extinguished upon the applicable effective date of termination of this Agreement, except for any obligations that accrue prior to such termination or as otherwise provided herein. All rights and obligations set forth above in this Section 5.02 shall survive the termination of this Agreement.

Article VI Miscellaneous

6.01 **Binding Agreement.** The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the parties. This Agreement may not be assigned without the express written consent of the non-assigning party, except that the Company may assign this Agreement without obtaining the City's consent (a) to one of its affiliates, or (b) to any

person or entity that directly or indirectly acquires, through merger, sale of stock, purchase or otherwise, all or substantially all of the assets of the Company.

6.02 **No Joint Venture.** It is acknowledged and agreed by the parties that the terms of this Agreement are not intended to and shall not be deemed to create a partnership or joint venture among the parties. Neither party shall have any authority to act on behalf of the other party under any circumstances by virtue of this Agreement.

6.03 **Authorization.** Each party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

6.04 **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below (or such other address as such party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered.

If intended for the City:
City of Plano, Texas
Attention: Thomas H. Muehlenbeck
City Manager
1520 Avenue K
P.O. Box 860358
Plano, TX 75086-0358

With a copy to:
City of Plano, Texas
Attention: Diane Wetherbee
City Attorney
1520 Avenue K
P. O. Box 860358
Plano, TX 75086-0358

If intended for the Company:
ADS Alliance Data Systems, Inc.
Attention: James Pierce
Vice President of Corporate Administration
One Legacy Circle
7500 Dallas Parkway, Suite 800
Plano, Texas 75024

With a copy to:
ADS Alliance Data Systems, Inc.
Attention: Kellie Watts
Vice President and Counsel
One Legacy Circle
7500 Dallas Parkway, Suite 800
Plano, Texas 75024

6.05 **Entire Agreement.** This Agreement is the entire Agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the parties that in any manner relates to the subject matter of this Agreement.

6.06 **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction. Venue for any action concerning this Agreement, the transactions contemplated hereby or the liabilities or obligations imposed hereunder shall be in the State District Court of Collin County, Texas.

6.07 **Amendment.** This Agreement may only be amended by the mutual written agreement of the parties.

6.08 **Legal Construction.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

6.09 **Recitals.** The recitals to this Agreement are incorporated herein.

6.10 **Counterparts.** This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

6.11 **Survival of Covenants.** Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

6.12 **Dispute Resolution.** Any controversy or claim arising from or relating to this Agreement, or a breach thereof shall be subject to non-binding mediation, as a condition precedent to the institution of legal or equitable proceedings by any party. The parties shall endeavor to resolve their claims by mediation that, unless the parties mutually agree otherwise, shall be in accordance with the American Arbitration Association's Commercial Mediation Rules in effect at

the time of mediation. Request for mediation shall be filed concurrently with the other party. Mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing for mediation, unless stayed for a longer period of time by agreement of the parties. Each party shall bear its own costs related to the mediation. The mediation shall be held in Collin County, Texas, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any Court having jurisdiction thereof.

EXECUTED on this 25th day of January, 2010.

[Signatures continue on following page]

ATTEST:

CITY OF PLANO, TEXAS, a home rule
municipal corporation

Diane Zucco, CITY SECRETARY

By: _____
Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ADS Alliance Data Systems, Inc. a Delaware
Corporation

By: _____
James Pierce
Vice President, Corporate Administration

EXHIBIT "A"

INITIAL CERTIFICATE OF COMPLIANCE*

I hereby certify that ADS ALLIANCE DATA SYTEMS, INC. has occupied not less than 84,200 square feet of commercial space on the Property and has retained, transfered or added 216 new Job Equivalent positions to the Property. ADS ALLIANCE DATA SYTEMS, INC. is in compliance with subsections (a) and (b) of Article III of the Agreement , and is entitled to receive payment under the terms of that Agreement.

ADS ALLIANCE DATA SYTEMS, INC., a
Delaware Corporation

By: _____

Name:

Title:

Date

NOTE:

This Certificate of Compliance should be mailed to:

City of Plano
Finance Department
P.O. Box 860358
Plano, Texas 75086-0358

*This form may be modified as appropriate for an additional initial certification.

EXHIBIT "B"

ANNUAL CERTIFICATE OF COMPLIANCE

I hereby certify that ADS ALLIANCE DATA SYTEMS, INC. is in compliance with each applicable term as set forth in Article III of the Agreement as of _____. The term of the Agreement is September 1, 2010 through August 31, 2020. The number of new, transferred or retained Job Equivalents, calculated as set forth in the Agreement, and maintained pursuant to the Agreement since its inception has not fallen below 216 for more than 180 consecutive days and is _____ as of the date of this Certificate of Compliance. If the number herein reported is below the number required to be maintained pursuant the Agreement, I certify that the City of Plano has been refunded the appropriate amount as required by Section 4.03 of the Agreement. This form is due on January 31 of each year this Agreement is in force.

ATTEST:

ADS ALLIANCE DATA SYTEMS, INC., a
Delaware Corporation

By: _____

Name:

Title:

Date

NOTE:

This Certificate of Compliance should be mailed to:

City of Plano
Finance Department
P.O. Box 860358
Plano, Texas 75086-0358



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		01/25/10		
Department:		Finance		
Department Head		Denise Tacke		
Agenda Coordinator (include phone #): Katherine Crumbley - x7479				
CAPTION				
<p>An ordinance providing for the issuance and sale of City of Plano, Texas, Combination Tax and Revenue Certificates of Obligation, Series 2010; levying a tax in payment thereof and pledging surplus municipal drainage utility system revenues in payment thereof; approving execution and delivery of a purchase contract; approving the Official Statement; and enacting other provisions relating thereto.</p>				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input checked="" type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 09-10	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	\$10,035,000*	0	\$10,035,000*
Encumbered/Expended Amount		0	0	0
This Item	0	0	0	0
BALANCE	0	\$10,035,000*	0	\$10,035,000*
FUND(S):				
COMMENTS:				
SUMMARY OF ITEM				
<p>The sale of \$10,035,000* in Combination Tax and Revenue Certificates of Obligation, Series 2010, will be used for the Acquisition, implementation and installation of a radio system infrastructure, and for payment of professional services of attorneys, financial advisors and other professionals in connection with the projects and the issuance of the Certificates.</p> <p>* Preliminary, subject to change</p>				
List of Supporting Documents: Bond Ordinance			Other Departments, Boards, Commissions or Agencies	

CERTIFICATES OF OBLIGATION ORDINANCE

CITY OF PLANO, TEXAS
COMBINATION TAX AND REVENUE CERTIFICATES OF OBLIGATION
SERIES 2010

Adopted January 25, 2010

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Exhibit A - Description of Annual Disclosure of Financial Information A-1

An ordinance providing for the issuance and sale of City of Plano, Texas, Combination Tax and Revenue Certificates of Obligation, Series 2010; levying a tax in payment thereof and pledging surplus municipal drainage utility system revenues in payment thereof; approving execution and delivery of a purchase contract; approving the Official Statement; and enacting other provisions relating thereto.

WHEREAS, under the provisions of Subchapter C of Chapter 271, Texas Local Government Code, as amended (the "Act"), the City of Plano, Texas (the "City"), is authorized to issue certificates of obligation for the purposes specified in this Ordinance and for the payment of all or a portion of the costs of professional services, including that of engineers, attorneys, and financial advisors in connection therewith, and to sell the same for cash as herein provided; and

WHEREAS, the City is authorized to provide that such obligations will be payable from and secured by the levy of a direct and continuing ad valorem tax against all taxable property within the City, in combination with all or a part of any "Surplus Revenues" (as defined herein) of the City's Municipal Drainage System remaining after payment of any obligations of the City payable in whole or in part from a lien or pledge of such revenues, pursuant to Section 522.041 et seq., Texas Local Government Code, such pledge of Surplus Revenues, however, being limited to \$1,000; and

WHEREAS, the governing body (the "City Council") of the City has found and determined that it is necessary and in the best interests of the City and its citizens that it issue the certificates of obligation (the "Certificates") authorized by this Ordinance for the purposes specified in this Ordinance; and

WHEREAS, pursuant to a resolution passed by this City Council, notice of intention to issue the Certificates was published in a newspaper of general circulation in the City at the times and in the manner required by the Act; and

WHEREAS, no petition of any kind has been filed with the City Secretary, any member of the City Council or any other official of the City, protesting the issuance of the Certificates; and

WHEREAS, this City Council is now authorized and empowered to proceed with the issuance of the Certificates and to sell the same for cash; and

WHEREAS, it is officially found, determined, and declared that the meeting at which this Ordinance is considered is open to the public and public notice of the time, place and subject matter of the public business to be considered and acted upon at said meeting, including this ordinance, was given, all as required by the applicable provisions of Chapter 551, Texas Government Code, as amended; therefore,

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

ARTICLE I

DEFINITIONS AND OTHER PRELIMINARY MATTERS

Section 1.01. Definitions.

Unless otherwise expressly provided or unless the context clearly requires otherwise in this Ordinance, the following terms shall have the meanings specified below:

“Business Day” means any day other than a Saturday, Sunday or legal holiday or other day on which banking institutions in the city where the Designated Payment/Transfer Office is located are generally authorized or obligated by law or executive order to close.

“Certificate” means any of the Certificates.

“Certificate Date” means the date designated as the date of the Certificates by Section 3.02(a) of this Ordinance.

“Certificates” means the City’s certificates of obligation authorized to be issued by Section 3.01 of this Ordinance and designated as “City of Plano, Texas, Combination Tax and Revenue Certificates of Obligation, Series 2010.”

“Closing Date” means the date of the initial delivery of and payment for the Certificates.

“Code” means the Internal Revenue Code of 1986, as amended, including applicable regulations, published rulings and court decisions.

“Designated Payment/Transfer Office” means (i) with respect to the initial Paying Agent/Registrar named herein, its office in East Syracuse, New York, or at such other location designated by the Paying Agent/Registrar and (ii) with respect to any successor Paying Agent/Registrar, the office of such successor designated and located as may be agreed upon by the City and such successor.

“DTC” shall mean The Depository Trust Company of New York, New York, or any successor securities depository.

“DTC Participant” shall mean brokers and dealers, banks, trust companies, clearing corporations and certain other organizations on whose behalf DTC was created to hold securities to facilitate the clearance and settlement of securities transactions among DTC Participants.

“EMMA” means the Electronic Municipal Market Access System.

“Event of Default” means any event of default as defined in Section 10.01 of this Ordinance.

“Fiscal Year” means the fiscal year of the City ending on September 30 of each year.

“Initial Certificate” means the Initial Certificate authorized by Section 3.04(d) of this Ordinance.

“Interest and Sinking Fund” means the interest and sinking fund established by Section 7.03(a) of this Ordinance.

“Interest Payment Date” means the date or dates on which interest on the Certificates is scheduled to be paid until their respective dates of maturity or prior redemption, such dates being March 1 and September 1, commencing September 1, 2010.

“Letter of Representations” means the Blanket Letter of Representations between the City and DTC.

“MSRB” means the Municipal Securities Rulemaking Board.

“Owner” means the person who is the registered owner of a Certificate or Certificates, as shown in the Register.

“Paying Agent/Registrar” means initially The Bank of New York Mellon Trust Company, National Association, or any successor thereto as provided in this Ordinance.

“Project” means the acquisition, implementation and installation of radio system infrastructure.

“Purchase Contract” means that certain purchase contract, dated as of January 25, 2010, approved in Section 8.01(a) hereof.

“Record Date” means the fifteenth day of the month next preceding an Interest Payment Date.

“Register” means the certificate register specified in Section 3.06(a) of this Ordinance.

“Representative” means the representative of the Underwriters, designated in the Purchase Contract.

“Rule” means SEC Rule 15c2 12, as amended from time to time.

“SEC” means the United States Securities and Exchange Commission.

“Unclaimed Payments” means money deposited with the Paying Agent/Registrar for the payment of the principal of or interest on Certificates as the same become due and payable and remaining unclaimed by the Owners of such Certificates for 90 days after the applicable payment or redemption date.

“Underwriters” means those underwriters of the Bonds named in the Purchase Contract.

Section 1.02. Findings.

The declarations, determinations and findings declared, made and found in the preamble to this Ordinance are hereby adopted, restated and made a part of the operative provisions hereof.

Section 1.03. Table of Contents, Titles and Headings.

The table of contents, titles and headings of the Articles and Sections of this Ordinance have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof and shall never be considered or given any effect in construing this Ordinance or any provision hereof or in ascertaining intent, if any question of intent should arise.

Section 1.04. Interpretation.

(a) If the context requires otherwise, words of the masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa.

(b) Ordinance and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein.

ARTICLE II

SECURITY FOR THE CERTIFICATES

Section 2.01. Tax Levy and Other Security for Payment of the Certificates.

(a) The City Council hereby declares and covenants that it will provide and levy a tax legally and fully sufficient for payment of the Certificates, it having been determined that the existing and available taxing authority of the City for such purpose is adequate to permit a legally sufficient tax in consideration of all other outstanding obligations of the City.

(b) In order to provide for the payment of the debt service requirements on the Certificates, being (i) the interest on the Certificates, and (ii) a sinking fund for their payment at maturity or a sinking fund of two percent per annum (whichever amount is the greater), there is hereby levied for the current year and each succeeding year thereafter while the Certificates or interest thereon remain outstanding and unpaid, a tax within legal limitations on each \$100 assessed valuation of taxable property in the City that is sufficient to pay such debt service requirements, full allowance being made for delinquencies and costs of collection.

(c) The tax levied by this Section shall be assessed and collected each year and applied to the payment of the debt service requirements on the Certificates, and the tax shall not be diverted to any other purpose.

(d) Said ad valorem tax, the collections therefrom, and all amounts on deposit in or required hereby to be deposited to the Interest and Sinking Fund are hereby pledged and

committed irrevocably to the payment of the principal of and interest on the Certificates when and as due and payable in accordance with their terms and this Ordinance.

The amount of taxes to be provided annually for the payment of principal of and interest on the Certificates shall be determined and accomplished in the following manner:

(i) the City's annual budget shall reflect (A) the amount of debt service to become due on the Certificates in the next succeeding Fiscal Year of the City, (B) the amount on deposit in the Surplus Revenues Fund available to pay the debt service on the Certificates and the Interest and Sinking Fund, as of the date the budget is prepared (after giving effect to any payments required to be made during the remainder of the then current Fiscal Year), and (C) the amount of Surplus Revenues estimated to be collected and available for the payment of such debt service requirements on the Certificates during the succeeding Fiscal Year of the City;

(ii) the amount required to be provided in the succeeding Fiscal Year of the City from ad valorem taxes shall be the amount, if any, that the debt service requirements to be paid on the Certificates in the next succeeding Fiscal Year exceeds the sum of (A) the amount shown to be on deposit in the Surplus Revenues Fund and the Interest and Sinking Fund (after giving effect to the payments required to be made during the remainder of the then current Fiscal Year) at the time the annual budget is prepared, and (B) the Surplus Revenues shown to be budgeted and available for payment of debt service on the Certificates.

(iii) Following the final approval of the annual budget of the City, the governing body of the City shall, by ordinance, levy an ad valorem tax at a rate sufficient to produce taxes in the amount determined in paragraph (ii) above, to be utilized for purposes of paying the principal of and interest on the Certificates in the next succeeding Fiscal Year of the City.

(e) If the liens and provisions of this Ordinance shall be released in a manner permitted by Article XI hereof, then the collection of such ad valorem tax may be suspended or appropriately reduced, as the facts may permit, and further deposits to the Interest and Sinking Fund may be suspended or appropriately reduced, as the facts may permit. In determining the aggregate principal amount of outstanding Certificates, there shall be subtracted the amount of any Certificates that have been duly called for redemption and for which money has been deposited with the Paying Agent/Registrar for such redemption.

Section 2.02. Revenue Pledge.

The City hereby covenants and agrees that the Surplus Revenues are hereby irrevocably pledged to the payment of the principal of and interest on the Certificates as the same become due.

ARTICLE III

AUTHORIZATION; GENERAL TERMS AND PROVISIONS
REGARDING THE CERTIFICATES

Section 3.01. Authorization.

The City's certificates of obligation to be designated "City of Plano, Texas, Combination Tax and Revenue Certificates of Obligation, Series 2010" (the "Certificates"), are hereby authorized to be issued and delivered in accordance with the Constitution and laws of the State of Texas and the Charter of the City. The Certificates shall be issued in the aggregate principal amount of \$10,035,000 for the public purpose of (i) paying the costs of the Project and (ii) paying for professional services of attorneys, financial advisors and other professionals in connection with the Project and the issuance of the Certificates, all as set forth in the preamble hereof, under and by virtue of the Act and pursuant to Chapter 9.22 of the Charter of the City.

Section 3.02. Date, Denomination, Maturities and Interest.

(a) The Certificates shall be dated January 15, 2010. The Certificates shall be in fully registered form, without coupons, in the denomination of \$5,000 or any integral multiple thereof, and shall be numbered separately from one upward, except the Initial Certificate, which shall be numbered T-1.

(b) The Certificates shall mature on September 1 in the years and in the principal amounts set forth in the following schedule:

<u>Years</u>	<u>Principal Amount</u>	<u>Interest Rates</u>	<u>Years</u>	<u>Principal Amount</u>	<u>Interest Rates</u>
2011	545,000		2019	675,000	
2012	560,000		2020	695,000	
2013	575,000		2021	720,000	
2014	590,000		2022	745,000	
2015	605,000		2023	775,000	
2016	620,000		2024	805,000	
2017	635,000		2025	835,000	
2018	655,000				

(c) Interest shall accrue and be paid on each Certificate respectively until its maturity or prior redemption, from the later of the Certificate Date or the most recent Interest Payment Date to which interest has been paid or provided for at the rates per annum for each respective maturity specified in the schedule contained in subsection (b) above. Such interest shall be payable on each Interest Payment Date until maturity or prior redemption. Interest on the Certificates shall be calculated on the basis of a 360-day year composed of twelve 30-day months.

Section 3.03. Medium, Method and Place of Payment.

(a) The principal of and interest on the Certificates shall be paid in lawful money of the United States of America.

(b) Interest on the Certificates shall be payable to the Owners as shown in the Register at the close of business on the Record Date; provided, however, in the event of nonpayment of interest on a scheduled Interest Payment Date and for 30 days thereafter, a new record date for such interest payment (a "Special Record Date") shall 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 Certificate appearing on the Register at the close of business on the last Business Day next preceding the date of mailing of such notice.

(c) Interest on each Certificate shall be paid to each Owner by (i) 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 each Owner at the address of each Owner as such appears in the Register or (ii) such other customary banking arrangements acceptable to the Paying Agent/Registrar and the person to whom interest is to be paid at the risk and expense of such Owner.

(d) The principal of each Certificate shall be paid to the Owner thereof on the due date (whether at the maturity date or the date of prior redemption thereof) upon presentation and surrender of such Certificate at the Designated Payment/Transfer Office of the Paying Agent/Registrar.

(e) If the date for the payment of the principal of or interest on the Certificates 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.

(f) Unclaimed Payments of amounts due hereunder shall be segregated in a special account and held in trust, uninvested by the Paying Agent/Registrar, for the account of the Owner of the Certificates to which such Unclaimed Payments pertain. Subject to Title 6 of the Texas Property Code, any Unclaimed Payments remaining unclaimed by the Owners entitled thereto for three years after the applicable payment or redemption date shall be applied to the next payment or payments on the Certificates thereafter coming due and, to the extent any such money remains after the retirement of all outstanding Certificates, shall be paid to the City to be used for any lawful purpose. Thereafter, neither the City, the Paying Agent/Registrar nor any other person shall be liable or responsible to any holders of such Certificates for any further payment of such unclaimed moneys or on account of any such Certificates, subject to Title 6 of the Texas Property Code.

Section 3.04. Execution and Registration of Certificates.

(a) The Certificates shall be executed on behalf of the City by the Mayor and the City Secretary, by their manual or facsimile signatures, and the official seal of the City shall be impressed or placed in facsimile thereon. Such facsimile signatures on the Certificates shall have the same effect as if each of the Certificates had been signed manually and in person by each of said officers, and such facsimile seal on the Certificates shall have the same effect as if the official seal of the City had been manually impressed upon each of the Certificates.

(b) In the event that any officer of the City whose manual or facsimile signature appears on the Certificates ceases to be such officer before the authentication of such Certificates or before the delivery thereof, such manual or facsimile signature nevertheless shall be valid and sufficient for all purposes as if such officer had remained in such office.

(c) Except as provided below, no Certificate shall be valid or obligatory for any purpose or be entitled to any security or benefit of this Ordinance unless and until there appears thereon the Certificate of Paying Agent/Registrar substantially in the form provided herein, duly authenticated by manual execution by an officer or duly authorized signatory of the Paying Agent/Registrar. It shall not be required that the same officer or authorized signatory of the Paying Agent/Registrar sign the Certificate of Paying Agent/Registrar on all of the Certificates. In lieu of the executed Certificate of Paying Agent/Registrar described above, the Initial Certificate delivered at the Closing Date shall have attached thereto the Comptroller's Registration Certificate substantially in the form provided herein, manually executed by the Comptroller of Public Accounts of the State of Texas, or by his duly authorized agent, which Certificate shall be evidence that the Certificate has been duly approved by the Attorney General of the State of Texas and that it is a valid and binding obligation of the City, and has been registered by the Comptroller of Public Accounts of the State of Texas.

(d) On the Closing Date, one initial Certificate (the "Initial Certificate") representing the entire principal amount of all Certificates, payable in stated installments to the Purchaser, or its designee, manually signed by the Mayor and City Secretary of the City, approved by the Attorney General, and registered and manually signed by the Comptroller of Public Accounts, will be delivered to the Purchaser or its designee. Upon payment for the Initial Certificate, the Paying Agent/Registrar shall cancel the Initial Certificate and deliver to DTC on behalf of the Purchaser one registered definitive Certificate for each year of maturity of the Certificates in the aggregate principal amount of all Certificates for such maturity, registered in the name of Cede & Co., as nominee of DTC.

Section 3.05. Ownership.

(a) The City, the Paying Agent/Registrar and any other person may treat the person in whose name any Certificate is registered as the absolute owner of such Certificate for the purpose of making and receiving payment of the principal thereof, for the further purpose of making and receiving payment of the interest thereon, and for all other purposes (except interest will be paid to the person in whose name such Certificate is registered on the Record Date or Special Record Date, as applicable), whether or not such Certificate is overdue, and neither the City nor the Paying Agent/Registrar shall be bound by any notice or knowledge to the contrary.

(b) All payments made to the Owner of a Certificate shall be valid and effectual and shall discharge the liability of the City and the Paying Agent/Registrar upon such Certificate to the extent of the sums paid.

Section 3.06. Registration, Transfer and Exchange.

(a) So long as any Certificates remain outstanding, the City shall cause the Paying Agent/Registrar to keep at the Designated Payment/Transfer Office a register (the "Register") in which, subject to such reasonable regulations as it may prescribe, the Paying Agent/Registrar shall provide for the registration and transfer of Certificates in accordance with this Ordinance.

(b) The ownership of a Certificate may be transferred only upon the presentation and surrender of the Certificate at the Designated Payment/Transfer Office with such endorsement or other evidence of transfer as is acceptable to the Paying Agent/Registrar. No transfer of any Certificate shall be effective until entered in the Register.

(c) The Certificates shall be exchangeable upon the presentation and surrender thereof at the Designated Payment/Transfer Office for a Certificate or Certificates of the same maturity and interest rate and in any denomination or denominations of any integral multiple of \$5,000 and in an aggregate principal amount equal to the unpaid principal amount of the Certificates presented for exchange. The Paying Agent/Registrar is hereby authorized to authenticate and deliver Certificates exchanged for other Certificates in accordance with this Section.

(d) Each exchange Certificate delivered by the Paying Agent/Registrar in accordance with this Section shall constitute an original contractual obligation of the City and shall be entitled to the benefits and security of this Ordinance to the same extent as the Certificate or Certificates in lieu of which such exchange Certificate is delivered.

(e) No service charge shall be made to the Owner for the initial registration, subsequent transfer, or exchange for a different denomination of any of the Certificates. The Paying Agent/Registrar, however, may require the Owner to pay a sum sufficient to cover any tax or other governmental charge that is authorized to be imposed in connection with the registration, transfer or exchange of a Certificate.

(f) Neither the City nor the Paying Agent/Registrar shall be required to issue, transfer, or exchange any Certificate called for redemption, in whole or in part, within 45 calendar days prior to the date fixed for redemption; provided, however, such limitation shall not be applicable to an exchange by the Owner of the uncalled principal balance of a Certificate.

Section 3.07. Cancellation.

All Certificates paid or redeemed before scheduled maturity in accordance with this Ordinance, and all Certificates in lieu of which exchange Certificates or replacement Certificates are authenticated and delivered in accordance with this Ordinance, shall be cancelled and proper records shall be made regarding such payment, redemption, exchange or replacement. The Paying Agent/Registrar shall dispose of cancelled Certificates in accordance with the Securities Exchange Act of 1934.

Section 3.08. Temporary Certificates.

(a) Following the delivery and registration of the Initial Certificate and pending the preparation of definitive Certificates, the proper officers of the City may execute and, upon the City's request, the Paying Agent/Registrar shall authenticate and deliver, one or more temporary Certificates that are printed, lithographed, typewritten, mimeographed or otherwise produced, in any denomination, substantially of the tenor of the definitive Certificates in lieu of which they are delivered, without coupons, and with such appropriate insertions, omissions, substitutions and other variations as the officers of the City executing such temporary Certificates may determine, as evidenced by their signing of such temporary Certificates.

(b) Until exchanged for Certificates in definitive form, such Certificates in temporary form shall be entitled to the benefit and security of this Ordinance.

(c) The City, without unreasonable delay, shall prepare, execute and deliver to the Paying Agent/Registrar the Certificates in definitive form; then, upon the presentation and surrender of the Certificates in temporary form to the Paying Agent/Registrar, the Paying Agent/Registrar shall cancel the Certificates in temporary form and shall authenticate and deliver in exchange therefor Certificates of the same maturity and series, in definitive form, in the authorized denomination, and in the same aggregate principal amount, as the Certificates in temporary form surrendered. Such exchange shall be made without the making of any charge therefor to any Owner.

Section 3.09. Replacement Certificates.

(a) Upon the presentation and surrender to the Paying Agent/Registrar of a mutilated Certificate, the Paying Agent/Registrar shall authenticate and deliver in exchange therefor a replacement Certificate of like tenor and principal amount, bearing a number not contemporaneously outstanding. The City or the Paying Agent/Registrar may require the Owner of such Certificate to pay a sum sufficient to cover any tax or other governmental charge that is authorized to be imposed in connection therewith and any other expenses connected therewith.

(b) In the event that any Certificate is lost, apparently destroyed or wrongfully taken, the Paying Agent/Registrar, pursuant to the applicable laws of the State of Texas and in the absence of notice or knowledge that such Certificate has been acquired by a bona fide purchaser, shall authenticate and deliver a replacement Certificate of like tenor and principal amount, bearing a number not contemporaneously outstanding, provided that the Owner first:

(i) furnishes to the Paying Agent/Registrar satisfactory evidence of his or her ownership of and the circumstances of the loss, destruction or theft of such Certificate;

(ii) furnishes such security or indemnity as may be required by the Paying Agent/Registrar to save it and the City harmless;

(iii) pays all expenses and charges in connection therewith, including, but not limited to, printing costs, legal fees, fees of the Paying Agent/Registrar and any tax or other governmental charge that is authorized to be imposed; and

(iv) satisfies any other reasonable requirements imposed by the City and the Paying Agent/Registrar.

(c) If, after the delivery of such replacement Certificate, a bona fide purchaser of the original Certificate in lieu of which such replacement Certificate was issued presents for payment such original Certificate, the City and the Paying Agent/Registrar shall be entitled to recover such replacement Certificate from the person to whom it was delivered or any person taking therefrom, except a bona fide purchaser, and shall be entitled to recover upon the security or indemnity provided therefor to the extent of any loss, damage, cost or expense incurred by the City or the Paying Agent/Registrar in connection therewith.

(d) In the event that any such mutilated, lost, apparently destroyed or wrongfully taken Certificate has become or is about to become due and payable, the Paying Agent/Registrar, in its discretion, instead of issuing a replacement Certificate, may pay such Certificate if it has become due and payable or may pay such Certificate when it becomes due and payable.

(e) Each replacement Certificate delivered in accordance with this Section shall constitute an original additional contractual obligation of the City and shall be entitled to the benefits and security of this Ordinance to the same extent as the Certificate or Certificates in lieu of which such replacement Certificate is delivered.

Section 3.10. Book-Entry Only System.

(a) The definitive Certificates shall be initially issued in the form of a separate typewritten fully registered Certificate for each of the maturities thereof. Upon initial issuance, the ownership of such Certificates shall be registered in the name of Cede & Co., as nominee of DTC, and except as provided in Section 3.11 hereof, all of the outstanding Certificates shall be registered in the name of Cede & Co., as nominee of DTC.

(b) With respect to Certificates registered in the name of Cede & Co., as nominee of DTC, the City and the Paying Agent/Registrar shall have no responsibility or obligation to any DTC Participant or to any person on behalf of whom such a DTC Participant holds an interest in the Certificates. Without limiting the immediately preceding sentence, the City and the Paying Agent/Registrar shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. or any DTC Participant with respect to any ownership interest in the Certificates, (ii) the delivery to any DTC Participant or any other person, other than a Certificateholder, as shown on the Register, of any notice with respect to the Certificates, including any notice of redemption,, or (iii) the payment to any DTC Participant or any other person, other than a Certificateholder, as shown in the Register of any amount with respect to principal of or interest on the Certificates. Notwithstanding any other provision of this Ordinance to the contrary, the City and the Paying Agent/Registrar shall be entitled to treat and consider the person in whose name each Certificate is registered in the Register as the absolute owner of such Certificate for the purpose of payment of principal of and interest on the Certificates, for the purpose of all matters with respect to such Certificate, for the purpose of registering transfer with respect to such Certificate, and for all other purposes whatsoever. The Paying Agent/Registrar shall pay all principal of and interest on the Certificates only to or upon the order of the respective owners, as shown in the Register as provided in this Ordinance, or

their respective attorneys or representatives duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the City's obligations with respect to payment of principal of and interest on the Certificates to the extent of the sum or sums so paid. No person other than an owner, as shown in the Register, shall receive a certificate evidencing the obligation of the City to make payments of amounts due pursuant to this Ordinance. Upon delivery by DTC to the Paying Agent/Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., the word "Cede & Co." in this Ordinance shall refer to such new nominee of DTC.

(c) The Letter of Representations previously executed and delivered by the City, and applicable to the City's obligations delivered in book-entry-only form to DTC as securities depository, is hereby ratified and approved for the Certificates.

Section 3.11. Successor Securities Depository; Transfer Outside Book-Entry Only System.

In the event that the City or the Paying Agent/Registrar determines that DTC is incapable of discharging its responsibilities described herein and in the Letter of Representations of the City to DTC, and that it is in the best interest of the beneficial owners of the Certificates that they be able to obtain certificated Certificates, or in the event DTC discontinues the services described herein, the Issuer or the Paying Agent/Registrar shall (i) appoint a successor securities depository, qualified to act as such under Section 17(a) of the Securities and Exchange Act of 1934, as amended, notify DTC and DTC Participants of the appointment of such successor securities depository and transfer one or more separate Certificates to such successor securities depository or (ii) notify DTC and DTC Participants of the availability through DTC of Certificates and transfer one or more separate Certificates to DTC Participants having Certificates credited to their DTC accounts. In such event, the Certificates shall no longer be restricted to being registered in the Register in the name of Cede & Co., as nominee of DTC, but may be registered in the name of the successor securities depository, or its nominee, or in whatever name or names Owners transferring or exchanging Certificates shall designate, in accordance with the provisions of this Ordinance.

Section 3.12. Payments to Cede & Co.

Notwithstanding any other provision of this Ordinance to the contrary, so long as any Certificates are registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of and interest on such Certificates, and all notices with respect to such Certificates, shall be made and given, respectively, in the manner provided in the Letter of Representations.

ARTICLE IV

REDEMPTION OF CERTIFICATES BEFORE MATURITY

Section 4.01. Limitation on Redemption.

The Certificates shall be subject to redemption before scheduled maturity only as provided in this Article IV.

Section 4.02. Optional Redemption.

(a) The City reserves the option to redeem Certificates maturing on and after September 1, 2020, in whole or any part, before their respective scheduled maturity dates, on March 1, 2020, or on any date thereafter, such redemption date or dates to be fixed by the City, at a price equal to the principal amount of the Certificates called for redemption plus accrued interest to the date fixed for redemption.

(b) If less than all of the Certificates are to be redeemed pursuant to an optional redemption, 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 Certificates, or portions thereof, within such maturity or maturities and in such principal amounts for redemption.

(c) The City, at least 45 days before the redemption date, unless a shorter period shall be satisfactory to the Paying Agent/Registrar, shall notify the Paying Agent/Registrar of such redemption date and of the principal amount of Certificates to be redeemed.

Section 4.03. Partial Redemption.

(a) A portion of a single Certificate of a denomination greater than \$5,000 may be redeemed, but only in a principal amount equal to \$5,000 or any integral multiple thereof. If such a Certificate is to be partially redeemed, the Paying Agent/Registrar shall treat each \$5,000 portion of the Certificate as though it were a single Certificate for purposes of selection for redemption.

(b) Upon surrender of any Certificate for redemption in part, the Paying Agent/Registrar, in accordance with Section 3.06 of this Ordinance, shall authenticate and deliver an exchange Certificate or Certificates in an aggregate principal amount equal to the unredeemed portion of the Certificate so surrendered, such exchange being without charge.

(c) The Paying Agent/Registrar shall promptly notify the City in writing of the principal amount to be redeemed of any Certificate as to which only a portion thereof is to be redeemed.

Section 4.04. Notice of Redemption to Owners.

(a) The Paying Agent/Registrar shall give notice of any redemption of Certificates by sending notice, not less than 30 days before the date fixed for redemption, to the Owner of each Certificate or portion thereof to be redeemed by first-class United States mail, postage prepaid to

the address of each Owner of a Certificate appearing on the Register at the close of business on the last Business Day next preceding the date of mailing of such notice.

(b) The notice shall state the redemption date, the redemption price, the place at which the Certificates are to be surrendered for payment, and, if less than all the Certificates outstanding are to be redeemed, an identification of the Certificates or portions thereof to be redeemed.

(c) The City reserves the right to give notice of its election or direction to redeem Certificates under Section 4.02 conditioned upon the occurrence of subsequent events. Such notice may state (i) that the redemption is conditioned upon the deposit of moneys and/or authorized securities, in an amount equal to the amount necessary to effect the redemption, with the Paying Agent/Registrar, or such other entity as may be authorized by law, no later than the redemption date or (ii) that the City retains the right to rescind such notice at any time prior to the scheduled redemption date if the City delivers a certificate of the City to the Paying Agent/Registrar instructing the Paying Agent/Registrar to rescind the redemption notice, and such notice and redemption shall be of no effect if such moneys and/or authorized securities are not so deposited or if the notice is rescinded. The Paying Agent/Registrar shall give prompt notice of any such rescission of a conditional notice of redemption to the affected Owners. Any Certificates subject to conditional redemption where redemption has been rescinded shall remain Outstanding, and the rescission shall not constitute an event of default. Further, in the case of a conditional redemption, the failure of the City to make moneys and/or authorized securities available in part or in whole on or before the redemption date shall not constitute an event of default.

(d) Any notice given as provided in this Section shall be conclusively presumed to have been duly given, whether or not the Owner receives such notice.

Section 4.05. Payment Upon Redemption.

(a) Before or on each redemption date, the City shall deposit with the Paying Agent/Registrar money sufficient to pay all amounts due on the redemption date and the Paying Agent/Registrar shall make provision for the payment of the Certificates to be redeemed on such date by setting aside and holding in trust such amounts as are received by the Paying Agent/Registrar from the City and shall use such funds solely for the purpose of paying the principal of and accrued interest on the Certificates being redeemed.

(b) Upon presentation and surrender of any Certificate called for redemption at the Designated Payment/Transfer Office on or after the date fixed for redemption, the Paying Agent/Registrar shall pay the principal of and accrued interest on such Certificate to the date of redemption from the money set aside for such purpose.

Section 4.06. Effect of Redemption.

(a) Notice of redemption having been given as provided in Section 4.04 of this Ordinance and subject to any conditions or rights reserved by the City under Section 4.04(c), the Certificates or portions thereof called for redemption shall become due and payable on the date

fixed for redemption and, unless the City defaults in its obligation to make provision for the payment of the principal thereof or accrued interest thereon, such Certificates or portions thereof shall cease to bear interest from and after the date fixed for redemption, whether or not such Certificates are presented and surrendered for payment on such date.

(b) If the City shall fail to make provision for payment of all sums due on a redemption date, then any Certificate or portion thereof called for redemption shall continue to bear interest at the rate stated on the Certificate until due provision is made for the payment of same by the City.

Section 4.07. Lapse of Payment.

Money set aside for the redemption of Certificates and remaining unclaimed by the Holders of such Certificates shall be subject to the provisions of Section 3.03(f) hereof.

ARTICLE V

PAYING AGENT/REGISTRAR

Section 5.01. Appointment of Initial Paying Agent/Registrar.

The Bank of New York Mellon Trust Company, National Association, is hereby appointed as the initial Paying Agent/Registrar for the Certificates.

Section 5.02. Qualifications.

Each Paying Agent/Registrar shall be a commercial bank, a trust company organized under the laws of the State of Texas, or any other entity duly qualified and legally authorized to serve as and perform the duties and services of paying agent and registrar for the Certificates.

Section 5.03. Maintaining Paying Agent/Registrar.

(a) At all times while any Certificates are outstanding, the City will maintain a Paying Agent/Registrar that is qualified under Section 5.02 of this Ordinance. The Mayor is hereby authorized to execute an agreement with the Paying Agent/Registrar specifying the duties and responsibilities of the City and the Paying Agent/Registrar. The signature of the Mayor shall be attested by the City Secretary of the City.

(b) If the Paying Agent/Registrar resigns or otherwise ceases to serve as such, the City will promptly appoint a replacement.

Section 5.04. Termination.

The City, upon not less than 60 days notice, reserves the right to terminate the appointment of any Paying Agent/Registrar by delivering to the entity whose appointment is to be terminated written notice of such termination.

Section 5.05. Notice of Change to Owners.

Promptly upon each change in the entity serving as Paying Agent/Registrar, the City will cause notice of the change stating the effective date of the change and the name and mailing address of the replacement Paying Agent/Registrar to be sent to each Owner by first-class United States mail, postage prepaid, at the address shown on the Register.

Section 5.06. Agreement to Perform Duties and Functions.

By accepting the appointment as Paying Agent/Registrar and executing the Paying Agent/Registrar Agreement, the Paying Agent/Registrar is deemed to have agreed to the provisions of this Ordinance and that it will perform the duties and functions of Paying Agent/Registrar prescribed thereby.

Section 5.07. Delivery of Records to Successor.

If a Paying Agent/Registrar is replaced, such Paying Agent/Registrar, promptly upon the appointment of the successor, will deliver the Register (or a copy thereof) and all other pertinent books and records relating to the Certificates to the successor Paying Agent/Registrar.

ARTICLE VI

FORM OF THE CERTIFICATES

Section 6.01. Form Generally.

(a) The Certificates, the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Certificate of the Paying Agent/Registrar, and the Assignment form to appear on each of the Certificates, (i) shall be substantially in the form set forth in this Article, with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Ordinance, and (ii) may have such letters, numbers, or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association (“CUSIP Numbers”)) and such legends and endorsements (including any reproduction of an opinion of counsel) thereon as, consistently herewith, may be determined by the City or by the officers executing such Certificates, as evidenced by their execution thereof.

(b) Any portion of the text of any Certificates may be set forth on the reverse side thereof, with an appropriate reference thereto on the face of the Certificates.

(c) The definitive Certificates shall be typewritten, printed, lithographed, or engraved, and may be produced by any combination of these methods or produced in any other similar manner, all as determined by the officers executing such Certificates, as evidenced by their execution thereof.

(d) The Initial Certificate submitted to the Attorney General of the State of Texas may be typewritten and photocopied or otherwise reproduced.

Section 6.02. Form of the Certificates.

The form of the Certificates, including the form of the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the form of Certificate of the Paying Agent/Registrar and the form of Assignment appearing on the Certificates, shall be substantially as follows:

(a) Form of Certificates.

REGISTERED
No. _____

REGISTERED
\$ _____

United States of America
State of Texas

CITY OF PLANO, TEXAS
COMBINATION TAX AND REVENUE CERTIFICATES OF OBLIGATION
SERIES 2010

<u>INTEREST RATE:</u>	<u>MATURITY DATE:</u>	<u>CERTIFICATE</u> <u>DATE:</u>	<u>CUSIP NUMBER:</u>
_____%	September 1, ____	January 15, 2010	_____

The City of Plano, Texas (the "City"), in the Counties of Collin and Denton, State of Texas, for value received, hereby promises to pay to

or registered assigns, on the Maturity Date specified above, the sum of

_____ DOLLARS

unless this Certificate shall have been sooner called for redemption and the payment of the principal hereof shall have been paid or provided for, and to pay interest on such principal amount from the later of the Certificate Date specified above or the most recent interest payment date to which interest has been paid or provided for until payment of such principal amount has been paid or provided for, at the per annum rate of interest specified above, computed on the basis of a 360 day year of twelve 30 day months, such interest to be paid semiannually on March 1 and September 1 of each year, commencing September 1, 2010.

The principal of this Certificate shall be payable without exchange or collection charges in lawful money of the United States of America upon presentation and surrender of this Certificate at the designated office in East Syracuse, New York, of The Bank of New York Mellon Trust Company, National Association, 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 Certificate shall be paid either by (i) 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) 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 Certificate, the registered owner shall be the person in whose name this Certificate 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 Certificate 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 Certificate 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 Certificate is one of a series of fully registered certificates specified in the title hereof issued in the aggregate principal amount of \$10,035,000 (herein referred to as the “Certificates”), issued pursuant to a certain ordinance of the City Council of the City (the “Ordinance”) for the purpose of paying the costs of the Project as described in the Ordinance and (ii) for the payment of professional services of attorneys, financial advisors and other professionals in connection with the Project and the issuance of the Certificates.

The Certificates and the interest thereon are payable from the levy of a direct and continuing ad valorem tax, within the limit prescribed by law, against all taxable property in the City and from a pledge of Surplus Revenues, derived by the City from the operation of the City’s Municipal Drainage System, limited to an amount not to exceed \$1,000, all as described and provided in the Ordinance.

The City has reserved the option to redeem the Certificates maturing on or after September 1, 2020, in whole or in part before their respective scheduled maturity dates, on March 1, 2020, or on any date thereafter, at a price equal to the principal amount of the Certificates so called for redemption plus accrued interest to the date fixed for redemption. If

less than all of the Certificates 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 Certificates, or portions thereof, within such maturity and in such principal amounts, for redemption.

The Paying Agent/Registrar shall give notice of any redemption of Certificates by sending notice, not less than 30 days before the date fixed for redemption, to the registered owner of each Certificate or portion thereof to be redeemed by first-class United States mail, postage prepaid, at the address shown on the Register. In the Ordinance, the City reserves the right in the case of an optional redemption to give notice of its election or direction to redeem Certificates conditioned upon the occurrence of subsequent events. Such notice may state (i) that the redemption is conditioned upon the deposit of moneys and/or authorized securities, in an amount equal to the amount necessary to effect the redemption, with the Paying Agent/Registrar, or such other entity as may be authorized by law, no later than the redemption date or (ii) that the City retains the right to rescind such notice at any time prior to the scheduled redemption date if the City delivers a certificate of the City to the Paying Agent/Registrar instructing the Paying Agent/Registrar to rescind the redemption notice, and such notice and redemption shall be of no effect if such moneys and/or authorized securities are not so deposited or if the notice is rescinded. The Paying Agent/Registrar shall give prompt notice of any such rescission of a conditional notice of redemption to the affected Owners. Any Certificates subject to conditional redemption where redemption has been rescinded shall remain Outstanding, and the rescission shall not constitute an event of default. Further, in the case of a conditional redemption, the failure of the City to make moneys and/or authorized securities available in part or in whole on or before the redemption date shall not constitute an event of default.

As provided in the Ordinance, and subject to certain limitations therein set forth, this Certificate is transferable upon surrender of this Certificate for transfer at the Designated Payment/Transfer Office with such endorsement or other evidence of transfer as is acceptable to the Paying Agent/Registrar; then, one or more new fully registered Certificates of the same stated maturity, of authorized denominations, bearing the same rate of interest, and for the same aggregate principal amount will be issued to the designated transferee or transferees.

Neither the City nor the Paying Agent/Registrar shall be required to issue, transfer or exchange any Certificate called for redemption where such redemption is scheduled to occur within 45 calendar days of the date fixed for redemption; provided, however, such limitation shall not be applicable to an exchange by the registered owner of the uncalled principal balance of a Certificate.

The City, the Paying Agent/Registrar, and any other person may treat the person in whose name this Certificate is registered as the owner hereof for the purpose of receiving payment as herein provided (except interest shall be paid to the person in whose name this Certificate is registered on the Record Date or Special Record Date, as applicable) and for all other purposes, whether or not this Certificate be overdue, and neither the City nor the Paying Agent/Registrar shall be affected by notice to the contrary.

IT IS HEREBY CERTIFIED AND RECITED that the issuance of this Certificate and the series of which it is a part is duly authorized by law; that all acts, conditions and things required

to be done precedent to and in the issuance of the Certificates have been properly done and performed and have happened in regular and due time, form and manner, as required by law; and that ad valorem taxes upon all taxable property in the City have been levied for and pledged to the payment of the debt service requirements of the Certificates, within the limit prescribed by law; that in addition to said taxes, further provisions have been made for the payment of the debt service requirements of the Certificates by pledging to such purpose Surplus Revenues, as defined in the Ordinance, in an amount not to exceed \$1,000, of the City's Municipal Drainage System; that when so collected, such taxes and Surplus Revenues shall be appropriated to such purposes; and that the total indebtedness of the City, including the Certificates, does not exceed any constitutional or statutory limitation.

IN WITNESS WHEREOF, the City has caused this Certificate to be executed by the manual or facsimile signature of the Mayor of the City and countersigned by the manual or facsimile signature of the City Secretary of the City, and the official seal of the City has been duly impressed or placed in facsimile on this Certificate.

City Secretary
City of Plano, Texas

Mayor
City of Plano, Texas

[SEAL]

(b) Form of Comptroller's Registration Certificate.

The following Comptroller's Registration Certificate may be deleted from the definitive Certificates if such Certificate on the Initial Certificate is fully executed.

OFFICE OF THE COMPTROLLER §
OF PUBLIC ACCOUNTS § REGISTER NO. _____
OF THE STATE OF TEXAS §

I hereby certify that there is on file and of record in my office a certificate of the Attorney General of the State of Texas to the effect that this Certificate has been examined by him as required by law, that he finds that it has been issued in conformity with the Constitution and laws of the State of Texas, and that it is a valid and binding obligation of the City of Plano, Texas, and that this Certificate has this day been registered by me.

Witness my hand and seal of office at Austin, Texas, _____.

Comptroller of Public Accounts of
the State of Texas

[SEAL]

(c) Form of Certificate of Paying Agent/Registrar.

The following Certificate of Paying Agent/Registrar may be deleted from the Initial Certificate if the executed Comptroller's Registration Certificate appears thereon.

CERTIFICATE OF PAYING AGENT/REGISTRAR

The records of the Paying Agent/Registrar show that the Initial Certificate of this series of Certificates was approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts of the State of Texas, and that this is one of the Certificates referred to in the within mentioned Ordinance.

THE BANK OF NEW YORK MELLON
TRUST COMPANY, NATIONAL
ASSOCIATION, as Paying Agent/Registrar

Dated: _____

By: _____
Authorized Signature

Section 6.03. CUSIP Registration.

The City may secure identification numbers through the CUSIP Service Bureau Division of Standard & Poor's Corporation, New York, New York, and may authorize the printing of such numbers on the face of the Certificates. It is expressly provided, however, that the presence or absence of CUSIP Numbers on the Certificates shall be of no significance or effect as regards the legality thereof and neither the City nor the attorneys approving said Certificates as to legality are to be held responsible for CUSIP Numbers incorrectly printed on the Certificates.

Section 6.04. Legal Opinion.

The approving legal opinions of Vinson & Elkins L.L.P., Dallas, Texas, Bond Counsel, may be attached to each Certificate over the certification of the City Secretary of the City, which may be executed in facsimile.

Section 6.05. Municipal Bond Insurance.

If municipal bond guaranty insurance is obtained with respect to the Certificates, the Certificates, including the Initial Certificate, may bear an appropriate legend, as provided by the insurer.

ARTICLE VII

SALE AND DELIVERY OF CERTIFICATES, CREATION OF FUNDS, DEPOSIT OF PROCEEDS

Section 7.01. Sale of Certificates, Official Statement.

(a) The Certificates are hereby officially sold and awarded and shall be delivered to the Representative, on behalf of the Underwriters, in accordance with the terms and provisions of that certain Purchase Contract relating to the Certificates between the City and the Underwriters and dated the date of the passage of this Ordinance. The form and content of such Purchase Contract are hereby approved, and the Mayor is hereby authorized and directed to execute and deliver, and the City Secretary of the City is hereby authorized and directed to attest, if required, such Purchase Contract. It is hereby officially found, determined and declared that the terms of this sale are the most advantageous reasonably obtainable. The Certificates shall initially be registered in the name of the Representative, or their designee.

(b) The form and substance of the Preliminary Official Statement for the Certificates, and any addenda, supplement or amendment thereto, and the final Official Statement (the "Official Statement") presented to and considered at this meeting, are hereby in all respects approved and adopted and the Preliminary Official Statement is hereby deemed final as of its date within the meaning and for the purposes of paragraph (b)(1) of Rule 15c2-12 under the Securities Exchange Act of 1934, as amended. The Mayor and the City Secretary of the City are hereby authorized and directed to execute the same and deliver appropriate numbers of executed copies thereof to the Representative. The Official Statement as thus approved, executed and delivered, with such appropriate variations as shall be approved by the Mayor of the City and the Representative, may be used by the Underwriters in the public offering and sale thereof. The

City Secretary of the City is hereby authorized and directed to include and maintain a copy of the Official Statement and any addenda, supplement or amendment thereto thus approved among the permanent records of this meeting. The use and distribution of the Preliminary Official Statement, and the preliminary public offering of the Certificates by the Underwriters is hereby ratified, approved and confirmed.

(c) All officers of the City are authorized to execute such documents, certificates and receipts, and to make such elections with respect to the tax exempt status of Certificates, as they may deem appropriate in order to consummate the delivery of the Certificates in accordance with the provisions and terms of sale therefor. Further, in connection with the submission of the record of proceedings for the Certificates to the Attorney General of the State of Texas for examination and approval of such Certificates, the appropriate officer of the City is hereby authorized and directed to issue a check of the City payable to the Attorney General of the State of Texas as a nonrefundable examination fee in the amount required by Chapter 1202, Texas Government Code (such amount to be the lesser of (i) 1/10th of 1% of the principal amount of the Certificates or (ii) \$9,500).

Section 7.02. Control and Delivery of Certificates.

(a) The Mayor of the City is hereby authorized to have control of the Initial Certificate and all necessary records and proceedings pertaining thereto pending investigation, examination and approval of the Attorney General of the State of Texas, registration by the Comptroller of Public Accounts of the State and registration with, and initial exchange or transfer by, the Paying Agent/Registrar.

(b) After registration by the Comptroller of Public Accounts, delivery of the Certificates shall be made to the Purchaser under and subject to the general supervision and direction of the Mayor, against receipt by the City of all amounts due to the City under the terms of sale.

(c) In the event the Mayor or City Secretary is absent or otherwise unable to execute any document or take any action authorized herein, the Mayor Pro Tem and the Assistant City Secretary, respectively, shall be authorized to execute such documents and take such actions, and the performance of such duties by the Mayor Pro Tem and the Assistant City Secretary shall for the purposes of this Ordinance have the same force and effect as if such duties were performed by the Mayor and City Secretary, respectively.

Section 7.03. Creation of Funds.

The City hereby establishes the following funds or accounts:

(a) the City of Plano, Texas, Combination Tax and Revenue Certificates of Obligation, Series 2010, Interest and Sinking Fund (the "Interest and Sinking Fund");

(b) the City of Plano, Texas, Combination Tax and Revenue Certificates of Obligation, Series 2010, Project Fund (the "Project Fund"); and

(c) the City of Plano, Texas, Combination Tax and Revenue Certificates of Obligation, Series 2010, Surplus Revenues Fund (the “Surplus Revenues Fund”).

Section 7.04. Deposit of Proceeds.

(a) All amounts received on the Closing Date as accrued interest on the Certificates from the Certificate Date to the Closing Date shall be deposited to the Interest and Sinking Fund.

(b) The remainder of the proceeds of the Certificates shall be deposited to a Project Fund and shall be used to pay the costs of the Project and the costs of issuing the Certificates.

Section 7.05. Interest and Sinking Fund.

(a) The taxes levied under Section 2.01 of this Ordinance shall be deposited to the credit of the Interest and Sinking Fund at such times and in such amounts as necessary for the timely payment of the principal of and interest on the Certificates.

(b) If the amount of money in the Interest and Sinking Fund is at least equal to the aggregate principal amount of the outstanding Certificates plus the aggregate amount of interest due and that will become due and payable on such Certificates, no further deposits to that fund need be made.

(c) Money on deposit in the Interest and Sinking Fund shall be used to pay the principal of and interest on the Certificates as such become due and payable.

Section 7.06. Surplus Revenues Fund.

All Surplus Revenues shall be paid over and deposited into the Surplus Revenues Fund. On or before each Interest Payment Date, the Surplus Revenues, if any, shall be appropriated and employed in the following order:

(a) First: For deposit to the Interest and Sinking Fund to provide for the payment of the debt service requirements of the Certificates in accordance with the terms and conditions of this Ordinance; and

(b) Second: After all the requirements of subparagraph (a) above have been provided for, whether by the collection of the ad valorem tax levied in this Ordinance or by the use of pledged Surplus Revenues, the Surplus Revenues may be used for any lawful purpose.

Section 7.07. Project Fund.

The Project Fund shall be used for the purpose of making the permanent public improvements for which the Certificates were issued (as specified in the preamble of this Ordinance) and for paying expenses incurred in connection with the issuance and delivery of the Certificates.

Section 7.08. Excess Certificate Proceeds.

Upon completion of the Project any amount (exclusive of that amount retained for the payment of costs of such improvements not then due and payable) that remains in the Project Fund shall be transferred to the credit of the Interest and Sinking Fund and segregated in a special escrow account to be used to pay principal of and interest on the Certificates on the next ensuing Interest Payment Date.

ARTICLE VIII

INVESTMENTS

Section 8.01. Investments.

(a) Money in the Interest and Sinking Fund and the Project Fund created by this Ordinance, at the option of the City, may be invested in such securities or obligations as permitted under applicable law. The City's Director of Finance, and any other officer of the City authorized to make investments on behalf of the City, are hereby authorized and directed to execute and deliver, on behalf of the City, any and all investment agreements, guaranteed investment contracts or repurchase agreements in connection with the investment of moneys on deposit in the Interest and Sinking Fund and the Project Fund, but only to the extent such investment agreements, guaranteed investment contracts or repurchase agreements are authorized investments under applicable law.

(b) Any securities or obligations in which money in either the Interest and Sinking Fund or the Project Fund is so invested shall be kept and held in trust for the benefit of the Owners and shall be sold and the proceeds of sale shall be timely applied to the making of all payments required to be made from the fund from which the investment was made.

Section 8.02. Investment Income.

(a) Interest and income derived from investment of the Interest and Sinking Fund shall be credited to such fund.

(b) Interest and income derived from the investment of funds deposited pursuant to Section 7.04(b) hereof shall be credited to the Project Fund until completion of the Project; thereafter, to the extent such interest and income are present, such interest and income shall be deposited to the Interest and Sinking Fund.

ARTICLE IX

PARTICULAR REPRESENTATIONS AND COVENANTS

Section 9.01. Payment of the Certificates.

On or before each Interest Payment Date for the Certificates and while any of the Certificates are outstanding and unpaid, there shall be made available to the Paying Agent/Registrar, out of the Interest and Sinking Fund, money sufficient to pay such interest on

and principal of the Certificates as will accrue or mature on the applicable Interest Payment Date or maturity date or date of prior redemption.

Section 9.02. Other Representations and Covenants.

(a) The City will faithfully perform at all times any and all covenants, undertakings, stipulations, and provisions contained in this Ordinance and in each Certificate; the City will promptly pay or cause to be paid the principal of and interest on each Certificate on the dates and at the places and manner prescribed in such Certificate; and the City will, at the times and in the manner prescribed by this Ordinance, deposit or cause to be deposited the amounts of money specified by this Ordinance.

(b) The City is duly authorized under the laws of the State of Texas to issue the Certificates; all action on its part for the creation and issuance of the Certificates has been duly and effectively taken; and the Certificates in the hands of the Owners thereof are and will be valid and enforceable obligations of the City in accordance with their terms.

Section 9.03. Provisions Concerning Federal Income Tax Exclusion.

The City intends that the interest on the Certificates shall be excludable from gross income for purposes of federal income taxation pursuant to sections 103 and 141 through 150 of the Internal Revenue Code of 1986, as amended (the "Code"), and the applicable Income Tax Regulations (the "Regulations"). The City covenants and agrees not to take any action, or knowingly omit to take any action within its control, that if taken or omitted, respectively, would cause the interest on the Certificates to be includable in the gross income, as defined in section 61 of the Code, for purposes of federal income tax purposes. In particular, the City covenants and agrees to comply with each requirement of Sections 9.03 through 9.10, inclusive; provided, however, that the City shall not be required to comply with any particular requirement of Sections 9.03 through 9.10, inclusive, if the City has received an opinion of nationally recognized bond counsel ("Counsel's Opinion") that such noncompliance will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Certificates or if the City has received a Counsel's Opinion to the effect that compliance with some other requirement set forth in Sections 9.03 through 9.10, inclusive, will satisfy the applicable requirements of the Code and the Regulations, in which case compliance with such other requirement specified in such Counsel's Opinion shall constitute compliance with the corresponding requirement specified in Sections 9.03 through 9.10, inclusive.

Section 9.04. No Private Use or Payment and No Private Loan Financing.

The City shall certify, through an authorized officer, employee or agent, that, based upon all facts and estimates known or reasonably expected to be in existence on the date the Certificates are delivered, that the proceeds of the Certificates will not be used in a manner that would cause the Certificates to be "private activity bonds" within the meaning of section 141 of the Code and the Regulations promulgated thereunder. Moreover the City covenants and agrees that it will make such use of the proceeds of the Certificates, including interest or other investment income derived from Certificate proceeds, regulate the use of property financed, directly or indirectly, with such proceeds, and take such other and further action as may be

required so that the Certificates will not be “private activity bonds” within the meaning of section 141 of the Code and the Regulations and the Regulations promulgated thereunder.

Section 9.05. No Federal Guarantee.

The City covenants and agrees not to take any action, or knowingly omit to take any action within its control, that, if taken or omitted, respectively, would cause the Certificates to be “federally guaranteed” within the meaning of section 149(b) of the Code and the applicable Regulations thereunder, except as permitted by section 149(b)(3) of the Code and such Regulations.

Section 9.06. No Hedge Bonds.

The City covenants and agrees not to take any action, or knowingly omit to take any action, and has not knowingly omitted and will not knowingly omit to take any action, within its control, that, if taken or omitted, respectively, would cause the Certificates to be “hedge bonds” within the meaning of section 149(g) of the Code and the applicable Regulations thereunder.

Section 9.07. No-Arbitrage Covenant.

The City shall certify, through an authorized officer, employee or agent, that, based upon all facts and estimates known or reasonably expected to be in existence on the date the Certificates are delivered, the City will reasonably expect that the proceeds of the Certificates will not be used in a manner that would cause the Certificates to be “arbitrage bonds” within the meaning of section 148(a) of the Code and the applicable Regulations promulgated thereunder. Moreover, the City covenants and agrees that it will make such use of the proceeds of the Certificates including interest or other investment income derived from Certificate proceeds, regulate investments of proceeds of the Certificates, and take such other and further action as may be required so that the Certificates will not be “arbitrage bonds” within the meaning of section 148(a) of the Code and the applicable Regulations promulgated thereunder.

Section 9.08. Arbitrage Rebate.

If the City does not qualify for an exception to the requirements of Section 148(f) of the Code, the City will take all necessary steps to comply with the requirement that certain amounts earned by the City on the investment of the “gross proceeds” of the Certificates (within the meaning of section 148(f)(6)(B) of the Code), be rebated to the federal government. Specifically, the City will (i) maintain records regarding the investment of the gross proceeds of the Certificates as may be required to calculate the amount earned on the investment of the gross proceeds of the Certificates separately from records of amounts on deposit in the funds and accounts of the City allocable to other bond issues of the City or moneys which do not represent gross proceeds of any bonds of the City, (ii) calculate at such times as are required by the Regulations, the amount earned from the investment of the gross proceeds of the Certificates which is required to be rebated to the federal government, and (iii) pay, not less often than every fifth anniversary date of the delivery of the Certificates or on such other dates as may be permitted under the Regulations, all amounts required to be rebated to the federal government. Further, the City will not indirectly pay any amount otherwise payable to the federal government pursuant to the foregoing requirements to any person other than the federal government by

entering into any investment arrangement with respect to the gross proceeds of the Certificates that might result in a reduction in the amount required to be paid to the federal government because such arrangement results in a smaller profit or a larger loss than would have resulted if the arrangement had been at arm's length and had the yield on the issue not been relevant to either party.

Section 9.09. Information Reporting.

The City covenants and agrees to file or cause to be filed with the Secretary of the Treasury, not later than the 15th day of the second calendar month after the close of the calendar quarter in which the Certificates are issued, an information statement concerning the Certificates, all under and in accordance with section 149(e) of the Code and the applicable Regulations promulgated thereunder.

Section 9.10. Continuing Obligation.

Notwithstanding any other provision of this Ordinance, the City's obligations under the covenants and provisions of Sections 9.03 through 9.09, inclusive, shall survive the defeasance and discharge of the Certificates.

ARTICLE X

DEFAULT AND REMEDIES

Section 10.01. Events of Default.

Each of the following occurrences or events for the purpose of this Ordinance is hereby declared to be an Event of Default:

- (i) the failure to make payment of the principal of or interest on any of the Certificates when the same becomes due and payable; or
- (ii) default in the performance or observance of any other covenant, agreement or obligation of the City, which default materially and adversely affects the rights of the Owners, including but not limited to, their prospect or ability to be repaid in accordance with this Ordinance, and the continuation thereof for a period of 60 days after notice of such default is given by any Owner to the City.

Section 10.02. Remedies for Default.

(a) Upon the happening of any Event of Default, then any Owner or an authorized representative thereof, including but not limited to, a trustee or trustees therefor, may proceed against the City for the purpose of protecting and enforcing the rights of the Owners under this Ordinance, by mandamus or other suit, action or special proceeding in equity or at law, in any court of competent jurisdiction, for any relief permitted by law, including the specific performance of any covenant or agreement contained herein, or thereby to enjoin any act or thing that may be unlawful or in violation of any right of the Owners hereunder or any combination of such remedies.

(b) It is provided that all such proceedings shall be instituted and maintained for the equal benefit of all Owners of Certificates then outstanding.

Section 10.03. Remedies Not Exclusive.

(a) No remedy herein conferred or reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or under the Certificates or now or hereafter existing at law or in equity; provided, however, that notwithstanding any other provision of this Ordinance, the right to accelerate the debt evidenced by the Certificates shall not be available as a remedy under this Ordinance.

(b) The exercise of any remedy herein conferred or reserved shall not be deemed a waiver of any other available remedy.

ARTICLE XI

DISCHARGE

Section 11.01. Discharge.

The Certificates may be defeased, discharged or refunded in any manner permitted by applicable law.

ARTICLE XII

CONTINUING DISCLOSURE UNDERTAKING

Section 12.01. Annual Reports.

(a) The City shall provide annually to the MSRB, within six (6) months after the end of each fiscal year, financial information and operating data with respect to the City of the general type included in the final Official Statement, being the information described in Exhibit A hereto. Any financial statements so to be provided shall be (i) prepared in accordance with the accounting principles described in Exhibit A hereto, and (ii) audited, if the City commissions an audit of such statements and the audit is completed within the period during which they must be provided and (iii) submitted through EMMA, in an electronic format with accompany identifying information, as prescribed by the MSRB. If the audit of such financial statements is not complete within such period, then the City shall provide notice that audited financial statements are not available and shall provide unaudited financial statements for the applicable fiscal year to the MSRB. The City shall provide audited financial statements for the applicable fiscal year to the MSRB, when and if audited financial statements become available.

(b) If the City changes its fiscal year, it will notify the MSRB of the change (and of the date of the new fiscal year end) prior to the next date by which the City otherwise would be required to provide financial information and operating data pursuant to this Section.

(c) The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific referenced to any document (including an official statement or other offering document, if it is available from the MSRB) that theretofore has been provided to the MSRB or filed with the SEC.

Section 12.02. Material Event Notices.

(a) The City shall notify the MSRB, in a timely manner, of any of the following events with respect to the Certificates, if such event is material within the meaning of the federal securities laws:

- (i) principal and interest payment delinquencies;
- (ii) nonpayment related defaults;
- (iii) unscheduled draws on debt service reserves reflecting financial difficulties;
- (iv) unscheduled draws on credit enhancements reflecting financial difficulties;
- (v) substitution of credit or liquidity providers, or their failure to perform;
- (vi) adverse tax opinions or events affecting the tax exempt status of the Certificates;
- (vii) modifications to rights of Owners;
- (viii) redemption calls;
- (ix) defeasances;
- (x) release, substitution, or sale of property securing repayment of the Certificates; and
- (xi) rating changes.

The City will provide notice of such events to the MSRB in an electronic format and accompanied by identifying information, as prescribed by the MSRB.

(b) The City shall notify the MSRB, in a timely manner, of any failure by the City to provide financial information or operating data in accordance with Section 12.01 of this Ordinance by the time required by such Section.

Section 12.03. Limitations, Disclaimers and Amendments.

(a) The City shall be obligated to observe and perform the covenants specified in this Article for so long as, but only for so long as, the City remains an “obligated person” with respect to the Certificates within the meaning of the Rule, except that the City in any event will give

notice of any Certificate calls and any defeasances that cause the City to be no longer an “obligated person.”

(b) The provisions of this Article are for the sole benefit of the Owners and beneficial owners of the Certificates, and nothing in this Article, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The City undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Article and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the City’s financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Article or otherwise, except as expressly provided herein. The City does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Certificates at any future date.

UNDER NO CIRCUMSTANCES SHALL THE CITY BE LIABLE TO THE OWNER OR BENEFICIAL OWNER OF ANY CERTIFICATE OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE CITY, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS ARTICLE, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

(c) No default by the City in observing or performing its obligations under this Article shall constitute a breach of or default under the Ordinance for purposes of any other provisions of this Ordinance.

(d) Nothing in this Article is intended or shall act to disclaim, waive, or otherwise limit the duties of the City under federal and state securities laws.

(e) The provisions of this Article may be amended by the City from time to time to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the City, but only if (i) the provisions of this Article, as so amended, would have permitted an underwriter to purchase or sell Certificates in the primary offering of the Certificates in compliance with the Rule, taking into account any amendments or interpretations of the Rule to the date of such amendment, as well as such changed circumstances, and (ii) either (A) the Owners of a majority in aggregate principal amount (or any greater amount required by any other provisions of this Ordinance that authorizes such an amendment) of the outstanding Certificates consent to such amendment or (B) an entity or individual person that is unaffiliated with the City (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interests of the Owners and beneficial owners of the Certificates. If the City so amends the provisions of this Article, it shall include with any amended financial information or operating data next provided in accordance with Section 12.01 an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in type of financial information or operating data so provided.

ARTICLE XIII

AMENDMENTS; ATTORNEY GENERAL MODIFICATION

Section 13.01. Amendments.

This Ordinance shall constitute a contract with the Owners, be binding on the City, and shall not be amended or repealed by the City so long as any Certificate remains outstanding except as permitted in this Section and Section 12.03(e). The City may, without consent of or notice to any Owners, from time to time and at any time, amend this Ordinance in any manner not detrimental to the interests of the Owners, including the curing of any ambiguity, inconsistency, or formal defect or omission herein. In addition, the City may, with the written consent of the Owners of the Certificates holding a majority in aggregate principal amount of the Certificates then outstanding, amend, add to, or rescind any of the provisions of this Ordinance; provided that, without the consent of all Owners of outstanding Certificates, no such amendment, addition, or rescission shall (i) extend the time or times of payment of the principal of and interest on the Certificates, reduce the principal amount thereof, or the rate of interest thereon, or in any other way modify the terms of payment of the principal of or interest on the Certificates, (ii) give any preference to any Certificate over any other Certificate, or (iii) reduce the aggregate principal amount of Certificates required to be held by Owners for consent to any such amendment, addition, or rescission.

Section 13.02. Attorney General Modification.

In order to obtain the approval of the Certificates by the Attorney General of the State of Texas, any provision of this Ordinance may be modified, altered or amended after the date of its adoption if required by the Attorney General in connection with the Attorney General's examination as to the legality of the Certificates and approval thereof in accordance with the applicable law. Such changes, if any, shall be provided to the City Secretary of the City and the City Secretary of the City shall insert such changes into this Ordinance as if approved on the date hereof.

FINALLY PASSED, APPROVED AND EFFECTIVE this January 25, 2010.

ATTEST:

Phil Dyer
MAYOR

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Weatherbee, CITY ATTORNEY

EXHIBIT A

DESCRIPTION OF ANNUAL DISCLOSURE OF FINANCIAL INFORMATION

The following information is referred to in Article XII of this Ordinance.

Annual Financial Statements and Operating Data

The financial information and operating data with respect to the City to be provided annually in accordance with such Article are as specified (and included in the Appendix or other headings of the Official Statement referred to) below:

1. The portions of the financial statements of the City appended to the Official Statement as Appendix A, but for the most recently concluded fiscal year.
2. Statistical and financial data set forth in Tables numbered 1 through 6 and 8 through 14, each inclusive.

Accounting Principles

The accounting principles referred to in such Article are the accounting principles described in the notes to the financial statements referred to in Paragraph 1 above.



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		01/25/10		
Department:		Finance		
Department Head		Denise Tacke		
Agenda Coordinator (include phone #): Katherine Crumbley - x7479				
CAPTION				
<p align="center">An ordinance providing for the issuance and sale of City of Plano, Texas, General Obligation Refunding and Improvement Bonds, Series 2010; levying a tax in payment thereof; approving the Official Statement; approving the execution and delivery of a purchase contract; and enacting other provisions relating thereto.</p>				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input checked="" type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 09-10	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	28,545,000*	0	28,545,000*
Encumbered/Expended Amount		0	0	0
This Item	0	0	0	0
BALANCE	0	28,545,000*	0	28,545,000*
FUND(S):				
COMMENTS:				
SUMMARY OF ITEM				
<p>The sale of \$28,545,000* in General Obligation Refunding and Improvement Bonds, Series 2010, for the purpose of refunding a portion of the city's outstanding debt to lower the overall debt service requirements of the City, for various permanent public improvements and public purposes including a recreation center, equipment and street improvements, and for payment of professional services of attorneys, financial advisors and other professionals in connection with the projects and the issuance of the Bonds.</p> <p>* Preliminary, subject to change</p>				
List of Supporting Documents: Bond Ordinance			Other Departments, Boards, Commissions or Agencies	

BOND ORDINANCE

CITY OF PLANO, TEXAS
GENERAL OBLIGATION REFUNDING AND IMPROVEMENT BONDS
SERIES 2010

Adopted January 25, 2010

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An ordinance providing for the issuance and sale of City of Plano, Texas, General Obligation Refunding and Improvement Bonds, Series 2010; levying a tax in payment thereof; approving the Official Statement; approving the execution and delivery of a purchase contract; and enacting other provisions relating thereto.

WHEREAS, a portion of the bonds hereinafter authorized were duly and favorably voted, as required by the Constitution and laws of the State of Texas, at elections held in the City of Plano, Texas (the "City"), on May 7, 2005 and May 9, 2009; and

WHEREAS, at said elections and an election held on May 2, 1998, the following are among the purposes and amounts of the bonds which were authorized, reflecting any amount previously issued pursuant to each voted authorization, the amount therefrom being issued pursuant to this ordinance (this "Ordinance"), and the balance that remains unissued after the issuance of the bonds herein authorized, to wit:

<u>Purpose</u>	<u>Amount Voted</u>	<u>Amount Previously Issued</u>	<u>Amount Being Issued</u>	<u>Unissued Balance</u>
<u>1998 Election</u>				
Creative and Performing				
Arts Facilities	\$ 19,402,000	\$ 5,210,000	\$ -0-	\$14,192,000
1998 Subtotal	\$ 19,402,000	\$ 5,210,000	\$ -0-	\$14,192,000
<u>2005 Election</u>				
Parks & Recreation Facilities	\$ 57,775,000	\$45,520,000	\$-0-	\$12,255,000
Recreation Center	\$ 6,600,000	\$ 1,585,000	\$5,015,000	\$ -0-
Street Improvements	\$ 55,372,000	\$42,662,000	\$ 6,110,000	\$6,600,000
2005 Subtotal	\$119,747,000	\$89,767,000	\$11,125,000 ²	\$18,855,000
<u>2009 Election</u>				
Technology	\$ 8,000,000	\$ -0-	\$ 1,000,000	\$ 7,000,000
Street Improvements	\$ 34,754,500	\$ -0-	\$ -0-	\$ 34,754,500
Library Improvements	\$ 1,750,000	\$ -0-	\$ -0-	\$ 1,750,000
Parks & Recreation Facilities	\$ 48,650,000	\$ -0-	\$ -0-	\$ 48,650,000
Recreation Centers	\$ 24,100,000	\$ -0-	\$ 490,000	\$ 23,610,000
Public Safety	\$ 11,368,000	\$ -0-	\$ -0-	\$ 11,368,000
2009 Subtotal	\$128,622,500	\$ -0-	\$ 1,490,000	\$ 127,132,500
Total	\$267,771,500	\$94,977,000 ¹	\$12,615,000	\$ 160,179,500

WHEREAS, there are presently outstanding certain obligations of the City, described on Schedule I hereto, which are secured by and payable from ad valorem taxes levied on property within the City in an amount sufficient to pay principal of and interest on such obligations as they become due within the limits prescribed by law; and

¹ Includes premium received with respect to general obligation bonds previously issued by the City allocated on a pro rata basis among all projects for which such bonds were issued.

² Includes a portion of the premium received with respect to the Bonds in the amount of \$_____.

WHEREAS, the City now desires to refund such obligations described on Schedule I hereto (such refunded obligations to be hereinafter referred to as the “Refunded Bonds”); and

WHEREAS, Chapter 1207, Texas Government Code (“Chapter 1207”), authorizes the City to issue refunding obligations and to deposit the proceeds from the sale thereof, and any other available funds or resources, directly with the paying agent for any of the Refunded Bonds, and such deposit, if made before such payment dates, shall constitute the making of firm banking and financial arrangements for the discharge and final payment of the Refunded Bonds; and

WHEREAS, Chapter 1207 further authorizes the City to enter into an escrow agreement with the paying agent for any of the Refunded Bonds with respect to the safekeeping, investment, reinvestment, administration and disposition of any such deposit; and

WHEREAS, The Bank of New York Mellon Trust Company, National Association, is the paying agent for the Refunded Bonds and the Escrow Agreement hereinafter authorized constitutes an escrow agreement of the kind authorized and permitted by said Chapter 1207; and

WHEREAS, the City Council hereby finds and determines that refunding the Refunded Bonds for the purpose of achieving a gross debt service savings of approximately \$_____ and a net present value debt service savings of approximately \$_____ with respect to the Refunded Bonds is in the best interests of the citizens of the City; and

WHEREAS, the City Council has found and determined that it is necessary and in the best interest of the City and its citizens that it authorize by this Ordinance the issuance and delivery of its bonds in a single series at this time; and

WHEREAS, the meeting at which this Ordinance is considered is open to the public as required by law, and the public notice of the time, place and purpose of said meeting was given as required by Chapter 551, Texas Government Code, as amended; therefore

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

ARTICLE I

DEFINITIONS AND OTHER PRELIMINARY MATTERS

Section 1.01. Definitions.

Unless otherwise expressly provided or unless the context clearly requires otherwise in this Ordinance, the following terms shall have the meanings specified below:

“Bond” means any of the Bonds.

“Bond Date” means the date designated as the date of the Bonds by Section 3.02(a) of this Ordinance.

“Bonds” means the City’s bonds authorized to be issued by Section 3.01 of this Ordinance and designated as “City of Plano, Texas, General Obligation Refunding and Improvement Bonds, Series 2010.”

“Business Day” means any day other than a Saturday, Sunday or legal holiday or other day on which banking institutions in the city where the Designated Payment/Transfer Office is located are generally authorized or obligated by law or executive order to close.

“Closing Date” means the date of the initial delivery of and payment for the Bonds.

“Code” means the Internal Revenue Code of 1986, as amended, including applicable regulations, published rulings and court decisions.

“Designated Payment/Transfer Office” means (i) with respect to the initial Paying Agent/Registrar named herein, its office in East Syracuse, New York, or at such other location designated by the Paying Agent/Registrar and (ii) with respect to any successor Paying Agent/Registrar, the office of such successor designated and located as may be agreed upon by the City and such successor.

“DTC” shall mean The Depository Trust Company of New York, New York, or any successor securities depository.

“DTC Participant” shall mean brokers and dealers, banks, trust companies, clearing corporations and certain other organizations on whose behalf DTC was created to hold securities to facilitate the clearance and settlement of securities transactions among DTC Participants.

“EMMA” means the Electronic Municipal Market Access System.

“Escrow Agent” means The Bank of New York Mellon Trust Company, National Association, its successors and assigns.

“Escrow Agreement” means that certain Escrow Agreement relating to the Bonds, dated as of January 15, 2010, between the City and the Escrow Agent.

“Escrow Fund” means the fund by that name established in the Escrow Agreement.

“Event of Default” means any event of default as defined in Section 10.01 of this Ordinance.

“Initial Bond” means the Initial Bond authorized by Section 3.04(d) of this Ordinance.

“Interest and Sinking Fund” means the interest and sinking fund established by Section 2.02 of this Ordinance.

“Interest Payment Date” means the date or dates on which interest on the Bonds is scheduled to be paid until their respective dates of maturity or prior redemption, such dates being March 1 and September 1, commencing September 1, 2010.

“Letter of Representations” means the Blanket Letter of Representations between the City and DTC.

“MSRB” means the Municipal Securities Rulemaking Board.

“Owner” means the person who is the registered owner of a Bond or Bonds, as shown in the Register.

“Paying Agent/Registrar” means initially The Bank of New York Mellon Trust Company, National Association, or any successor thereto as provided in this Ordinance.

“Purchase Contract” means that certain purchase contract, dated as of January 25, 2010, approved in Section 7.01(a) hereof.

“Record Date” means the fifteenth day of the month next preceding an Interest Payment Date.

“Register” means the bond register specified in Section 3.06(a) of this Ordinance.

“Representative” means the representative of the Underwriters, designated in the Purchase Contract.

“Rule” means SEC Rule 15c2 12, as amended from time to time.

“SEC” means the United States Securities and Exchange Commission.

“Special Record Date” means the Special Record Date prescribed by Section 3.03(b).

“Unclaimed Payments” means money deposited with the Paying Agent/Registrar for the payment of the principal of or interest on Bonds as the same become due and payable and remaining unclaimed by the Owners of such Bonds for 90 days after the applicable payment or redemption date.

“Underwriters” means those underwriters of the Bonds named in the Purchase Contract.

Section 1.02. Findings.

The declarations, determinations and findings declared, made and found in the preamble to this Ordinance are hereby adopted, restated and made a part of the operative provisions hereof.

Section 1.03. Table of Contents, Titles and Headings.

The table of contents, titles and headings of the Articles and Sections of this Ordinance have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof and shall never be considered or given any effect in construing this Ordinance or any provision hereof or in ascertaining intent, if any question of intent should arise.

Section 1.04. Interpretation.

(a) If the context requires otherwise, words of the masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa.

(b) Ordinance and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein.

ARTICLE II

SECURITY FOR THE BONDS; INTEREST AND SINKING FUND

Section 2.01. Tax Levy.

(a) Pursuant to the authority granted by the Texas Constitution and the laws of the State of Texas, there shall be levied and there is hereby levied for the current year and for each succeeding year hereafter while any of the Bonds or any interest thereon is outstanding and unpaid, an ad valorem tax on each one hundred dollars' valuation of taxable property within the City, at a rate sufficient, within the limit prescribed by law, to pay the debt service requirements of the Bonds, being (i) the interest on the Bonds, and (ii) a sinking fund for their redemption at maturity or a sinking fund of 2% per annum (whichever amount is greater), when due and payable, full allowance being made for delinquencies and costs of collection.

(b) The ad valorem tax thus levied shall be assessed and collected each year against all property appearing on the tax rolls of the City most recently approved in accordance with law and the money thus collected shall be deposited as collected to the Interest and Sinking Fund.

(c) Said ad valorem tax, the collections therefrom, and all amounts on deposit in or required hereby to be deposited to the Interest and Sinking Fund are hereby pledged and committed irrevocably to the payment of the principal of and interest on the Bonds when and as due and payable in accordance with their terms and this Ordinance.

(d) If the lien and provisions of this Ordinance shall be released in a manner permitted by Article XI hereof, then the collection of such ad valorem tax may be suspended or appropriately reduced, as the facts may permit, and further deposits to the Interest and Sinking Fund may be suspended or appropriately reduced, as the facts may permit. In determining the aggregate principal amount of outstanding Bonds, there shall be subtracted the amount of any Bonds that have been duly called for redemption and for which money has been deposited with the Paying Agent/Registrar for such redemption.

Section 2.02. Interest and Sinking Fund.

(a) The City hereby establishes a special fund or account, to be designated the "City of Plano, Texas, General Obligation Refunding and Improvement Bonds, Series 2010, Interest and Sinking Fund."

(b) Money on deposit in or required by this Ordinance to be deposited to the Interest and Sinking Fund shall be used solely for the purpose of paying the interest on and principal of the Bonds when and as due and payable in accordance with their terms and this Ordinance.

ARTICLE III

AUTHORIZATION; GENERAL TERMS AND PROVISIONS REGARDING THE BONDS

Section 3.01. Authorization.

The City's bonds to be designated "City of Plano, Texas, General Obligation Refunding and Improvement Bonds, Series 2010," are hereby authorized to be issued and delivered in accordance with Chapters 1207 and 1331, Texas Government Code, as amended, and Section 9.22 of the Charter of the City. The Bonds shall be issued in the aggregate principal amount of \$28,545,000, for the purpose of providing funds to refund the Refunding Bonds, to pay the costs of issuing the Bonds and to make the following permanent public improvements authorized in the following amounts: from the 2005 authorization (i) \$6,110,000 for developing, engineering, constructing, reconstructing, improving, repairing, extending, expanding and enhancing streets, thoroughfares, alleys, sidewalks, bridges, intersections, and other public ways, including participation in joint projects with federal, state and local public entities and agencies, computerized signalization and monitoring equipment and other traffic controls, grade separations, street lighting, noise abatements, necessary and related storm drainage facilities and improvements, and the acquisition of any needed rights-of-way therefor; and (ii) \$5,015,000 for improving, renovating, expanding, furnishing and equipping the Carpenter Park Recreation Center; and from the 2009 authorization (iii) \$1,000,000 for improving, renovating, expanding, furnishing and equipping municipal facilities for technology services purposes; and (iv) \$490,000 for improving, renovating, expanding, furnishing and equipping recreation centers (collectively, the "Project").

Section 3.02. Date, Denomination, Maturities and Interest.

(a) The Bonds shall be dated January 15, 2010. The Bonds shall be in fully registered form, without coupons, in the denomination of \$5,000 or any integral multiple thereof, and shall be numbered separately from one upward, except the Initial Bond, which shall be numbered T-1.

(b) The Bonds shall mature on September 1 in the years and in the principal amounts set forth in the following schedule:

<u>Years</u>	<u>Principal Amount</u>	<u>Interest Rates</u>	<u>Years</u>	<u>Principal Amount</u>	<u>Interest Rates</u>
2011			2021		
2012			2022		
2013			2023		
2014			2024		
2015			2025		
2016			2026		
2017			2027		
2018			2028		
2019			2029		
2020			2030		

(c) Interest shall accrue and be paid on each Bond respectively until its maturity or prior redemption, from the later of the Bond Date or the most recent Interest Payment Date to which interest has been paid or provided for at the rates per annum for each respective maturity specified in the schedule contained in subsection (b) above. Such interest shall be payable on each Interest Payment Date until maturity or prior redemption. Interest on the Bonds shall be calculated on the basis of a 360-day year composed of twelve 30-day months.

Section 3.03. Medium, Method and Place of Payment.

(a) The principal of and interest on the Bonds shall be paid in lawful money of the United States of America.

(b) Interest on the Bonds shall be payable to the Owners as shown in the Register at the close of business on the Record Date; provided, however, in the event of nonpayment of interest on a scheduled Interest Payment Date and for 30 days thereafter, a new record date for such interest payment (a “Special Record Date”) shall 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 on the Register at the close of business on the last Business Day next preceding the date of mailing of such notice.

(c) Interest on each Bond shall be paid to each Owner by (i) 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 each Owner at the address of each Owner as such appears in the Register or (ii) by such other customary banking arrangements acceptable to the Paying Agent/Registrar and the person to whom interest is to be paid at the risk and expense of such Owner.

(d) The principal of each Bond shall be paid to the Owner thereof on the due date (whether at the maturity date or the date of prior redemption thereof) upon presentation and surrender of such Bond at the Designated Payment/Transfer Office of the Paying Agent/Registrar.

(e) If the date for the payment of the principal of or interest on the Bonds 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.

(f) Unclaimed Payments of amounts due hereunder shall be segregated in a special account and held in trust, uninvested by the Paying Agent/Registrar, for the account of the Owner of the Bonds to which such Unclaimed Payments pertain. Subject to Title 6 of the Texas Property Code, any Unclaimed Payments remaining unclaimed by the Owners entitled thereto for three years after the applicable payment or redemption date shall be applied to the next payment or payments on the Bonds thereafter coming due and, to the extent any such money remains after the retirement of all outstanding Bonds, shall be paid to the City to be used for any lawful purpose. Thereafter, neither the City, the Paying Agent/Registrar nor any other person shall be liable or responsible to any holders of such Bonds for any further payment of such unclaimed moneys or on account of any such Bonds, subject to Title 6 of the Texas Property Code.

Section 3.04. Execution and Registration of Bonds.

(a) The Bonds shall be executed on behalf of the City by the Mayor and the City Secretary, by their manual or facsimile signatures, and the official seal of the City shall be impressed or placed in facsimile thereon. Such facsimile signatures on the Bonds shall have the same effect as if each of the Bonds had been signed manually and in person by each of said officers, and such facsimile seal on the Bonds shall have the same effect as if the official seal of the City had been manually impressed upon each of the Bonds.

(b) In the event that any officer of the City whose manual or facsimile signature appears on the Bonds ceases to be such officer before the authentication of such Bonds or before the delivery thereof, such manual or facsimile signature nevertheless shall be valid and sufficient for all purposes as if such officer had remained in such office.

(c) Except as provided below, no Bond shall be valid or obligatory for any purpose or be entitled to any security or benefit of this Ordinance unless and until there appears thereon the Certificate of Paying Agent/Registrar substantially in the form provided herein, duly authenticated by manual execution by an officer or duly authorized signatory of the Paying Agent/Registrar. It shall not be required that the same officer or authorized signatory of the Paying Agent/Registrar sign the Certificate of Paying Agent/Registrar on all of the Bonds. In lieu of the executed Certificate of Paying Agent/Registrar described above, the Initial Bond delivered at the Closing Date shall have attached thereto the Comptroller's Registration

Certificate substantially in the form provided herein, manually executed by the Comptroller of Public Accounts of the State of Texas, or by his duly authorized agent, which Certificate shall be evidence that the Bond has been duly approved by the Attorney General of the State of Texas and that it is a valid and binding obligation of the City, and has been registered by the Comptroller of Public Accounts of the State of Texas.

(d) On the Closing Date, one initial Bond (the "Initial Bond") representing the entire principal amount of all Bonds, payable in stated installments to the Purchaser, or its designee, manually signed by the Mayor and City Secretary of the City, approved by the Attorney General, and registered and manually signed by the Comptroller of Public Accounts, will be delivered to the Purchaser or its designee. Upon payment for the Initial Bond, the Paying Agent/Registrar shall cancel the Initial Bond and deliver to DTC on behalf of the Purchaser one registered definitive Bond for each year of maturity of the Bonds in the aggregate principal amount of all Bonds for such maturity, registered in the name of Cede & Co., as nominee of DTC.

Section 3.05. Ownership.

(a) The City, the Paying Agent/Registrar and any other person may treat the person in whose name any Bond is registered as the absolute owner of such Bond for the purpose of making and receiving payment of the principal thereof, for the further purpose of making and receiving payment of the interest thereon, and for all other purposes (except interest will be paid to the person in whose name such bond is registered on the Record Date or Special Record Date, as applicable), whether or not such Bond is overdue, and neither the City nor the Paying Agent/Registrar shall be bound by any notice or knowledge to the contrary.

(b) All payments made to the Owner of a Bond shall be valid and effectual and shall discharge the liability of the City and the Paying Agent/Registrar upon such Bond to the extent of the sums paid.

Section 3.06. Registration, Transfer and Exchange.

(a) So long as any Bonds remain outstanding, the City shall cause the Paying Agent/Registrar to keep at the Designated Payment/Transfer Office a register (the "Register") in which, subject to such reasonable regulations as it may prescribe, the Paying Agent/Registrar shall provide for the registration and transfer of Bonds in accordance with this Ordinance.

(b) The ownership of a Bond may be transferred only upon the presentation and surrender of the Bond at the Designated Payment/Transfer Office with such endorsement or other evidence of transfer as is acceptable to the Paying Agent/Registrar. No transfer of any Bond shall be effective until entered in the Register.

(c) The Bonds shall be exchangeable upon the presentation and surrender thereof at the Designated Payment/Transfer Office for a Bond or Bonds of the same maturity and interest rate and in any denomination or denominations of any integral multiple of \$5,000 and in an aggregate principal amount equal to the unpaid principal amount of the Bonds presented for exchange. The Paying Agent/Registrar is hereby authorized to authenticate and deliver Bonds exchanged for other Bonds in accordance with this Section.

(d) Each exchange Bond delivered by the Paying Agent/Registrar in accordance with this Section shall constitute an original contractual obligation of the City and shall be entitled to the benefits and security of this Ordinance to the same extent as the Bond or Bonds in lieu of which such exchange Bond is delivered.

(e) No service charge shall be made to the Owner for the initial registration, subsequent transfer, or exchange for a different denomination of any of the Bonds. The Paying Agent/Registrar, however, may require the Owner to pay a sum sufficient to cover any tax or other governmental charge that is authorized to be imposed in connection with the registration, transfer or exchange of a Bond.

(f) Neither the City nor the Paying Agent/Registrar shall be required to issue, transfer, or exchange any Bond called for redemption, in whole or in part, within 45 calendar days prior to the date fixed for redemption; provided, however, such limitation shall not be applicable to an exchange by the Owner of the uncalled principal balance of a Bond.

Section 3.07. Cancellation.

All Bonds paid or redeemed before scheduled maturity in accordance with this Ordinance, and all Bonds in lieu of which exchange Bonds or replacement Bonds are authenticated and delivered in accordance with this Ordinance, shall be cancelled and proper records shall be made regarding such payment, redemption, exchange or replacement. The Paying Agent/Registrar shall dispose of cancelled Bonds in accordance with the Securities Exchange Act of 1934.

Section 3.08. Temporary Bonds.

(a) Following the delivery and registration of the Initial Bond and pending the preparation of definitive Bonds, the proper officers of the City may execute and, upon the City's request, the Paying Agent/Registrar shall authenticate and deliver, one or more temporary Bonds that are printed, lithographed, typewritten, mimeographed or otherwise produced, in any denomination, substantially of the tenor of the definitive Bonds in lieu of which they are delivered, without coupons, and with such appropriate insertions, omissions, substitutions and other variations as the officers of the City executing such temporary Bonds may determine, as evidenced by their signing of such temporary Bonds.

(b) Until exchanged for Bonds in definitive form, such Bonds in temporary form shall be entitled to the benefit and security of this Ordinance.

(c) The City, without unreasonable delay, shall prepare, execute and deliver to the Paying Agent/Registrar the Bonds in definitive form; then, upon the presentation and surrender of the Bonds in temporary form to the Paying Agent/Registrar, the Paying Agent/Registrar shall cancel the Bonds in temporary form and shall authenticate and deliver in exchange therefor Bonds of the same maturity and series, in definitive form, in the authorized denomination, and in the same aggregate principal amount, as the Bonds in temporary form surrendered. Such exchange shall be made without the making of any charge therefor to any Owner.

Section 3.09. Replacement Bonds.

(a) Upon the presentation and surrender to the Paying Agent/Registrar of a mutilated Bond, the Paying Agent/Registrar shall authenticate and deliver in exchange therefor a replacement Bond of like tenor and principal amount, bearing a number not contemporaneously outstanding. The City or the Paying Agent/Registrar may require the Owner of such Bond to pay a sum sufficient to cover any tax or other governmental charge that is authorized to be imposed in connection therewith and any other expenses connected therewith.

(b) In the event that any Bond is lost, apparently destroyed or wrongfully taken, the Paying Agent/Registrar, pursuant to the applicable laws of the State of Texas and in the absence of notice or knowledge that such Bond has been acquired by a bona fide purchaser, shall authenticate and deliver a replacement Bond of like tenor and principal amount, bearing a number not contemporaneously outstanding, provided that the Owner first:

(i) furnishes to the Paying Agent/Registrar satisfactory evidence of his or her ownership of and the circumstances of the loss, destruction or theft of such Bond;

(ii) furnishes such security or indemnity as may be required by the Paying Agent/Registrar to save it and the City harmless;

(iii) pays all expenses and charges in connection therewith, including, but not limited to, printing costs, legal fees, fees of the Paying Agent/Registrar and any tax or other governmental charge that is authorized to be imposed; and

(iv) satisfies any other reasonable requirements imposed by the City and the Paying Agent/Registrar.

(c) If, after the delivery of such replacement Bond, a bona fide purchaser of the original Bond in lieu of which such replacement Bond was issued presents for payment such original Bond, the City and the Paying Agent/Registrar shall be entitled to recover such replacement Bond from the person to whom it was delivered or any person taking therefrom, except a bona fide purchaser, and shall be entitled to recover upon the security or indemnity provided therefor to the extent of any loss, damage, cost or expense incurred by the City or the Paying Agent/Registrar in connection therewith.

(d) In the event that any such mutilated, lost, apparently destroyed or wrongfully taken Bond has become or is about to become due and payable, the Paying Agent/Registrar, in its discretion, instead of issuing a replacement Bond, may pay such Bond if it has become due and payable or may pay such Bond when it becomes due and payable.

(e) Each replacement Bond delivered in accordance with this Section shall constitute an original additional contractual obligation of the City and shall be entitled to the benefits and security of this Ordinance to the same extent as the Bond or Bonds in lieu of which such replacement Bond is delivered.

Section 3.10. Book-Entry Only System.

(a) The definitive Bonds shall be initially issued in the form of a separate typewritten fully registered Bond for each of the maturities thereof. Upon initial issuance, the ownership of such Bonds shall be registered in the name of Cede & Co., as nominee of DTC, and except as provided in Section 3.11 hereof, all of the outstanding Bonds shall be registered in the name of Cede & Co., as nominee of DTC.

(b) With respect to Bonds registered in the name of Cede & Co., as nominee of DTC, the City and the Paying Agent/Registrar shall have no responsibility or obligation to any DTC Participant or to any person on behalf of whom such a DTC Participant holds an interest in the Bonds. Without limiting the immediately preceding sentence, the City and the Paying Agent/Registrar shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. or any DTC Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any DTC Participant or any other person, other than a Bondholder, as shown on the Register, of any notice with respect to the Bonds, including any notice of redemption, or (iii) the payment to any DTC Participant or any other person, other than a Bondholder, as shown in the Register of any amount with respect to principal of or interest on the Bonds. Notwithstanding any other provision of this Ordinance to the contrary, the City and the Paying Agent/Registrar shall be entitled to treat and consider the person in whose name each Bond is registered in the Register as the absolute owner of such Bond for the purpose of payment of principal of and interest on the Bonds, for the purpose of all matters with respect to such Bond, for the purpose of registering transfer with respect to such Bond, and for all other purposes whatsoever. The Paying Agent/Registrar shall pay all principal of and interest on the Bonds only to or upon the order of the respective owners, as shown in the Register as provided in this Ordinance, or their respective attorneys or representatives duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the City's obligations with respect to payment of principal of and interest on the Bonds to the extent of the sum or sums so paid. No person other than an owner, as shown in the Register, shall receive a Bond certificate evidencing the obligation of the City to make payments of amounts due pursuant to this Ordinance. Upon delivery by DTC to the Paying Agent/Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., the word "Cede & Co." in this Ordinance shall refer to such new nominee of DTC.

(c) The Letter of Representations previously executed and delivered by the City, and applicable to the City's obligations delivered in book-entry-only form to DTC as securities depository, is hereby ratified and approved for the Bonds.

Section 3.11. Successor Securities Depository; Transfer Outside Book-Entry Only System.

In the event that the City or the Paying Agent/Registrar determines that DTC is incapable of discharging its responsibilities described herein and in the Letter of Representations of the City to DTC, and that it is in the best interest of the beneficial owners of the Bonds that they be able to obtain certificated Bonds, or in the event DTC discontinues the services described herein, the Issuer or the Paying Agent/Registrar shall (i) appoint a successor securities depository, qualified to act as such under Section 17(a) of the Securities and Exchange Act of 1934, as

amended, notify DTC and DTC Participants of the appointment of such successor securities depository and transfer one or more separate Bonds to such successor securities depository or (ii) notify DTC and DTC Participants of the availability through DTC of Bonds and transfer one or more separate Bonds to DTC Participants having Bonds credited to their DTC accounts. In such event, the Bonds shall no longer be restricted to being registered in the Register in the name of Cede & Co., as nominee of DTC, but may be registered in the name of the successor securities depository, or its nominee, or in whatever name or names Owners transferring or exchanging Bonds shall designate, in accordance with the provisions of this Ordinance.

Section 3.12. Payments to Cede & Co.

Notwithstanding any other provision of this Ordinance to the contrary, so long as any Bonds are registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of and interest on such Bonds, and all notices with respect to such Bonds, shall be made and given, respectively, in the manner provided in the Letter of Representations.

ARTICLE IV

REDEMPTION OF BONDS BEFORE MATURITY

Section 4.01. Limitation on Redemption.

The Bonds shall be subject to redemption before scheduled maturity only as provided in this Article IV.

Section 4.02. Optional Redemption.

(a) The City reserves the option to redeem Bonds maturing on and after September 1, 2020, in whole or any part, before their respective scheduled maturity dates, on March 1, 2020, or on any date thereafter, such redemption date or dates to be fixed by the City, at a price equal to the principal amount of the Bonds called for redemption plus accrued interest to the date fixed for redemption.

(b) If less than all of the Bonds are to be redeemed pursuant to an optional redemption, 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 or maturities and in such principal amounts for redemption.

(c) The City, at least 45 days before the redemption date, unless a shorter period shall be satisfactory to the Paying Agent/Registrar, shall notify the Paying Agent/Registrar of such redemption date and of the principal amount of Bonds to be redeemed.

Section 4.03. Partial Redemption.

(a) A portion of a single Bond of a denomination greater than \$5,000 may be redeemed, but only in a principal amount equal to \$5,000 or any integral multiple thereof. If such a Bond is to be partially redeemed, the Paying Agent/Registrar shall treat each \$5,000 portion of the Bond as though it were a single Bond for purposes of selection for redemption.

(b) Upon surrender of any Bond for redemption in part, the Paying Agent/Registrar, in accordance with Section 3.06 of this Ordinance, shall authenticate and deliver an exchange Bond or Bonds in an aggregate principal amount equal to the unredeemed portion of the Bond so surrendered, such exchange being without charge.

(c) The Paying Agent/Registrar shall promptly notify the City in writing of the principal amount to be redeemed of any Bond as to which only a portion thereof is to be redeemed.

Section 4.04. Notice of Redemption to Owners.

(a) The Paying Agent/Registrar shall give notice of any redemption of Bonds by sending notice, not less than 30 days before the date fixed for redemption, to the Owner of each Bond or portion thereof to be redeemed by first-class United States mail, postage prepaid to the address of each Owner of a Bond appearing on the Register at the close of business on the last Business Day next preceding the date of mailing of such notice.

(b) The notice shall state the redemption date, the redemption price, the place at which the Bonds are to be surrendered for payment, and, if less than all the Bonds outstanding are to be redeemed, an identification of the Bonds or portions thereof to be redeemed.

(c) The City reserves the right to give notice of its election or direction to redeem Bonds under Section 4.02 conditioned upon the occurrence of subsequent events. Such notice may state (i) that the redemption is conditioned upon the deposit of moneys and/or authorized securities, in an amount equal to the amount necessary to effect the redemption, with the Paying Agent/Registrar, or such other entity as may be authorized by law, no later than the redemption date or (ii) that the City retains the right to rescind such notice at any time prior to the scheduled redemption date if the City delivers a certificate of the City to the Paying Agent/Registrar instructing the Paying Agent/Registrar to rescind the redemption notice, and such notice and redemption shall be of no effect if such moneys and/or authorized securities are not so deposited or if the notice is rescinded. The Paying Agent/Registrar shall give prompt notice of any such rescission of a conditional notice of redemption to the affected Owners. Any Bonds subject to conditional redemption where redemption has been rescinded shall remain Outstanding, and the rescission shall not constitute an event of default. Further, in the case of a conditional redemption, the failure of the City to make moneys and/or authorized securities available in part or in whole on or before the redemption date shall not constitute an event of default.

(d) Any notice given as provided in this Section shall be conclusively presumed to have been duly given, whether or not the Owner receives such notice.

Section 4.05. Payment Upon Redemption.

(a) Before or on each redemption date, the City shall deposit with the Paying Agent/Registrar money sufficient to pay all amounts due on the redemption date and the Paying Agent/Registrar shall make provision for the payment of the Bonds to be redeemed on such date by setting aside and holding in trust such amounts as are received by the Paying Agent/Registrar from the City and shall use such funds solely for the purpose of paying the principal of and accrued interest on the Bonds being redeemed.

(b) Upon presentation and surrender of any Bond called for redemption at the Designated Payment/Transfer Office on or after the date fixed for redemption, the Paying Agent/Registrar shall pay the principal of and accrued interest on such Bond to the date of redemption from the money set aside for such purpose.

Section 4.06. Effect of Redemption.

(a) Notice of redemption having been given as provided in Section 4.04 of this Ordinance and subject to any conditions or rights reserved by the City under Section 4.04(c), the Bonds or portions thereof called for redemption shall become due and payable on the date fixed for redemption and, unless the City defaults in its obligation to make provision for the payment of the principal thereof or accrued interest thereon, such Bonds or portions thereof shall cease to bear interest from and after the date fixed for redemption, whether or not such Bonds are presented and surrendered for payment on such date.

(b) If the City shall fail to make provision for payment of all sums due on a redemption date, then any Bond or portion thereof called for redemption shall continue to bear interest at the rate stated on the Bond until due provision is made for the payment of same by the City.

Section 4.07. Lapse of Payment.

Money set aside for the redemption of Bonds and remaining unclaimed by the Holders of such Bonds shall be subject to the provisions of Section 3.03(f) hereof.

ARTICLE V

PAYING AGENT/REGISTRAR

Section 5.01. Appointment of Initial Paying Agent/Registrar.

The Bank of New York Mellon Trust Company, National Association is hereby appointed as the initial Paying Agent/Registrar for the Bonds.

Section 5.02. Qualifications.

Each Paying Agent/Registrar shall be a commercial bank, a trust company organized under the laws of the State of Texas, or any other entity duly qualified and legally authorized to serve as and perform the duties and services of paying agent and registrar for the Bonds.

Section 5.03. Maintaining Paying Agent/Registrar.

(a) At all times while any Bonds are outstanding, the City will maintain a Paying Agent/Registrar that is qualified under Section 5.02 of this Ordinance. The Mayor is hereby authorized to execute an agreement with the Paying Agent/Registrar specifying the duties and responsibilities of the City and the Paying Agent/Registrar. The signature of the Mayor shall be attested by the City Secretary of the City.

(b) If the Paying Agent/Registrar resigns or otherwise ceases to serve as such, the City will promptly appoint a replacement.

Section 5.04. Termination.

The City, upon not less than 60 days notice, reserves the right to terminate the appointment of any Paying Agent/Registrar by delivering to the entity whose appointment is to be terminated written notice of such termination.

Section 5.05. Notice of Change to Owners.

Promptly upon each change in the entity serving as Paying Agent/Registrar, the City will cause notice of the change to be sent to each Owner by first-class United States mail, postage prepaid, at the address in the Register, stating the effective date of the change and the name and mailing address of the replacement Paying Agent/Registrar.

Section 5.06. Agreement to Perform Duties and Functions.

By accepting the appointment as Paying Agent/Registrar and executing the Paying Agent/Registrar Agreement, the Paying Agent/Registrar is deemed to have agreed to the provisions of this Ordinance and that it will perform the duties and functions of Paying Agent/Registrar prescribed thereby.

Section 5.07. Delivery of Records to Successor.

If a Paying Agent/Registrar is replaced, such Paying Agent/Registrar, promptly upon the appointment of the successor, will deliver the Register (or a copy thereof) and all other pertinent books and records relating to the Bonds to the successor Paying Agent/Registrar.

ARTICLE VI

FORM OF THE BONDS

Section 6.01. Form Generally.

(a) The Bonds, the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Certificate of the Paying Agent/Registrar, and the Assignment form to appear on each of the Bonds, (i) shall be substantially in the form set forth in this Article, with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Ordinance, and (ii) may have such letters, numbers, or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association (“CUSIP Numbers”)) and such legends and endorsements (including any reproduction of an opinion of counsel) thereon as, consistently herewith, may be determined by the City or by the officers executing such Bonds, as evidenced by their execution thereof.

(b) Any portion of the text of any Bonds may be set forth on the reverse side thereof, with an appropriate reference thereto on the face of the Bonds.

(c) The definitive Bonds shall be typewritten, printed, lithographed, or engraved, and may be produced by any combination of these methods or produced in any other similar manner, all as determined by the officers executing such Bonds, as evidenced by their execution thereof.

(d) The Initial Bond submitted to the Attorney General of the State of Texas may be typewritten and photocopied or otherwise reproduced.

Section 6.02. Form of the Bonds.

The form of the Bond, including the form of the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the form of Certificate of the Paying Agent/Registrar and the form of Assignment appearing on the Bonds, shall be substantially as follows:

(a) Form of Bonds.

REGISTERED
No. _____

REGISTERED
\$ _____

United States of America
State of Texas

CITY OF PLANO, TEXAS
GENERAL OBLIGATION REFUNDING AND IMPROVEMENT BONDS
SERIES 2010

INTEREST RATE: MATURITY DATE: BOND DATE: CUSIP NUMBER:
_____ % September 1, ____ January 15, 2010 _____

The City of Plano, Texas (the "City"), in the Counties of Collin and Denton, State of Texas, for value received, hereby promises to pay to

_____ or registered assigns, on the Maturity Date specified above, the sum of

_____ DOLLARS

unless this Bond shall have been sooner called for redemption and the payment of the principal hereof shall have been paid or provided for, and to pay interest on such principal amount from the later of the Bond Date specified above or the most recent interest payment date to which interest has been paid or provided for until payment of such principal amount has been paid or provided for, at the per annum rate of interest specified above, computed on the basis of a 360 day year of twelve 30 day months, such interest to be paid semiannually on March 1 and September 1 of each year, commencing September 1, 2010.

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 Mellon Trust Company, National Association, 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) 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) 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 \$28,545,000 (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, 2020, in whole or in part before their respective scheduled maturity dates, on March 1, 2020, 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.

The Paying Agent/Registrar shall give notice of any redemption of Bonds by sending notice, not less than 30 days before the date fixed for redemption, to the registered owner of each Bond or portion thereof to be redeemed by first-class United States mail, postage prepaid, at the address shown on the Register. In the Ordinance, the City reserves the right in the case of an optional redemption to give notice of its election or direction to redeem Bonds conditioned upon the occurrence of subsequent events. Such notice may state (i) that the redemption is conditioned upon the deposit of moneys and/or authorized securities, in an amount equal to the amount necessary to effect the redemption, with the Paying Agent/Registrar, or such other entity as may be authorized by law, no later than the redemption date or (ii) that the City retains the right to rescind such notice at any time prior to the scheduled redemption date if the City delivers a certificate of the City to the Paying Agent/Registrar instructing the Paying Agent/Registrar to rescind the redemption notice, and such notice and redemption shall be of no effect if such moneys and/or authorized securities are not so deposited or if the notice is rescinded. The Paying Agent/Registrar shall give prompt notice of any such rescission of a conditional notice of redemption to the affected owners. Any Bonds subject to conditional redemption where redemption has been rescinded shall remain Outstanding, and the rescission shall not constitute an event of default. Further, in the case of a conditional redemption, the failure of the City to make moneys and/or authorized securities available in part or in whole on or before the redemption date shall not constitute an event of default.

As provided in the Ordinance, and subject to certain limitations therein set forth, this Bond is transferable upon surrender of this Bond for transfer at the Designated Payment/Transfer Office with such endorsement or other evidence of transfer as is acceptable to the Paying Agent/Registrar; then, one or more new fully registered Bonds of the same stated maturity, of authorized denominations, bearing the same rate of interest, and for the same aggregate principal amount will be issued to the designated transferee or transferees.

Neither the City nor the Paying Agent/Registrar shall be required to issue, transfer or exchange any Bond called for redemption where such redemption is scheduled to occur within 45 calendar days of the date fixed for redemption; provided, however, such limitation shall not be applicable to an exchange by the registered owner of the uncalled principal balance of a Bond.

The City, the Paying Agent/Registrar, and any other person may treat the person in whose name this Bond is registered as the owner hereof for the purpose of receiving payment as herein provided (except interest shall be paid to the person in whose name this Bond is registered on the Record Date or Special Record Date, as applicable) and for all other purposes, whether or not this Bond is overdue, and neither the City nor the Paying Agent/Registrar shall be affected by notice to the contrary.

IT IS HEREBY CERTIFIED AND RECITED that the issuance of this Bond and the series of which it is a part is duly authorized by law and has been authorized by a vote of the properly qualified electors of the City; that all acts, conditions and things required to be done precedent to and in the issuance of the Bonds have been properly done and performed and have happened in regular and due time, form and manner, as required by law; and that ad valorem taxes upon all taxable property in the City have been levied for and pledged to the payment of the debt service requirements of the Bonds, within the limit prescribed by law.

IN WITNESS WHEREOF, the City has caused this Bond to be executed by the manual or facsimile signature of the Mayor of the City and countersigned by the manual or facsimile signature of the City Secretary of the City, and the official seal of the City has been duly impressed or placed in facsimile on this Bond.

City Secretary
City of Plano, Texas

Mayor
City of Plano, Texas

[SEAL]

(b) Form of Comptroller's Registration Certificate.

The following Comptroller's Registration Certificate may be deleted from the definitive Bonds if such Certificate on the Initial Bond is fully executed.

OFFICE OF THE COMPTROLLER §
OF PUBLIC ACCOUNTS § REGISTER NO. _____
OF THE STATE OF TEXAS §

I hereby certify that there is on file and of record in my office a certificate of the Attorney General of the State of Texas to the effect that this Bond has been examined by him as required by law, that he finds that it has been issued in conformity with the Constitution and laws of the State of Texas, and that it is a valid and binding obligation of the City of Plano, Texas, and that this Bond has this day been registered by me.

Witness my hand and seal of office at Austin, Texas, _____.

Comptroller of Public Accounts of
the State of Texas

[SEAL]

(c) Form of Certificate of Paying Agent/Registrar.

The following Certificate of Paying Agent/Registrar may be deleted from the Initial Bond if the Comptroller's Registration Certificate appears thereon.

CERTIFICATE OF PAYING AGENT/REGISTRAR

The records of the Paying Agent/Registrar show that the Initial Bond of this series of bonds was approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts of the State of Texas, and that this is one of the Bonds referred to in the within mentioned Ordinance.

THE BANK OF NEW YORK MELLON
TRUST COMPANY, NATIONAL
ASSOCIATION, as Paying Agent/Registrar

Dated: _____

By: _____
Authorized Signature

(d) Form of Assignment.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns, and transfers unto (print or typewrite name, address and Zip Code of transferee):

(Social Security or other identifying number: _____) the within Bond and all rights hereunder and hereby irrevocably constitutes and appoints _____ attorney to transfer the within Bond on the books kept for registration hereof, with full power of substitution in the premises.

Dated: _____

Signature Guaranteed By:

Authorized Signatory

NOTICE: The signature on this Assignment must correspond with the name of the registered owner as it appears on the face of the within Bond in every particular and must be guaranteed in a manner acceptable to the Paying Agent/Registrar.

(e) The Initial Bond shall be in the form set forth in paragraphs (a) through (d) of this Section, except for the following alterations:

(i) immediately under the name of the Bond, the headings "INTEREST RATE" and "MATURITY DATE" shall both be completed with the words "As shown below" and the words "CUSIP NUMBER:" shall be deleted;

(ii) in the first paragraph of the Bond, the words "on the Maturity Date specified above" shall be deleted and the following will be inserted: "on September 1 in each of the years, in the principal installments and bearing interest at the per annum rates in accordance with the following schedule:

Years Principal Installments Interest Rates

(Information to be inserted from schedule in Section 3.02 of this Ordinance).

(iii) the Initial Bond shall be numbered T-1.

Section 6.03. CUSIP Registration.

The City may secure identification numbers through the CUSIP Service Bureau Division of Standard & Poor's Corporation, New York, New York, and may authorize the printing of such

numbers on the face of the Bonds. It is expressly provided, however, that the presence or absence of CUSIP Numbers on the Bonds shall be of no significance or effect as regards the legality thereof and neither the City nor the attorneys approving said Bonds as to legality are to be held responsible for CUSIP Numbers incorrectly printed on the Bonds.

Section 6.04. Legal Opinion.

The approving legal opinions of Vinson & Elkins L.L.P., Dallas, Texas, Bond Counsel, may be printed on the reverse side of or attached to each Bond over the certification of the City Secretary of the City, which may be executed in facsimile.

ARTICLE VII

SALE AND DELIVERY OF BONDS, DEPOSIT OF PROCEEDS

Section 7.01. Sale of Bonds, Official Statement.

(a) The Bonds are hereby officially sold and awarded and shall be delivered to the Representative, on behalf of the Underwriters, in accordance with the terms and provisions of that certain Purchase Contract relating to the Bonds between the City and the Underwriters and dated the date of the passage of this Ordinance. The form and content of such Purchase Contract are hereby approved, and the Mayor is hereby authorized and directed to execute and deliver, and the City Secretary of the City is hereby authorized and directed to attest, if required, such Purchase Contract. It is hereby officially found, determined and declared that the terms of this sale are the most advantageous reasonably obtainable. The Bonds shall initially be registered in the name of the Representative, or their designee.

(b) The form and substance of the Preliminary Official Statement for the Bonds, and any addenda, supplement or amendment thereto, and the final Official Statement (the "Official Statement") presented to and considered at this meeting, are hereby in all respects approved and adopted and the Preliminary Official Statement is hereby deemed final as of its date within the meaning and for the purposes of paragraph (b)(1) of Rule 15c2-12 under the Securities Exchange Act of 1934, as amended. The Mayor and the City Secretary of the City are hereby authorized and directed to execute the same and deliver appropriate numbers of executed copies thereof to the Representative. The Official Statement as thus approved, executed and delivered, with such appropriate variations as shall be approved by the Mayor of the City and the Representative, may be used by the Underwriters in the public offering and sale thereof. The City Secretary of the City is hereby authorized and directed to include and maintain a copy of the Official Statement and any addenda, supplement or amendment thereto thus approved among the permanent records of this meeting. The use and distribution of the Preliminary Official Statement, and the preliminary public offering of the Bonds by the Underwriters is hereby ratified, approved and confirmed.

(c) All officers of the City are authorized to execute such documents, certificates and receipts, and to make such elections with respect to the tax-exempt status of Bonds, as they may deem appropriate in order to consummate the delivery of the Bonds in accordance with the provisions and terms of sale therefor. Further, in connection with the submission of the record of

proceedings for the Bonds to the Attorney General of the State of Texas for examination and approval of such Bonds, the appropriate officer of the City is hereby authorized and directed to issue a check of the City payable to the Attorney General of the State of Texas as a nonrefundable examination fee in the amount required by Chapter 1202, Texas Government Code (such amount to be the lesser of (i) 1/10th of 1% of the principal amount of the Bonds or (ii) \$9,500).

Section 7.02. Control and Delivery of Bonds.

(a) The Mayor of the City is hereby authorized to have control of the Initial Bond and all necessary records and proceedings pertaining thereto pending investigation, examination and approval of the Attorney General of the State of Texas, registration by the Comptroller of Public Accounts of the State and registration with, and initial exchange or transfer by, the Paying Agent/Registrar.

(b) After registration by the Comptroller of Public Accounts, delivery of the Bonds shall be made to the Purchaser under and subject to the general supervision and direction of the Mayor, against receipt by the City of all amounts due to the City under the terms of sale.

(c) In the event the Mayor or City Secretary is absent or otherwise unable to execute any document or take any action authorized herein, the Mayor Pro Tem and the Assistant City Secretary, respectively, shall be authorized to execute such documents and take such actions, and the performance of such duties by the Mayor Pro Tem and the Assistant City Secretary shall for the purposes of this Ordinance have the same force and effect as if such duties were performed by the Mayor and City Secretary, respectively.

Section 7.03. Deposit of Proceeds.

(a) All amounts received on the Closing Date as accrued interest on the Bonds from the Bond Date to the Closing Date, shall be deposited to the Interest and Sinking Fund.

(b) \$_____ of the proceeds of the Bonds, together with an amount equal to _____ which shall be transferred from the interest and sinking fund for the Refunded Bonds, shall be deposited to the Escrow Fund and shall be applied in accordance with the Escrow Agreement.

(c) \$_____ of the proceeds of the Bonds shall be deposited to a special construction fund and shall be used to pay the costs of the Project.

(d) Premium in the amount of \$_____ shall be used to pay the costs of issuing the Bonds.

ARTICLE VIII

INVESTMENTS

Section 8.01. Investments.

(a) Money in the Interest and Sinking Fund created by this Ordinance and the special construction fund for the Project, at the option of the City, may be invested in such securities or obligations as permitted under applicable law. The City's Director of Finance, and any other officer of the City authorized to make investments on behalf of the City, are hereby authorized and directed to execute and deliver, on behalf of the City, any and all investment agreements, guaranteed investment contracts or repurchase agreements in connection with the investment of moneys on deposit in the Interest and Sinking Fund and the special construction fund for the Project, but only to the extent such investment agreements, guaranteed investment contracts or repurchase agreements are authorized investments under applicable law.

(b) Any securities or obligations in which money in either the Interest and Sinking Fund or the special construction fund for the Project is so invested shall be kept and held in trust for the benefit of the Owners and shall be sold and the proceeds of sale shall be timely applied to the making of all payments required to be made from the fund from which the investment was made.

Section 8.02. Investment Income.

(a) Interest and income derived from investment of the Interest and Sinking Fund shall be credited to such fund. Earnings derived from investment of the Escrow Fund shall be credited to such fund.

(b) Interest and income derived from the investment of funds deposited pursuant to Section 7.03(c) hereof shall be credited to the fund or account where deposited until completion of the Project; thereafter, to the extent such interest and income are present, such interest and income shall be deposited to the Interest and Sinking Fund.

(c) The investment and application of money in the Escrow Fund shall be in accordance with the provisions of the Escrow Agreement.

ARTICLE IX

PARTICULAR REPRESENTATIONS AND COVENANTS

Section 9.01. Payment of the Bonds.

On or before each Interest Payment Date for the Bonds and while any of the Bonds are outstanding and unpaid, there shall be made available to the Paying Agent/Registrar, out of the Interest and Sinking Fund, money sufficient to pay such interest on and principal of the Bonds as will accrue or mature on the applicable Interest Payment Date, maturity date or date of prior redemption.

Section 9.02. Other Representations and Covenants.

(a) The City will faithfully perform at all times any and all covenants, undertakings, stipulations, and provisions contained in this Ordinance and in each Bond; the City will promptly pay or cause to be paid the principal of and interest on each Bond on the dates and at the places and manner prescribed in such Bond; and the City will, at the times and in the manner prescribed by this Ordinance, deposit or cause to be deposited the amounts of money specified by this Ordinance.

(b) The City is duly authorized under the laws of the State of Texas to issue the Bonds; all action on its part for the creation and issuance of the Bonds has been duly and effectively taken; and the Bonds in the hands of the Owners thereof are and will be valid and enforceable obligations of the City in accordance with their terms.

Section 9.03. Provisions Concerning Federal Income Tax Exclusion.

The City intends that the interest on the Bonds shall be excludable from gross income for purposes of federal income taxation pursuant to sections 103 and 141 through 150 of the Internal Revenue Code of 1986, as amended (the "Code"), and the applicable Income Tax Regulations (the "Regulations"). The City covenants and agrees not to take any action, or knowingly omit to take any action within its control, that if taken or omitted, respectively, would cause the interest on the Bonds to be includable in the gross income, as defined in section 61 of the Code, for purposes of federal income tax purposes. In particular, the City covenants and agrees to comply with each requirement of Sections 9.03 through 9.10, inclusive; provided, however, that the City shall not be required to comply with any particular requirement of Sections 9.03 through 9.10, inclusive, if the City has received an opinion of nationally recognized bond counsel ("Counsel's Opinion") that such noncompliance will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bonds or if the City has received a Counsel's Opinion to the effect that compliance with some other requirement set forth in Sections 9.03 through 9.10, inclusive, will satisfy the applicable requirements of the Code and the Regulations, in which case compliance with such other requirement specified in such Counsel's Opinion shall constitute compliance with the corresponding requirement specified in Sections 9.03 through 9.10, inclusive.

Section 9.04. No Private Use or Payment and No Private Loan Financing.

The City shall certify, through an authorized officer, employee or agent, that, based upon all facts and estimates known or reasonably expected to be in existence on the date the Bonds are delivered, and that the proceeds of the Refunded Bonds have not been used and that that the proceeds of the Bonds will not be used in a manner that would cause the Bonds to be "private activity bonds" within the meaning of section 141 of the Code and the Regulations promulgated thereunder. Moreover the City covenants and agrees that it will make such use of the proceeds of the Refunded Bonds and the Bonds, including interest or other investment income derived from Bond proceeds, regulate the use of property financed, directly or indirectly, with such proceeds, and take such other and further action as may be required so that the Bonds will not be "private activity bonds" within the meaning of section 141 of the Code and the Regulations and the Regulations promulgated thereunder.

Section 9.05. No Federal Guarantee.

The City covenants and agrees not to take any action, or knowingly omit to take any action within its control, that, if taken or omitted, respectively, would cause the Bonds to be “federally guaranteed” within the meaning of section 149(b) of the Code and the applicable Regulations thereunder, except as permitted by section 149(b)(3) of the Code and such Regulations.

Section 9.06. No Hedge Bonds.

The City covenants and agrees not to take any action, or knowingly omit to take any action, and has not knowingly omitted and will not knowingly omit to take any action, within its control, that, if taken or omitted, respectively, would cause the Bonds to be “hedge bonds” within the meaning of section 149(g) of the Code and the applicable Regulations thereunder.

Section 9.07. No-Arbitrage Covenant.

The City shall certify, through an authorized officer, employee or agent, that, based upon all facts and estimates known or reasonably expected to be in existence on the date the Bonds are delivered, the City will reasonably expect that the proceeds of the Bonds will not be used in a manner that would cause the Bonds to be “arbitrage bonds” within the meaning of section 148(a) of the Code and the applicable Regulations promulgated thereunder. Moreover, the City covenants and agrees that it will make such use of the proceeds of the Bonds including interest or other investment income derived from Bond proceeds, regulate investments of proceeds of the Bonds, and take such other and further action as may be required so that the Bonds will not be “arbitrage bonds” within the meaning of section 148(a) of the Code and the applicable Regulations promulgated thereunder.

Section 9.08. Arbitrage Rebate.

If the City does not qualify for an exception to the requirements of Section 148(f) of the Code, the City will take all necessary steps to comply with the requirement that certain amounts earned by the City on the investment of the “gross proceeds” of the Bonds (within the meaning of section 148(f)(6)(B) of the Code), be rebated to the federal government. Specifically, the City will (i) maintain records regarding the investment of the gross proceeds of the Bonds as may be required to calculate the amount earned on the investment of the gross proceeds of the Bonds separately from records of amounts on deposit in the funds and accounts of the City allocable to other bond issues of the City or moneys which do not represent gross proceeds of any bonds of the City, (ii) calculate at such times as are required by the Regulations, the amount earned from the investment of the gross proceeds of the Bonds which is required to be rebated to the federal government, and (iii) pay, not less often than every fifth anniversary date of the delivery of the Bonds or on such other dates as may be permitted under the Regulations, all amounts required to be rebated to the federal government. Further, the City will not indirectly pay any amount otherwise payable to the federal government pursuant to the foregoing requirements to any person other than the federal government by entering into any investment arrangement with respect to the gross proceeds of the Bonds that might result in a reduction in the amount required to be paid to the federal government because such arrangement results in a smaller profit or a

larger loss than would have resulted if the arrangement had been at arm's length and had the yield on the issue not been relevant to either party.

Section 9.09. Information Reporting.

The City covenants and agrees to file or cause to be filed with the Secretary of the Treasury, not later than the 15th day of the second calendar month after the close of the calendar quarter in which the Bonds are issued, an information statement concerning the Bonds, all under and in accordance with section 149(e) of the Code and the applicable Regulations promulgated thereunder.

Section 9.10. Continuing Obligation.

Notwithstanding any other provision of this Ordinance, the City's obligations under the covenants and provisions of Sections 9.03 through 9.09, inclusive, shall survive the defeasance and discharge of the Bonds.

ARTICLE X

DEFAULT AND REMEDIES

Section 10.01. Events of Default.

Each of the following occurrences or events for the purpose of this Ordinance is hereby declared to be an Event of Default:

- (i) the failure to make payment of the principal of or interest on any of the Bonds when the same becomes due and payable; or
- (ii) default in the performance or observance of any other covenant, agreement or obligation of the City, which default materially and adversely affects the rights of the Owners, including but not limited to, their prospect or ability to be repaid in accordance with this Ordinance, and the continuation thereof for a period of 60 days after notice of such default is given by any Owner to the City.

Section 10.02. Remedies for Default.

(a) Upon the happening of any Event of Default, then any Owner or an authorized representative thereof, including but not limited to, a trustee or trustees therefor, may proceed against the City for the purpose of protecting and enforcing the rights of the Owners under this Ordinance, by mandamus or other suit, action or special proceeding in equity or at law, in any court of competent jurisdiction, for any relief permitted by law, including the specific performance of any covenant or agreement contained herein, or thereby to enjoin any act or thing that may be unlawful or in violation of any right of the Owners hereunder or any combination of such remedies.

(b) It is provided that all such proceedings shall be instituted and maintained for the equal benefit of all Owners of Bonds then outstanding.

Section 10.03. Remedies Not Exclusive.

(a) No remedy herein conferred or reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or under the Bonds or now or hereafter existing at law or in equity; provided, however, that notwithstanding any other provision of this Ordinance, the right to accelerate the debt evidenced by the Bonds shall not be available as a remedy under this Ordinance.

(b) The exercise of any remedy herein conferred or reserved shall not be deemed a waiver of any other available remedy.

ARTICLE XI

DISCHARGE

Section 11.01. Discharge.

The Bonds may be defeased, discharged or refunded in any manner permitted by applicable law.

ARTICLE XII

CONTINUING DISCLOSURE UNDERTAKING

Section 12.01. Annual Reports.

(a) The City shall provide annually to the MSRB, within six (6) months after the end of each fiscal year, financial information and operating data with respect to the City of the general type included in the final Official Statement, being the information described in Exhibit A hereto. Any financial statements so to be provided shall be (i) prepared in accordance with the accounting principles described in Exhibit A hereto, and (ii) audited, if the City commissions an audit of such statements and the audit is completed within the period during which they must be provided and (iii) submitted through EMMA, in an electronic format with accompany identifying information, as prescribed by the MSRB. If the audit of such financial statements is not complete within such period, then the City shall provide notice that audited financial statements are not available and shall provide unaudited financial statements for the applicable fiscal year to the MSRB. The City shall provide audited financial statements for the applicable fiscal year to the MSRB, when and if audited financial statements become available.

(b) If the City changes its fiscal year, it will notify the MSRB of the change (and of the date of the new fiscal year end) prior to the next date by which the City otherwise would be required to provide financial information and operating data pursuant to this Section.

(c) The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific referenced to any document (including an official statement or other offering document, if it is available from the MSRB) that theretofore has been provided to the MSRB of filed with the SEC.

Section 12.02. Material Event Notices.

(a) The City shall notify the MSRB, in a timely manner, of any of the following events with respect to the Bonds, if such event is material within the meaning of the federal securities laws:

- (i) principal and interest payment delinquencies;
 - (ii) nonpayment related defaults;
 - (iii) unscheduled draws on debt service reserves reflecting financial difficulties;
 - (iv) unscheduled draws on credit enhancements reflecting financial difficulties;
 - (v) substitution of credit or liquidity providers, or their failure to perform;
 - (vi) adverse tax opinions or events affecting the tax exempt status of the Bonds;
 - (vii) modifications to rights of Owners;
 - (viii) redemption calls;
 - (ix) defeasances;
 - (x) release, substitution, or sale of property securing repayment of the Bonds;
- and
- (xi) rating changes.

The City will provide notice of such events to the MSRB in an electronic format and accompanied by identifying information, as prescribed by the MSRB.

(b) The City shall notify the MSRB, in a timely manner, of any failure by the City to provide financial information or operating data in accordance with Section 12.01 of this Ordinance by the time required by such Section.

Section 12.03. Limitations, Disclaimers and Amendments.

(a) The City shall be obligated to observe and perform the covenants specified in this Article for so long as, but only for so long as, the City remains an “obligated person” with respect to the Bonds within the meaning of the Rule, except that the City in any event will give notice of any Bond calls and any defeasances that cause the City to be no longer an “obligated person.”

(b) The provisions of this Article are for the sole benefit of the Owners and beneficial owners of the Bonds, and nothing in this Article, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The City undertakes to

provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Article and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the City's financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Article or otherwise, except as expressly provided herein. The City does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Bonds at any future date.

UNDER NO CIRCUMSTANCES SHALL THE CITY BE LIABLE TO THE OWNER OR BENEFICIAL OWNER OF ANY BOND OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE CITY, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS ARTICLE, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

(c) No default by the City in observing or performing its obligations under this Article shall constitute a breach of or default under the Ordinance for purposes of any other provisions of this Ordinance.

(d) Nothing in this Article is intended or shall act to disclaim, waive, or otherwise limit the duties of the City under federal and state securities laws.

(e) The provisions of this Article may be amended by the City from time to time to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the City, but only if (i) the provisions of this Article, as so amended, would have permitted an underwriter to purchase or sell Bonds in the primary offering of the Bonds in compliance with the Rule, taking into account any amendments or interpretations of the Rule to the date of such amendment, as well as such changed circumstances, and (ii) either (A) the Owners of a majority in aggregate principal amount (or any greater amount required by any other provisions of this Ordinance that authorizes such an amendment) of the outstanding Bonds consent to such amendment or (B) an entity or individual person that is unaffiliated with the City (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interests of the Owners and beneficial owners of the Bonds. If the City so amends the provisions of this Article, it shall include with any amended financial information or operating data next provided in accordance with Section 12.01 an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in type of financial information or operating data so provided.

ARTICLE XIII

AMENDMENTS; ATTORNEY GENERAL MODIFICATION

Section 13.01. Amendments.

This Ordinance shall constitute a contract with the Owners, be binding on the City, and shall not be amended or repealed by the City so long as any Bond remains outstanding except as permitted in this Section and Section 12.03(e). The City may, without consent of or notice to any Owners, from time to time and at any time, amend this Ordinance in any manner not detrimental to the interests of the Owners, including the curing of any ambiguity, inconsistency, or formal defect or omission herein. In addition, the City may, with the written consent of the Owners of the Bonds holding a majority in aggregate principal amount of the Bonds then outstanding, amend, add to, or rescind any of the provisions of this Ordinance; provided that, without the consent of all Owners of outstanding Bonds, no such amendment, addition, or rescission shall (i) extend the time or times of payment of the principal of and interest on the Bonds, reduce the principal amount thereof, the redemption price, or the rate of interest thereon, or in any other way modify the terms of payment of the principal of or interest on the Bonds, (ii) give any preference to any Bond over any other Bond, or (iii) reduce the aggregate principal amount of Bonds required to be held by Owners for consent to any such amendment, addition, or rescission.

Section 13.02. Attorney General Modification.

In order to obtain the approval of the Bonds by the Attorney General of the State of Texas, any provision of this Ordinance may be modified, altered or amended after the date of its adoption if required by the Attorney General in connection with the Attorney General's examination as to the legality of the Bonds and approval thereof in accordance with the applicable law. Such changes, if any, shall be provided to the City Secretary of the City and the City Secretary of the City shall insert such changes into this Ordinance as if approved on the date hereof.

ARTICLE XIV

REDEMPTION OF REFUNDED BONDS; APPROVAL OF ESCROW AGREEMENT; PURCHASE OF ESCROWED SECURITIES

Section 14.01. Redemption of Refunded Bonds.

(a) The Refunded Bonds are hereby called for redemption on the date, in the principal amounts and at a redemption price equal to the principal amount thereof plus interest accrued thereon to the redemption date all as set forth on Schedule I hereto.

(b) The paying agent/registrars for the Refunded Bonds is hereby authorized and directed to give or cause to be given notice of redemption of the Refunded Bonds at the times and in the manner specified in the ordinance authorizing the issuance of such Refunded Bonds.

(c) The City Secretary is hereby authorized and directed to cause a copy of this Ordinance to be delivered to the paying agent/registrars for the Refunded Bonds, the delivery of which shall constitute notice of redemption and notice of defeasance to such paying agent/registrars.

Section 14.02. Subscription of Federal Securities.

The Mayor and the Director of Finance are each hereby authorized to make necessary arrangements for the purchase of the Federal Securities referenced in the Escrow Agreement, as may be necessary for the Escrow Fund and the application for the acquisition of the Federal Securities is hereby approved and ratified.

Section 14.03. Approval of Escrow Agreement.

The Escrow Agreement, in substantially the form presented at this meeting, and its execution and delivery by the Mayor is hereby authorized and approved. The signature of the Mayor shall be attested by the City Secretary.

Section 14.04. Notice of Deposit and Redemption.

The paying agent/registrars for the Refunded Bonds is hereby authorized and directed to give notice of deposit and redemption with respect to the Refunded Bonds as required under the ordinance pursuant to which the Refunded Bonds were issued.

FINALLY PASSED, APPROVED AND EFFECTIVE this January 25, 2010.

ATTEST:

Phil Dyer
MAYOR

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Weatherbee, CITY ATTORNEY

SCHEDULE I

SCHEDULE OF REFUNDED BONDS

ISSUE	ORIGINAL ISSUE DATE	MATURITIES TO BE REFUNDED	AMOUNT OUTSTANDING	AMOUNT REFUNDED	REDEMPTION DATE
General Obligation Bonds, Series 1999	1/15/1999	2011	\$1,295,000	\$1,295,000	4/2/2010
General Obligation Bonds, Series 2001	2/1/2001	2011 2012 2013	\$1,060,000 1,115,000 <u>1,170,000</u> \$3,345,000	\$1,060,000 1,115,000 <u>1,170,000</u> \$3,345,000	3/1/2011
General Obligation Bonds, Series 2001A	9/15/2001	2012 2013 2014 2015 2016 2017 2018 2019 2020 2021	\$ 895,000 940,000 985,000 1,035,000 1,090,000 1,140,000 1,200,000 1,260,000 1,320,000 <u>1,390,000</u> \$11,255,000	\$ 895,000 940,000 985,000 1,035,000 1,090,000 1,140,000 1,200,000 1,260,000 1,320,000 <u>1,390,000</u> \$11,255,000	9/1/2011

EXHIBIT A

DESCRIPTION OF ANNUAL DISCLOSURE OF FINANCIAL INFORMATION

The following information is referred to in Article XII of this Ordinance.

Annual Financial Statements and Operating Data

The financial information and operating data with respect to the City to be provided annually in accordance with such Article are as specified (and included in the Appendix or other headings of the Official Statement referred to) below:

1. The portions of the financial statements of the City appended to the Official Statement as Appendix A, but for the most recently concluded fiscal year.
2. Statistical and financial data set forth in Tables numbered 1 through 6 and 8 through 14, each inclusive.

Accounting Principles

The accounting principles referred to in such Article are the accounting principles described in the notes to the financial statements referred to in Paragraph 1 above.



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		01/25/10		
Department:		Finance		
Department Head		Denise Tacke		
Agenda Coordinator (include phone #): Katherine Crumbley - x7479				
CAPTION				
<p>An ordinance providing for the issuance and sale of City of Plano, Texas, Municipal Drainage Utility System Revenue Refunding and Improvement Bonds, Series 2010; approving execution and delivery of a purchase contract; approving the Official Statement; and enacting other provisions relating thereto.</p>				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input checked="" type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: 09-10	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	\$6,935,000*	0	\$6,935,000*
Encumbered/Expended Amount		0	0	0
This Item	0	0	0	0
BALANCE	0	\$6,935,000*	0	\$6,935,000*
FUND(S):				
COMMENTS:				
SUMMARY OF ITEM				
<p>The sale of \$6,935,000* in Municipal Drainage Utility System Revenue Refunding and Improvement Bonds, Series 2010, for the purpose of refunding a portion of the city's outstanding municipal drainage utility system revenue bonds, to fund a debt service reserve fund for various drainage and erosion projects and to pay costs of issuance associated with the sale of the bonds.</p> <p>* Preliminary, subject to change</p>				
List of Supporting Documents: Bond Ordinance			Other Departments, Boards, Commissions or Agencies	

BOND ORDINANCE

CITY OF PLANO, TEXAS
MUNICIPAL DRAINAGE UTILITY SYSTEM REVENUE REFUNDING AND
IMPROVEMENT BONDS
SERIES 2010

Adopted January 25, 2010

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Schedule I – Schedule of Refunded Bonds

Exhibit A - Description of Annual Disclosure of Financial Information

An ordinance providing for the issuance and sale of City of Plano, Texas, Municipal Drainage Utility System Revenue Refunding and Improvement Bonds, Series 2010; approving execution and delivery of a purchase contract; approving the Official Statement; and enacting other provisions relating thereto.

WHEREAS, pursuant to authority conferred by Subchapter C of Chapter 402 of the Texas Local Government Code, now recodified as Subchapter C of Chapter 552 of the Texas Local Government Code, the City Council (the "City Council") of the City of Plano, Texas (the "City"), established the City of Plano, Texas, Municipal Drainage Utility System (the "System");

WHEREAS, the City has previously issued its municipal drainage utility system revenue bonds (the "Previously Issued Bonds"), payable from the Revenues (as hereinafter defined) of the System;

WHEREAS, the City has reserved the right and option to issue, under certain conditions, Additional Bonds (as hereinafter defined), payable from the Revenues, on a parity as to lien and right with such Previously Issued Bonds;

WHEREAS, the City Council has found and determined that it is necessary and in the best interest of the City and its citizens that it authorize by this Ordinance the issuance and delivery of System revenue bonds to finance the costs of drainage improvements, including the acquisition, construction and repair of structures, equipment and facilities for the System;

WHEREAS, the City desires to refund the Previously Issued Bonds described on Schedule I hereto (such refunded bonds to be hereinafter referred to as the "Refunded Bonds");

WHEREAS, Chapter 1207, Texas Government Code ("Chapter 1207"), authorizes the City to issue refunding obligations and to deposit the proceeds from the sale thereof, and any other available funds or resources, directly with the paying agent for any of the Refunded Bonds, and such deposit, if made before such payment dates, shall constitute the making of firm banking and financial arrangements for the discharge and final payment of the Refunded Bonds;

WHEREAS, Chapter 1207 further authorizes the City to enter into an escrow agreement with the paying agent for any of the Refunded Bonds with respect to the safekeeping, investment, reinvestment, administration and disposition of any such deposit and The Bank of New York Mellon Trust Company, National Association, is the paying agent for the Refunded Bonds, and the Escrow Agreement hereinafter authorized constitutes an escrow agreement of the kind authorized and permitted by said Chapter 1207;

WHEREAS, upon the issuance of the Bonds, all Previously Issued Bonds dated on or before May 1, 2003, will no longer be Outstanding;

WHEREAS, the City Council hereby finds and determines that refunding the Refunded Bonds for the purpose of modifying certain covenants applicable to Previously Issued Bonds dated on or before May 1, 2003, which refunding will result in a gross debt service loss of approximately \$_____ and net present value debt service loss of approximately \$_____ with respect to the Refunded Bonds, is in the best interests of the citizens of the City;

WHEREAS, the City Council has found and determined that it is necessary and in the best interest of the City and its citizens that it authorize by this Ordinance the issuance and delivery of its bonds in a single series at this time; and

WHEREAS, the meeting at which this Ordinance is considered is open to the public as required by law, and the public notice of the time, place and purpose of said meeting was given as required by Chapter 551, Texas Government Code, as amended;

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

ARTICLE I

DEFINITIONS, FINDINGS AND INTERPRETATION

Section 1.01. Definitions.

Unless otherwise expressly provided or unless the context clearly requires otherwise, in this Ordinance, the following terms shall have the meanings specified below:

“Act” means Subchapter C of Chapter 552 of the Texas Local Government Code, as amended (formerly codified as Subchapter C of Chapter 402 of the Texas Local Government Code).

“Accountant” means a certified public accountant.

“Additional Bonds” means revenue bonds or other evidences of indebtedness issued or entered into, as the case may be, in the future in accordance with the terms and conditions provided in Section 9.02 hereof and, by their terms, are equally and ratably secured by a parity lien on and pledge of the Revenues of the System.

“Average Annual Debt Service” means an amount which, at the time of computation, is derived by dividing the total amount of Debt Service to be paid over a period of years as the same is scheduled to become due and payable by the number of years taken into account in determining the total Debt Service. Capitalized interest payments provided from bond proceeds shall be excluded in making the aforementioned computation.

“Bonds” means the “City of Plano, Texas, Municipal Drainage Utility System Revenue Refunding and Improvement Bonds, Series 2010,” dated January 15, 2010, authorized by this Ordinance.

“City” means the incorporated municipality known as the City of Plano located in Collin and Denton Counties, Texas.

“Closing Date” means the date of the initial delivery of and payment for the Bonds.

“Code” means the Internal Revenue Code of 1986, as amended, including applicable regulations, published rulings and court decisions.

“Credit Facility” means (i) a policy of insurance or a surety bond, issued by an issuer of policies of insurance insuring the timely payment of debt service on governmental obligations, provided that a Rating Agency having an outstanding rating on such obligations would rate such obligations which are fully insured by a standard policy issued by the issuer in its two highest generic rating categories for such obligations; and (ii) a letter or line of credit issued by any financial institution, provided that a Rating Agency having an outstanding rating on the Bonds would rate the Bonds in its two highest generic rating categories for such obligations if the letter or line of credit proposed to be issued by such financial institution secured the timely payment of the entire principal amount of the Bonds and the interest thereon.

“Debt Service” means as of any particular date of computation, with respect to any obligations and with respect to any period, the aggregate of the amounts to be paid or set aside by the City as of such date or in such period for the payment of the principal of and interest (to the extent not capitalized) on such obligations; assuming, in the case of obligations required to be redeemed or prepaid as to principal prior to maturity, the principal amounts thereof will be redeemed prior to maturity in accordance with such applicable mandatory redemption.

“Designated Payment/Transfer Office” means (i) with respect to the initial Paying Agent/Registrar named herein, its office in Dallas, Texas, or at such other location designated by the Paying Agent/Registrar and (ii) with respect to any successor Paying Agent/Registrar, the office of such successor designated and located as may be agreed upon by the City and such successor.

“DTC” shall mean The Depository Trust Company of New York, New York, or any successor securities depository.

“DTC Participant” shall mean brokers and dealers, banks, trust companies, clearing corporations and certain other organizations on whose behalf DTC was created to hold securities to facilitate the clearance and settlement of securities transactions among DTC Participants.

“EMMA” means the Electronic Municipal Market Access System.

“Escrow Agent” means The Bank of New York Mellon Trust Company, National Association, its successors and assigns.

“Escrow Agreement” means that certain Escrow Agreement relating to the Bonds, dated as of January 15, 2010, between the City and the Escrow Agent.

“Escrow Fund” means the fund by that name established in the Escrow Agreement.

“Fiscal Year” means the twelve-month financial accounting period used by the City in connection with the operation of the System which may be any twelve consecutive month period established by the City.

“Initial Bond” means the initial bond authorized by Section 3.04(d) of this Ordinance.

“Interest Payment Date” means the date or dates upon which interest on the Bonds is scheduled to be paid until their respective dates of maturity or prior redemption, such dates being May 15 and November 15 of each year, commencing November 15, 2010.

“Letter of Representations” means the Blanket Letter of Representation between the City and DTC.

“Maturity Date” means the date specified in Section 3.02 hereof on which the principal of the Bonds is due and payable.

“Net Revenues” means, with respect to any period, Revenues of the System remaining after deducting the System’s Operating and Maintenance Expenses for such period.

“Operating and Maintenance Expenses” means all current expenses of operating and maintaining the System, including all salaries, labor, materials, and administrative costs, allocable under generally accepted accounting principles, to the System. Depreciation charges and other costs and disbursements which may be capitalized under generally accepted accounting principles shall not be considered Operating and Maintenance Expenses.

“Outstanding” means when used in this Ordinance with respect to Bonds, Previously Issued Bonds or any Additional Bonds, as the case may be, as of the date of determination, all Bonds, Previously Issued Bonds and any Additional Bonds theretofore sold, issued and delivered by the City, except:

(1) Bonds, Previously Issued Bonds or any Additional Bonds cancelled or delivered to the transfer agent or registrar for cancellation in connection with the exchange or transfer of such obligations;

(2) Bonds, Previously Issued Bonds or any Additional Bonds paid or deemed to be paid in accordance with the provisions of Section 9.08 hereof; and

(3) Bonds, Previously Issued Bonds or any Additional Bonds that have been mutilated, destroyed, lost, or stolen and replacement bonds have been registered and delivered in lieu thereof.

“Owner” means the person who is the registered owner of a Bond, a Previously Issued Bond, or an Additional Bond, as applicable.

“Paying Agent/Registrar” means initially The Bank of New York Mellon Trust Company, National Association, or any successor thereto as provided in this Ordinance.

“Previously Issued Bonds” means the bonds of the following issues of the City to be outstanding upon the issuance of the Bonds herein authorized:

(1) Municipal Drainage Utility System Revenue Refunding and Improvement Bonds, Series 2005, dated May 15, 2005;

(2) Municipal Drainage Utility System Revenue Bonds, Series 2006, dated February 1, 2006;

(3) Municipal Drainage Utility System Revenue Bonds, Series 2007, dated May 1, 2007;

(4) Municipal Drainage Utility System Revenue Bonds, Series 2008, dated January 15, 2008; and

(5) Municipal Drainage Utility System Revenue Refunding and Improvement Bonds, Series 2009, dated January 15, 2009.

“Purchase Contract” means that certain purchase contract, dated as of January 25, 2010, approved in Section 8.01(a) hereof.

“Rating Agency” means any nationally recognized securities rating agency which has assigned a rating to the Bonds.

“Record Date” means the last business day of the month next preceding an Interest Payment Date.

“Register” means the register specified in Section 3.06(a) of this Ordinance.

“Required Reserve” means the total amount required to be maintained in the Reserve Fund under the provisions of Section 7.04 hereof.

“Reserve Fund Obligations” means cash or investment securities of any of the type or types permitted under Section 7.06 of this Ordinance.

“Representative” means the representative of the Underwriters, designated in the Purchase Contract.

“Revenues” means all annual income, receipts and revenues of every nature derived or received from the operation and ownership (excluding restricted gifts, grants in aid of construction and any amounts received from drainage charges specifically provided by ordinance for contribution to the funding of future drainage system construction) of the System, including earnings and income derived from the investment or deposit of moneys in any special funds or accounts created and established for the payment and security of the Bonds and the Previously Issued Bonds and other obligations payable solely from and secured only by a lien on and pledge of the Revenues of the System.

“Special Record Date” means the Special Record Date prescribed by Section 3.03(b).

“System” means all land, easements and interest in land, together with all structures, equipment and facilities used in draining benefited property (within the meaning of the Act), including, but not limited to, bridges, catch basins, channels, conduits, creeks, culverts, detention ponds, ditches, draws, flumes, pipes, pumps, sloughs, treatment works, and appurtenances to those items, whether natural or artificial, or using force or gravity, that are used to draw off

surface water from land, carry the water away, collect, store, or treat the water, or divert the water into natural or artificial watercourses.

“Underwriters” means those underwriters of the Bonds named in the Purchase Contract.

Section 1.02. Findings.

(a) The declarations, determinations and findings declared, made and found in the preambles to this Ordinance are hereby adopted, restated and made a part of the operative provisions hereof.

Section 1.03. Table of Contents, Titles and Headings.

The table of contents, titles and headings of the Articles and Sections of this Ordinance have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof and shall never be considered or given any effect in construing this Ordinance or any provision hereof or in ascertaining intent, if any question of intent should arise.

Section 1.04. Interpretation.

(a) Unless the context requires otherwise, words of the masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa.

(b) This Ordinance and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein to sustain the validity of this Ordinance.

ARTICLE II

SECURITY FOR THE BONDS

Section 2.01. Pledge of Security.

The City hereby covenants and agrees that all of the Revenues of the System are hereby irrevocably pledged to the payment of the Bonds, the Previously Issued Bonds and Additional Bonds, if issued, and the interest thereon, including the establishment and maintenance of the special funds created and established by this Ordinance, all as hereinafter provided. It is hereby ordained that the Previously Issued Bonds, the Bonds and the interest thereon shall constitute a first lien on such Revenues of the System and be valid and binding in accordance with the terms hereof without any filing or recording thereof (except in the official records of the City), physical delivery of such Revenues or further act by the City, and the lien created on the Revenues for the payment and security of the Bonds shall be prior in right and claim as to any other indebtedness, liability or obligation of the City or the System.

Section 2.02. Rates and Charges.

For the benefit of the Owners of the Previously Issued Bonds and the Bonds and in accordance with the provisions of the Act and other applicable laws of the State of Texas, the City hereby expressly stipulates and agrees, while any of the Previously Issued Bonds and the Bonds are Outstanding, to establish, maintain and impose drainage charges for services afforded by the System that are reasonably expected, on the basis of available information and experience and with due allowance for contingencies, to produce Revenues in each Fiscal year sufficient to pay:

- (1) Operating and Maintenance Expenses of the System;
- (2) Debt Service on the Previously Issued Bonds, the Bonds and any Additional Bonds then Outstanding;
- (3) any required deposits to the Reserve Fund and any contingency fund created for the payment and security of the Previously Issued Bonds, the Bonds and any Additional Bonds; and
- (4) all other indebtedness payable from and/or secured in whole or in part by a lien on and pledge of the Revenues of the System.

Section 2.03. Bonds as Special Obligations.

The Bonds and the Previously Issued Bonds are special obligations of the City payable from the pledged Revenues and the Owners thereof shall never have the right to demand payment thereof out of funds raised or to be raised by taxation.

ARTICLE III

AUTHORIZATION; GENERAL TERMS AND
PROVISIONS REGARDING THE BONDS

Section 3.01. Authorization.

The City's bonds to be designated the "City of Plano, Texas, Municipal Drainage Utility System Revenue Refunding and Improvement Bonds, Series 2010" are hereby authorized to be issued and delivered in accordance with the Constitution and laws of the State of Texas, including the Act. The Bonds shall be issued in the aggregate principal amount of \$6,935,000 for the purpose of providing funds to (i) pay the costs of drainage improvements, including the acquisition, construction, repair of structures, equipment and facilities for the System, (ii) make a deposit to the Reserve Fund, (iii) refund the Refunded Bonds and (iii) pay the costs of issuing the Bonds.

Section 3.02. Date, Denomination, Maturities and Interest.

(a) The Bonds shall be dated January 15, 2010, shall be in fully registered form, without coupons, in the denomination of \$5,000 or any integral multiple thereof and shall be numbered separately from one upward, except the Initial Bond, which shall be numbered T-1.

(b) The Bonds shall mature on May 15 in the years and in the principal amounts and shall bear interest at the per annum rates set forth in the following schedule:

<u>Year</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>Year</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
2011			2021		
2012			2022		
2013			2023		
2014			2024		
2015			2025		
2016			2026		
2017			2027		
2018			2028		
2019			2029		
2020			2030		

(c) Interest shall accrue and be paid on each Bond respectively until its maturity, or earlier redemption, from the later of the Bond Date or the most recent Interest Payment Date to which interest has been paid or provided for at the rate per annum for each respective maturity specified in the schedule contained in subsection (b) above. Such interest shall be payable on each Interest Payment Date until maturity or prior redemption and shall be computed on the basis of a 360-day year of twelve 30-day months.

Section 3.03. Medium, Method and Place of Payment.

(a) The principal of and interest on the Bonds shall be paid in lawful money of the United States of America.

(b) Interest on the Bonds shall be payable to the Owners as shown in the Register at the close of business on the Record Date; provided, however, in the event of nonpayment of interest on a scheduled Interest Payment Date and for 30 days thereafter, a new record date for such interest payment (a "Special Record Date") shall 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 on the Register at the close of business on the last Business Day next preceding the date of mailing of such notice.

(c) Interest on each Bond shall be paid to each Owner by (i) 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 each Owner at the address of each Owner as such appears in the Register or (ii) by such other customary banking arrangements acceptable to the Paying Agent/Registrar and the person to whom interest is to be paid at the risk and expense of such Owner.

(d) The principal of each Bond shall be paid to the Owner thereof on the due date (whether at the maturity date or the date of prior redemption thereof) upon presentation and surrender of such Bond at the designated office of the Paying Agent/Registrar.

(e) If the date for the payment of the principal of or interest on the Bonds 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 for all purposes be deemed to have been made on the due date thereof as specified in this Section.

(f) Unclaimed payments of amounts due hereunder that remain unclaimed by the Owners after the applicable payment or redemption date shall be segregated in a special escrow account and held in trust, uninvested by the Paying Agent/Registrar, for the account of the Owners of the Bonds to which such unclaimed payments pertain. Subject to Title 6, Texas Property Code, payments remaining unclaimed by the Owners entitled thereto for three years after the applicable payment or redemption date shall be applied to the next payment on the Bonds thereafter coming due; to the extent any such moneys remain after the retirement of all outstanding Bonds, such moneys shall be paid to the City to be used for any lawful purpose. Thereafter, neither the City, the Paying Agent/Registrar, nor any other person shall be liable or responsible to any Owners of such Bonds for any further payment of such unclaimed moneys or on account of any such Bonds, subject to Title 6, Texas Property Code.

Section 3.04. Execution and Registration of Bonds.

(a) The Bonds shall be executed on behalf of the City by the Mayor and City Secretary of the City, by their manual or facsimile signatures, and the official seal of the City shall be impressed or placed in facsimile thereon. Such facsimile signatures on the Bonds shall have the same effect as if each of the Bonds had been signed manually and in person by each of said officers, and such facsimile seal on the Bonds shall have the same effect as if the official seal of the City had been manually impressed upon each of the Bonds.

(b) In the event any officer of the City whose manual or facsimile signature appears on the Bonds ceases to be such officer before the authentication of such Bonds or before the delivery thereof, such facsimile signature nevertheless shall be valid and sufficient for all purposes as if such officer had remained in such office.

(c) Except as provided below, no Bond shall be valid or obligatory for any purpose or be entitled to any security or benefit of this Ordinance unless and until there appears thereon the

Certificate of Paying Agent/Registrar substantially in the form provided herein, duly authenticated by manual execution by an officer or duly authorized signatory of the Paying Agent/Registrar. It shall not be required that the same officer or authorized signatory of the Paying Agent/Registrar sign the Certificate of Paying Agent/Registrar on all of the Bonds. In lieu of the executed Certificate of Paying Agent/Registrar described above, the Initial Bond delivered at the Closing Date shall have attached thereto the Comptroller's Registration Certificate substantially in the form provided herein, manually executed by the Comptroller of Public Accounts of the State of Texas, or by his duly authorized agent, which certificate shall be evidence that the Initial Bonds have been duly approved by the Attorney General of the State of Texas and that they are valid and binding obligations of the City, and have been registered by the Comptroller of Public Accounts of the State of Texas.

(d) On the Closing Date, one initial Bond (the "Initial Bond"), representing the entire principal amount of the Bonds, payable in stated installments to the Representative or its designee, such Initial Bond to be executed by manual or facsimile signature of the Mayor and City Secretary of the City, approved by the Attorney General, and registered and manually signed by the Comptroller of Public Accounts, will be delivered to the Representative or its designee. Upon payment for the Initial Bond, the Paying Agent/Registrar shall cancel the Initial Bond and deliver to DTC on behalf of the Representative one typewritten Bond for each year of maturity of the Bonds, in the aggregate principal amount of all Bonds for such maturity, registered in the name of Cede & Co., as nominee of DTC.

Section 3.05. Ownership.

(a) The City, the Paying Agent/Registrar and any other person may treat the person in whose name any Bond is registered as the absolute owner of such Bond for the purpose of making and receiving payment of the principal thereof, for the further purpose of making and receiving payment of the interest thereon (subject to the provisions herein that for the Bonds interest is to be paid to the person in whose name the Bond is registered on the Record Date or Special Record Date, as applicable), and for all other purposes, whether or not such Bond is overdue, and neither the City nor the Paying Agent/Registrar shall be bound by any notice or knowledge to the contrary.

(b) All payments made to the Owner of a Bond shall be valid and effectual and shall discharge the liability of the City and the Paying Agent/Registrar upon such Bond to the extent of the sums paid.

Section 3.06. Registration, Transfer and Exchange.

(a) So long as any Bonds remain outstanding, the City shall cause the Paying Agent/Registrar to keep at its Designated/Payment Transfer Office a register (the "Register") in which, subject to such reasonable regulations as it may prescribe, the Paying Agent/Registrar shall provide for the registration and transfer of Bonds in accordance with this Ordinance.

(b) The ownership of a Bond may be transferred and exchanged only upon the presentation and surrender of the Bond to the Paying Agent/Registrar. A Bond may be assigned by the execution of an assignment form on the Bond or by other instrument of transfer and

assignment acceptable to the Paying Agent/Registrar. A new Bond or Bonds will be delivered by the Paying Agent/Registrar, in lieu of the Bond being transferred or exchanged, at the Designated Payment/Transfer Office of the Paying Agent/Registrar, or sent by United States mail, first-class, postage prepaid, to the new registered owner or his designee. No transfer of any Bond shall be effective until entered in the Register.

(c) The Bonds shall be exchangeable upon the presentation and surrender thereof at the Designated Payment/Transfer Office of the Paying Agent/Registrar for a Bond or Bonds of the same maturity and interest rate and in any denomination or denominations of any integral multiple of \$5,000 and in an aggregate principal amount equal to the unpaid principal amount of the Bonds presented for exchange. The Paying Agent/Registrar is hereby authorized to authenticate and deliver Bonds exchanged for other Bonds in accordance with this Section.

(d) Each exchange Bond delivered by the Paying Agent/Registrar in accordance with this Section shall constitute an original contractual obligation of the City and shall be entitled to the benefits and security of this Ordinance to the same extent as the Bond or Bonds in lieu of which such exchange Bond is delivered.

(e) No service charge shall be made to the Owner for the initial registration, any subsequent transfer, or exchange for a different denomination of any of the Bonds. The Paying Agent/Registrar, however, may require the Owner to pay a sum sufficient to cover any tax or other governmental charge that is authorized to be imposed in connection with the registration, transfer or exchange of a Bond.

Section 3.07. Cancellation.

All Bonds paid or redeemed before scheduled maturity in accordance with this Ordinance, and all Bonds in lieu of which exchange Bonds or replacement Bonds are authenticated and delivered in accordance with this Ordinance, shall be cancelled upon the making of proper records regarding such payment, exchange or replacement. The Paying Agent/Registrar shall dispose of cancelled Bonds in accordance with the Securities Exchange Act of 1934.

Section 3.08. Temporary Bonds.

(a) Following the delivery and registration of the Initial Bond and pending the preparation of definitive Bonds, the proper officers of the City may execute and, upon the City's request, the Paying Agent/Registrar shall authenticate and deliver, one or more temporary Bonds that are printed, lithographed, typewritten, mimeographed or otherwise produced, in any denomination, substantially of the tenor of the definitive Bonds in lieu of which they are delivered, without coupons, and with such appropriate insertions, omissions, substitutions and other variations as the officers of the City executing such temporary Bonds may determine, as evidenced by their signing of such temporary Bonds.

(b) Until exchanged for Bonds in definitive form, such Bonds in temporary form shall be entitled to the benefit and security of this Ordinance.

(c) The City, without unreasonable delay, shall prepare, execute and deliver to the Paying Agent/Registrar the Bonds in definitive form; thereupon, upon the presentation and surrender of the Bond or Bonds in temporary form to the Paying Agent/Registrar, the Paying Agent/Registrar shall cancel the Bonds in temporary form and authenticate and deliver in exchange therefor a Bond or Bonds of the same maturity and series, in definitive form, in the authorized denomination, and in the same aggregate principal amount, as the Bond or Bonds in temporary form surrendered. Such exchange shall be made without the making of any charge therefor to any Owner.

Section 3.09. Replacement Bonds.

(a) Upon the presentation and surrender to the Paying Agent/Registrar of a mutilated Bond, the Paying Agent/Registrar shall authenticate and deliver in exchange therefor a replacement Bond of like tenor and principal amount, bearing a number not contemporaneously outstanding. The City or the Paying Agent/Registrar may require the Owner of such Bond to pay a sum sufficient to cover any tax or other governmental charge that is authorized to be imposed in connection therewith and any other expenses connected therewith.

(b) In the event that any Bond is lost, apparently destroyed or wrongfully taken, the Paying Agent/Registrar, pursuant to the applicable laws of the State of Texas and in the absence of notice or knowledge that such Bond has been acquired by a bona fide purchaser, shall authenticate and deliver a replacement Bond of like tenor and principal amount, bearing a number not contemporaneously outstanding, provided that the Owner first complies with the following requirements:

(i) furnishes to the Paying Agent/Registrar satisfactory evidence of his or her ownership of and the circumstances of the loss, destruction or theft of such Bond;

(ii) furnishes such security or indemnity as may be required by the Paying Agent/Registrar to save it and the City harmless;

(iii) pays all expenses and charges in connection therewith, including, but not limited to, printing costs, legal fees, fees of the Paying Agent/Registrar and any tax or other governmental charge that is authorized to be imposed; and

(iv) satisfies any other reasonable requirements imposed by the City and the Paying Agent/Registrar.

(c) After the delivery of such replacement Bond, if a bona fide purchaser of the original Bond in lieu of which such replacement Bond was issued presents for payment such original Bond, the City and the Paying Agent/Registrar shall be entitled to recover such replacement Bond from the person to whom it was delivered or any person taking therefrom, except a bona fide purchaser, and shall be entitled to recover upon the security or indemnity provided therefor to the extent of any loss, damage, cost or expense incurred by the City or the Paying Agent/Registrar in connection therewith.

(d) In the event that any such mutilated, lost, apparently destroyed or wrongfully taken Bond has become or is about to become due and payable, the Paying Agent/Registrar, in its

discretion, instead of issuing a replacement Bond, may pay such Bond if it has become due and payable or may pay such Bond when it becomes due and payable.

(e) Each replacement Bond delivered in accordance with this Section shall constitute an original additional contractual obligation of the City and shall be entitled to the benefits and security of this Ordinance to the same extent as the Bond or Bonds in lieu of which such replacement Bond is delivered.

Section 3.10. Book-Entry-Only System.

(a) The Bonds shall initially be issued in book-entry-only form and shall be deposited with DTC, which is hereby appointed to act as the securities depository therefor, in accordance with the Letter of Representations.

(b) With respect to Bonds registered in the name of Cede & Co., as nominee of DTC, the City and the Paying Agent/Registrar shall have no responsibility or obligation to any DTC Participant or to any person on behalf of whom such a DTC Participant holds an interest in the Bonds. Without limiting the immediately preceding sentence, the City and the Paying Agent/Registrar shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. or any DTC Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any DTC Participant or any other person, other than an Owner, as shown on the Register, of any notice with respect to the Bonds, including any notice of redemption, or (iii) the payment to any DTC Participant or any other person, other than an Owner, as shown in the Register of any amount with respect to principal of or interest on the Bonds. Notwithstanding any other provision of this Ordinance to the contrary, the City and the Paying Agent/Registrar shall be entitled to treat and consider the person in whose name each Bond is registered in the Register as the absolute owner of such Bond for the purpose of payment of principal of and interest on Bonds, for the purpose of giving notices of redemption and other matters with respect to such Bond, for the purpose of registering transfer with respect to such Bond, and for all other purposes whatsoever. The Paying Agent/Registrar shall pay all principal of and interest on the Bonds only to or upon the order of the respective Owners as shown in the Register, as provided in this Ordinance, or their respective attorneys or representatives duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the City's obligations with respect to payment of principal of and interest on the Bonds to the extent of the sum or sums so paid. No person other than an Owner, as shown in the Register, shall receive a Bond certificate evidencing the obligation of the City to make payments of amounts due pursuant to this Ordinance. Upon delivery by DTC to the Paying Agent/Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions in this Ordinance with respect to interest checks or drafts being mailed to the registered owner at the close of business on the Record Date or Special Record Date, as applicable, the word "Cede & Co." in this Ordinance shall refer to such new nominee of DTC.

(c) The Letter of Representations previously executed and delivered by the City, and applicable to the City's obligations delivered in book-entry-only form to DTC as securities depository, is hereby ratified and approved for the Bonds.

Section 3.11. Successor Securities Depository; Transfer Outside Book-Entry-Only System.

In the event that the City determines that DTC is incapable of discharging its responsibilities described herein and in the Letter of Representations, the City shall (i) appoint a successor securities depository, qualified to act as such under Section 17(a) of the Securities and Exchange Act of 1934, as amended, notify DTC and DTC Participants of the appointment of such successor securities depository and transfer one or more separate Bonds to such successor securities depository; or (ii) notify DTC and DTC Participants of the availability through DTC of certificated Bonds and cause the Paying Agent/Registrar to transfer one or more separate registered Bonds to DTC Participants having Bonds credited to their DTC accounts. In such event, the Bonds shall no longer be restricted to being registered in the Register in the name of Cede & Co., as nominee of DTC, but may be registered in the name of the successor securities depository, or its nominee, or in whatever name or names Owners transferring or exchanging Bonds shall designate, in accordance with the provisions of this Ordinance.

Section 3.12. Payments to Cede & Co.

Notwithstanding any other provision of this Ordinance to the contrary, so long as any Bonds are registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of and interest on such Bonds, and all notices with respect to such Bonds shall be made and given, respectively, in the manner provided in the Letter of Representations.

ARTICLE IV

REDEMPTION OF BONDS BEFORE MATURITY

Section 4.01. Limitation on Redemption.

The Bonds shall be subject to redemption before their scheduled maturity only as provided in this Article IV.

Section 4.02. Optional Redemption.

(a) The City reserves the option to redeem the Bonds maturing on and after May 15, 2021, in whole or in part, before their respective scheduled maturity dates, on May 15, 2020, or on any date thereafter, such redemption date or dates to be fixed by the City, at a redemption price equal to the principal amount thereof plus accrued interest to the redemption date.

(b) The City, at least 45 days before the redemption date, unless a shorter period shall be satisfactory to the Paying Agent/Registrar, shall notify the Paying Agent/Registrar of such redemption and of the principal amount of Bonds to be redeemed.

Section 4.03. Partial Redemption.

(a) If less than all of the Bonds subject to redemption are to be redeemed pursuant to Section 4.02, 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 maturities and in such principal amounts, for redemption.

(b) A portion of a single Bond of a denomination greater than \$5,000 may be redeemed, but only in a principal amount equal to \$5,000 or any integral multiple thereof. The Paying Agent/Registrar shall treat each \$5,000 portion of such Bond as though it were a single Bond for purposes of selection for redemption.

(c) Upon surrender of any Bond for redemption in part, the Paying Agent/Registrar, in accordance with Section 3.06 of this Ordinance, shall authenticate and deliver an exchange Bond or Bonds in an aggregate principal amount equal to the unredeemed principal amount of the Bond so surrendered, such exchange being without charge.

(d) The Paying Agent/Registrar shall promptly notify the City in writing of the principal amount to be redeemed of any Bond as to which only a portion thereof is to be redeemed.

Section 4.04. Notice of Redemption to Owners.

(a) The Paying Agent/Registrar shall give notice of any redemption of Bonds by sending notice, not less than 30 days before the date fixed for redemption, to the Owner of each Bond or portion thereof to be redeemed by first-class United States mail, postage prepaid to the address of each Owner of a Bond appearing on the Register at the close of business on the last Business Day next preceding the date of mailing of such notice.

(b) The notice shall state the redemption date, the redemption price, the place at which the Bonds are to be surrendered for payment, and, if less than all the Bonds outstanding are to be redeemed, an identification of the Bonds or portions thereof to be redeemed.

(c) The City reserves the right to give notice of its election or direction to redeem Bonds under Section 4.02 conditioned upon the occurrence of subsequent events. Such notice may state (i) that the redemption is conditioned upon the deposit of moneys and/or authorized securities, in an amount equal to the amount necessary to effect the redemption, with the Paying Agent/Registrar, or such other entity as may be authorized by law, no later than the redemption date or (ii) that the City retains the right to rescind such notice at any time prior to the scheduled redemption date if the City delivers a certificate of the City to the Paying Agent/Registrar instructing the Paying Agent/Registrar to rescind the redemption notice, and such notice and redemption shall be of no effect if such moneys and/or authorized securities are not so deposited or if the notice is rescinded. The Paying Agent/Registrar shall give prompt notice of any such rescission of a conditional notice of redemption to the affected Owners. Any Bonds subject to conditional redemption where redemption has been rescinded shall remain Outstanding, and the rescission shall not constitute an event of default. Further, in the case of a conditional redemption, the failure of the City to make moneys and/or authorized securities available in part or in whole on or before the redemption date shall not constitute an event of default.

(d) Any notice given as provided in this Section shall be conclusively presumed to have been duly given, whether or not the Owner receives such notice.

(e) The Paying Agent/Registrar shall also send notice of redemption to two national information services that disseminate notices of redemption by a secured means that permits the Paying Agent/Registrar to verify the date of mailing. The Paying Agent/Registrar shall send a second notice of redemption to each Owner not more than 90 days after the redemption date, if such Owner is required to and has not presented Bonds for redemption within 30 days of the redemption date.

Section 4.05. Payment Upon Redemption.

(a) Before or on each redemption date, the City shall deposit with the Paying Agent/Registrar money sufficient to pay all amounts due on the redemption date, and the Paying Agent/ Registrar shall make provision for the payment of the Bonds to be redeemed on such date by setting aside and holding in trust such amounts as are received by the Paying Agent/Registrar from the City and shall use such funds solely for the purpose of paying the principal of and accrued interest on the Bonds being redeemed.

(b) Upon presentation and surrender of any Bond called for redemption at the Designated Payment/Transfer Office on or after the date fixed for redemption, the Paying Agent/Registrar shall pay the principal of such Bond to the date of redemption from the money set aside for such purpose. Interest on any such Bond called for redemption shall be paid to the Owner in accordance with the provisions of Section 3.03 of this Ordinance.

Section 4.06. Effect of Redemption.

(a) Notice of redemption having been given as provided in Section 4.04 of this Ordinance and subject to any conditions or rights reserved by the City under Section 4.04(c), the Bonds or portions thereof called for redemption shall become due and payable on the date fixed for redemption; thereafter, unless the City defaults in its obligation to make provision for the payment of the principal thereof and accrued interest thereon, such Bonds or portions thereof shall cease to bear interest from the date fixed for redemption, whether or not such Bonds are presented and surrendered for payment on such date.

(b) If the City shall fail to make provision for the payment of all sums due on a redemption date, then any Bond or portion thereof called for redemption shall continue to bear or accrue interest at the rate stated on the Bond until due provision is made for the payment of same by the City.

Section 4.07. Limitation on Transfer.

Neither the City nor the Paying Agent/Registrar shall be required to transfer or exchange any Bond called for redemption within 45 days of the date fixed for redemption; provided, however, that such limitation shall not apply to the uncalled principal balance of a Bond called for redemption in part.

ARTICLE V

PAYING AGENT/REGISTRAR

Section 5.01. Appointment of Initial Paying Agent/Registrar.

The Bank of New York Mellon Trust Company, National Association, is hereby appointed as the initial Paying Agent/Registrar for the Bonds.

Section 5.02. Qualifications.

Each Paying Agent/Registrar shall be a commercial bank, a trust company organized under the laws of the State of Texas, or any other entity duly qualified and legally authorized to serve as and perform the duties and services of paying agent and registrar for the Bonds.

Section 5.03. Maintaining Paying Agent/Registrar.

(a) At all times while any Bonds are outstanding, the City will maintain a Paying Agent/Registrar that is qualified under Section 5.02 of this Ordinance. The Mayor is hereby authorized to execute an agreement with the Paying Agent/Registrar specifying the duties and responsibilities of the City and the Paying Agent/Registrar. The signature of the Mayor shall be attested by the City Secretary of the City.

(b) If the Paying Agent/Registrar resigns or otherwise ceases to serve as such, the City will promptly appoint a replacement.

Section 5.04. Termination.

The City, upon not less than 60 days notice, reserves the right to terminate the appointment of any Paying Agent/Registrar by delivering to the entity whose appointment is to be terminated written notice of such termination.

Section 5.05. Notice of Change to Owners.

Promptly upon each change in the entity serving as Paying Agent/Registrar, the City will cause notice of the change to be sent to each Owner by first-class United States mail, postage prepaid to the address of each Owner of a Bond appearing on the Register at the close of business on the last Business Day next preceding the date of mailing of such notice, stating the effective date of the change and the name and mailing address of the replacement Paying Agent/Registrar.

Section 5.06. Agreement to Perform Duties and Functions.

By accepting the appointment as Paying Agent/Registrar, and executing the Paying Agent/Registrar Agreement, the Paying Agent/Registrar is deemed to have agreed to the provisions of this Ordinance and that it will perform the duties and functions of Paying Agent/Registrar prescribed thereby.

Section 5.07. Delivery of Records to Successor.

If a Paying Agent/Registrar is replaced, such Paying Agent, promptly upon the appointment of the successor, will deliver the Register (or a copy thereof) and all other pertinent books and records relating to the Bonds to the successor Paying Agent/Registrar.

ARTICLE VI

FORM OF THE BONDS

Section 6.01. Form Generally.

(a) The Bonds, including the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Certificate of the Paying Agent/Registrar and the Assignment form to appear on each of the Bonds, (i) shall be substantially in the form set forth in this Article with such appropriate insertions, omissions, substitutions and other variations as are permitted or required by this Ordinance, and (ii) may have such letters, numbers or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association (“CUSIP Numbers”)) and such legends and endorsements (including any reproduction of an opinion of counsel) thereon as, consistently herewith, may be determined by the City or by the officers executing such Bonds, as evidenced by their execution thereof.

(b) Any portion of the text of any Bonds may be set forth on the reverse side thereof, with an appropriate reference thereto on the face of the Bonds.

(c) The definitive Bonds, if any, shall be typewritten, photocopied, printed, lithographed or engraved, and may be produced by any combination of these methods or produced in any other similar manner, all as determined by the officers executing such Bonds, as evidenced by their execution thereof, except that so long as DTC is the securities depository for the Bonds as described in Section 3.10 hereof, the definitive Bonds may be typewritten and photocopied or otherwise reproduced.

(d) The Initial Bond submitted to the Attorney General of the State of Texas may be typewritten and photocopied or otherwise reproduced.

Section 6.02. Form of the Bonds.

The form of the Bonds, including the form of the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the form of Certificate of the Paying Agent/Registrar and the form of Assignment appearing on the Bonds, shall be substantially as follows:

(a) Form of Bonds.

REGISTERED
No. _____

REGISTERED:
\$ _____

United States of America
State of Texas

Counties of Collin and Denton
CITY OF PLANO, TEXAS
MUNICIPAL DRAINAGE UTILITY SYSTEM
REVENUE REFUNDING AND IMPROVEMENT BOND
SERIES 2010

INTEREST RATE: MATURITY DATE: BOND DATE: CUSIP NUMBER:
_____ % May 15, _____ January 15, 2010 _____

The City of Plano, Texas (the "City"), in the Counties of Collin and Denton, State of Texas, for value received, hereby promises to pay to

_____ or registered assigns, on the Maturity Date specified above, the sum of

_____ DOLLARS

unless this Bond shall have been sooner called for redemption and the payment of the principal hereof shall have been paid or provided for, and to pay interest on such principal amount from the later of the Bond Date specified above or the most recent interest payment date to which interest has been paid or provided for until payment of such principal amount has been paid or provided for, at the per annum rate of interest specified above, computed on the basis of a 360-day year of twelve 30-day months, such interest to be paid semiannually on May 15 and November 15 of each year, commencing November 15, 2010.

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 Dallas, Texas, of The Bank of New York Mellon Trust Company, National Association, 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 is payable to the registered owner of this Bond on or before the interest payment date by (i) 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 last business 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 on 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 for all purposes be deemed to have been made on the original date payment was due.

This Bond is one of a series of fully registered bonds specified in the title hereof issued in the aggregate principal amount of \$6,935,000 (herein referred to as the "Bonds"), issued pursuant to Subchapter C, Chapter 552, Texas Local Government Code, as amended, and a certain ordinance of the City (the "Ordinance"). Capitalized terms used herein and not otherwise defined shall have the meaning assigned thereto in the Ordinance. The Bonds are being issued for the purpose of providing funds to make certain improvements to the System, to refund certain of the Previously Issued Bonds (hereinafter defined), to make a deposit to the reserve fund and to pay the costs of issuing the Bonds.

The Bonds, together with certain outstanding parity lien revenue bonds of the City (the "Previously Issued Bonds"), constitute special obligations of the City and are payable solely from and equally secured by a first lien on and pledge of the Revenues of the System. The Bonds and the Previously Issued Bonds do not constitute a legal or equitable pledge, charge, lien or encumbrance upon any property of the City or the System, except with respect to the Revenues.

The City expressly reserves the right to issue additional revenue obligations in all things on a parity with the Bonds and the Previously Issued Bonds, payable solely from and equally secured by a first lien on and pledge of the Revenues of the System; provided, however, that any and all such additional obligations may be so issued only in accordance with and subject to the covenants, conditions, limitations and restrictions relating thereto which are set out and contained in the Ordinance to which reference is hereby made for more complete and full particulars.

The City has reserved the option to redeem the Bonds maturing on and after May 15, 2021, in whole or in part before their respective scheduled maturity dates, on May 15, 2020, or on any date thereafter, at a redemption price equal to the principal amount thereof plus accrued interest to the date of 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.

The Paying Agent/Registrar shall give notice of any redemption of Bonds by sending notice, not less than 30 days before the date fixed for redemption, to the registered owner of each Bond or portion thereof to be redeemed by first-class United States mail, postage prepaid, at the address shown on the Register. In the Ordinance, the City reserves the right in the case of an optional redemption to give notice of its election or direction to redeem Bonds conditioned upon the occurrence of subsequent events. Such notice may state (i) that the redemption is conditioned upon the deposit of moneys and/or authorized securities, in an amount equal to the amount necessary to effect the redemption, with the Paying Agent/Registrar, or such other entity as may be authorized by law, no later than the redemption date or (ii) that the City retains the right to rescind such notice at any time prior to the scheduled redemption date if the City delivers a certificate of the City to the Paying Agent/Registrar instructing the Paying Agent/Registrar to rescind the redemption notice, and such notice and redemption shall be of no effect if such moneys and/or authorized securities are not so deposited or if the notice is rescinded. The Paying Agent/Registrar shall give prompt notice of any such rescission of a conditional notice of redemption to the affected Owners. Any Bonds subject to conditional redemption where redemption has been rescinded shall remain Outstanding, and the rescission shall not constitute an event of default. Further, in the case of a conditional redemption, the failure of the City to make moneys and/or authorized securities available in part or in whole on or before the redemption date shall not constitute an event of default.

As provided in the Ordinance, and subject to certain limitations therein set forth, this Bond is transferable upon surrender of this Bond for transfer at the Designated Payment/Transfer Office with such endorsement or other evidence of transfer as is acceptable to the Paying Agent/Registrar; thereupon, one or more new fully registered Bonds of the same stated maturity, of authorized denominations, bearing the same rate of interest, and for the same aggregate principal amount will be issued to the designated transferee or transferees.

Neither the City nor the Paying Agent/Registrar shall be required to transfer or exchange any Bond called for redemption within 45 days of the date fixed for redemption; provided, however, that such limitation shall not apply to the uncalled principal balance of a Bond called for redemption in part.

The City, the Paying Agent/Registrar, and any other person may treat the person in whose name this Bond is registered as the owner hereof for the purpose of receiving payment as herein provided (except interest shall be paid to the person in whose name this Bond is registered on the "Record Date" or the "Special Record Date", as applicable) and for all other purposes, whether or not this Bond is overdue, and neither the City nor the Paying Agent/Registrar shall be affected by notice to the contrary.

IT IS HEREBY CERTIFIED AND RECITED that the issuance of this Bond and the series of which it is a part is duly authorized by law; that all acts, conditions and things required to be done precedent to and in the issuance of the Bonds to render the same lawful and valid have been properly done and have happened in regular and due time, form and manner as

required by law; that the Bonds do not exceed any constitutional or statutory limitation; and that provision has been made for the payment of the principal of and interest on the Bonds by irrevocably pledging the Revenues of the System, as hereinabove recited.

The owner hereof shall never have the right to demand payment of this Bond out of any funds raised or to be raised by taxation.

IN WITNESS WHEREOF, the City has caused this Bond to be executed in its name by the manual or facsimile signatures of the Mayor and City Secretary of the City, and the official seal of the City has been duly impressed or placed in facsimile on this Bond.

City Secretary
City of Plano, Texas

Mayor
City of Plano, Texas

[SEAL]

(b) Form of Comptroller's Registration Certificate.

The following Comptroller's Registration Certificate may be deleted from the definitive Bonds if such Certificate on the Initial Bond is fully executed.

OFFICE OF THE COMPTROLLER §
OF PUBLIC ACCOUNTS § REGISTER NO. _____
OF THE STATE OF TEXAS §

I hereby certify that there is on file and of record in my office a certificate of the Attorney General of the State of Texas to the effect that this Bond has been examined by him as required by law, that he finds that it has been issued in conformity with the Constitution and laws of the State of Texas, and that it is a valid and binding special obligation of the City of Plano, Texas, payable from the revenues pledged to its payment by and in the ordinance authorizing same, and that said Bond has this day been registered by me.

Witness my hand and seal of office at Austin, Texas, _____.

Comptroller of Public Accounts of
the State of Texas

[SEAL]

(c) Form of Certificate of Paying Agent/Registrar.

The following Certificate of Paying Agent/Registrar may be deleted from the Initial Bond if the Comptroller's Registration Certificate appears thereon.

CERTIFICATE OF PAYING AGENT/REGISTRAR

The records of the Paying Agent/Registrar show that the Initial Bond of this series of Bonds was approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts of the State of Texas, and that this is one of the Bonds referred to in the within-mentioned Ordinance.

THE BANK OF NEW YORK MELLON
TRUST COMPANY, NATIONAL
ASSOCIATION, as Paying Agent/Registrar

Dated: _____

By: _____
Authorized Signature

(d) Form of Assignment.

ASSIGNMENT

FOR VALUE RECEIVED _____ (the "Transferor"), the undersigned, hereby sells, assigns and transfers unto (print or typewrite name, address and zip code of transferee:

(Social Security or Federal Employer Identification No. _____) the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____ as attorney to transfer the within bond on the books kept for registration therefor, with full power of substitution in the premises.

Dated: _____

Signature Guaranteed By:

Authorized Signatory

NOTICE: The signature on this Assignment must correspond with the name of the registered owner as it appears on the face of the within Bond in every particular and must be guaranteed in a manner acceptable to the Paying Agent/Registrar.

(e) The Initial Bond shall be in the form set forth in paragraphs (a) through (d) of this Section, except for the following alterations:

(i) immediately under the name of the Bond, the headings "INTEREST RATE" and "MATURITY DATE" shall both be completed with the words "As shown below" and the words "CUSIP NUMBER:" shall be deleted;

(ii) in the first paragraph of the Bond, the words "on the Maturity Date specified above" shall be deleted and the following will be inserted: "on May 15 in each of the years, in the principal installments, and bearing interest at the per annum rates in accordance with the following schedule:

<u>Years</u>	<u>Principal Installments</u>	<u>Rates</u>
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(Information to be inserted from schedule in Section 3.02 of this Ordinance).

(iii) the Initial Bond shall be numbered T-1.

Section 6.03. CUSIP Registration.

The City may secure identification numbers through the CUSIP Service Bureau Division of Standard & Poor's Corporation, New York, New York, and may authorize the printing of such numbers on the face of the Bonds. It is expressly provided, however, that the presence or absence of CUSIP Numbers on the Bonds shall be of no significance or effect as regards the legality thereof and neither the City nor bond counsel to the City are to be held responsible for CUSIP Numbers incorrectly printed on the Bonds.

Section 6.04. Legal Opinion.

The approving legal opinions of Vinson & Elkins L.L.P., Dallas, Texas, may be printed on the reverse side of or attached to each Bond over the certification of the City Secretary of the City, which may be executed in facsimile.

ARTICLE VII

FUNDS AND ACCOUNTS

Section 7.01. Creation of Funds.

All revenues derived from the operation of the System shall be kept separate from other funds of the City. To that end, creation of the following special Funds is hereby confirmed:

(a) "City of Plano, Texas Municipal Drainage Utility System Fund," hereinafter called the "System Fund."

(b) "City of Plano, Texas Municipal Drainage Utility System Reserve Fund," hereinafter called the "Reserve Fund."

(c) "City of Plano, Texas Municipal Drainage Utility System Bond Fund," hereinafter called the "Bond Fund."

Section 7.02. System Fund.

(a) The City hereby covenants and agrees that the Revenues of the System (excluding earnings and income derived from investments held in the Bond Fund and the Reserve Fund) shall be deposited as collected to the credit of the System Fund. All revenues deposited in the System Fund shall be pledged and appropriated to the extent required for the following uses and in the order of priority shown:

First: To the payment of the amounts required to be deposited in the Bond Fund for the payment of Debt Service on the Bonds and the Previously Issued Bonds as the same becomes due and payable.

Second: To the payment of the amounts required to be deposited in the Reserve Fund to maintain the Required Reserve in accordance with the provisions of this Ordinance or any other ordinance relating to the issuance of Additional Bonds.

(b) Revenues remaining in the System Fund after satisfying the foregoing payments, or making adequate and sufficient provision for the payment thereof, may be transferred to the City's general fund or used for any lawful purpose including payment of Operating and Maintenance Expenses.

Section 7.03. Bond Fund.

(a) Moneys on deposit in the Bond Fund shall be used solely for the purpose of paying the principal of and interest on the Bonds and the Previously Issued Bonds as the same becomes due and payable. The City hereby covenants that there shall be deposited into the Bond Fund from the System Fund an amount sufficient to pay the principal of and interest on the Bonds and the Previously Issued Bonds when due, either at maturity or prior redemption. Deposits to the Bond Fund shall be made in substantially equal monthly installments on or before the 10th day of each month, beginning the month next following the delivery of the Bonds to the Representative.

(b) The required monthly deposits to the Bond Fund for the payment of principal of and interest on the Bonds shall continue to be made as hereinabove provided until (i) the total amount on deposit in the Bond Fund and the Reserve Fund is equal to the amount required to fully pay and discharge all Outstanding Bonds or (ii) the Bonds are no longer Outstanding.

(c) Accrued interest and premium, if any, received from the sale of the Bonds, as well as earnings derived from the investment of moneys in the Bond Fund, shall be deposited to the credit of the Bond Fund and taken into consideration in determining the amount of the monthly deposits hereinabove required to be deposited in the Bond Fund from the Revenues of the System.

Section 7.04. Reserve Fund.

(a) The City covenants and agrees that it will continuously maintain in the Reserve Fund an amount of Reserve Fund Obligations equal to not less than the Average Annual Debt Service on the Bonds and the Previously Issued Bonds (the "Required Reserve"), and that upon issuance of Additional Bonds, the Required Reserve shall be increased, if required, to an amount equal to the lesser of (i) the Average Annual Debt Service (calculated on a Fiscal Year basis) for all bonds Outstanding, as determined on the date of issuance of each series of Additional Bonds, and annually following each principal payment date or redemption date for the Bonds, the Previously Issued Bonds and any Additional Bonds Outstanding, as the case may be, or (ii) the maximum amount in a reasonably required reserve fund that can be invested without restriction as to yield pursuant to Subsection (d) of Section 148 of the Code and regulations promulgated thereunder. For so long as the funds on deposit in the Reserve Fund are equal to the Required Reserve, no additional deposit need be made therein, but should the Reserve Fund at any time contain less than the Required Reserve, then, subject and subordinate to making the required deposits to the credit of the Bond Fund, the City shall restore such deficiency by depositing additional Reserve Fund Obligations into the Reserve Fund in monthly installments of not less than 1/60th of the Required Reserve on or before the 10th day of each month following such deficiency, termination, or expiration. The money on deposit in the Reserve Fund shall be used solely for the purpose of paying the principal of and interest on the Bonds, the Previously Issued

Bonds and any Additional Bonds at any time there are not sufficient moneys on deposit in the Bond Fund.

(b) The City may, at its option, withdraw all surplus in the Reserve Fund over the Required Reserve and deposit the same in the System Fund; provided, however, that to the extent such surplus monies constitute bond proceeds, including interest and income derived therefrom, such amounts shall not be deposited to the System Fund and shall only be used for the purposes for which bond proceeds may be used.

(c) For the purpose of determining compliance with the requirements of subsection (g) of this Section, Reserve Fund Obligations shall be valued each year as of the last day of the City's fiscal year at their cost or market value, whichever is lower, except that any direct obligations of the United States (State and Local Government Series) held for the benefit of the Reserve Fund in book-entry form shall be continuously valued at their par value or face principal amount.

(d) To the extent permitted by, and in accordance with applicable law and upon approval of the Attorney General of the State of Texas, the City may replace or substitute a Credit Facility for cash or investment securities, of any of the type or types permitted by Section 7.06 hereof, on deposit in the Reserve Fund or in substitution or replacement of any existing Credit Facility. Upon such replacement or substitution, cash or investment securities of any of the types permitted by Section 7.06 hereof, on deposit in the Reserve Fund which, taken together with the face amount of any existing Credit Facilities, are in excess of the Required Reserve may be withdrawn by the City, at its option, and transferred to the System Fund; provided that the face amount of any Credit Facility may be reduced at the option of the City in lieu of such transfer. However, to the extent such surplus monies constitute bond proceeds, including interest and income derived therefrom, such amounts shall not be deposited to the System Fund and shall only be used for the purposes for which bond proceeds may be used. Any interest due on any reimbursement obligation under the Credit Facility shall not exceed the highest lawful rate of interest which may be paid by the City.

(e) If the City is required to make a withdrawal from the Reserve Fund, the City shall promptly notify the issuer of such Credit Facility of the necessity for a withdrawal from the Reserve Fund, and shall make such withdrawal first from available moneys or investment securities then on deposit in the Reserve Fund, and next from a drawing under any Credit Facility to the extent of such deficiency.

(f) In the event of a deficiency in the Reserve Fund, or in the event that on the date of termination or expiration of any Credit Facility there is not on deposit in the Reserve Fund sufficient Reserve Fund Obligations, all in an aggregate amount at least equal to the Required Reserve, then the City shall, after making required deposits to the Bond Fund in accordance with the terms of this Ordinance, satisfy the Required Reserve by depositing additional Reserve Fund Obligations into the Reserve Fund in monthly installments of not less than 1/60th of the Required Reserve on or before the 10th day of each month following such deficiency, termination or expiration.

(g) In the event of the redemption or defeasance of any of the Outstanding Bonds, any Reserve Fund Obligations on deposit in the Reserve Fund in excess of the Required Reserve may be withdrawn and transferred, at the option of the City, to the System Fund, as a result of (i) the redemption of the Outstanding Bonds, or (ii) funds for the payment of the Outstanding Bonds having been deposited irrevocably with the paying agent or place of payment therefor in the manner described in this Ordinance, the result of such deposit being that such Outstanding Bonds no longer are deemed to be Outstanding under the terms of this Ordinance. However, to the extent such surplus monies constitute bond proceeds, including interest and income derived therefrom, such amounts shall not be deposited to the System Fund and shall only be used for the purposes for which bond proceeds may be used.

(h) In the event there is a draw upon the Credit Facility, the City shall reimburse the issuer of such Credit Facility for such draw in accordance with the terms of any agreement pursuant to which the Credit Facility is issued from Net Revenues; however, such reimbursement from Net Revenues shall be subject to the provisions of subparagraph (k) hereof, and shall be subordinate and junior in right of payment to the payment of principal of and premium, if any, and interest on the Bonds.

Section 7.05. Deficiencies; Excess Revenues.

(a) If on any occasion there shall not be sufficient Revenues of the System to make the required deposits into the Bond Fund and the Reserve Fund, then such deficiency shall be cured as soon as possible from the next available Revenues of the System, or from any other sources available for such purpose.

(b) Subject to making the required deposits to the Bond Fund and the Reserve Fund in accordance with the provisions of this Ordinance, the ordinances authorizing the issuance of the Previously Issued Bonds, or any ordinance authorizing the issuance of Additional Bonds, the excess Revenues may be transferred to the City's general operating fund or used by the City for any lawful purpose.

Section 7.06. Security of Funds.

(a) Money in any Fund may, at the option of the City, be invested in funds and obligations authorized and identified in the Public Funds Investment Act, as amended (to the extent such funds and obligations are also authorized under the City's investment policy), or other applicable law. All deposits and investments shall be made in such a manner that the money required to be expended from any Fund will be available at the proper time or times. All interest and income derived from deposits and investments in the Bond Fund immediately shall be credited to, and any losses debited to, the Bond Fund. All interest and interest income derived from deposits in and investments of the Reserve Fund shall, subject to the limitations provided in Section 7.04 hereof, be credited to and deposited in the System Fund. All investments shall be sold promptly when necessary to prevent any default in connection with the Bonds or any Previously Issued Bonds.

(b) To the extent amounts deposited to the credit of any Funds referenced herein are not invested, such uninvested amounts shall be secured in the manner and to the fullest extent required by laws of the State of Texas for the security of public funds.

ARTICLE VIII

SALE AND DELIVERY OF BONDS; DEPOSIT OF PROCEEDS

Section 8.01. Sale of Bonds; Official Statement.

(a) The Bonds are hereby officially sold and awarded and shall be delivered to the Representative, on behalf of the Underwriters, in accordance with the terms and provisions of that certain Purchase Contract relating to the Bonds between the City and the Underwriters and dated the date of the passage of this Ordinance. The form and content of such Purchase Contract are hereby approved, and the Mayor is hereby authorized and directed to execute and deliver, and the City Secretary of the City is hereby authorized and directed to attest, if required, such Purchase Contract. It is hereby officially found, determined and declared that the terms of this sale are the most advantageous reasonably obtainable. The Bonds shall initially be registered in the name of the Representative, or their designee.

(b) The form and substance of the Preliminary Official Statement for the Bonds, and any addenda, supplement or amendment thereto, and the final Official Statement (the "Official Statement") presented to and considered at this meeting, are hereby in all respects approved and adopted and the Preliminary Official Statement is hereby deemed final as of its date within the meaning and for the purposes of paragraph (b)(1) of Rule 15c2-12 under the Securities Exchange Act of 1934, as amended. The Mayor and the City Secretary of the City are hereby authorized and directed to execute the same and deliver appropriate numbers of executed copies thereof to the Representative. The Official Statement as thus approved, executed and delivered, with such appropriate variations as shall be approved by the Mayor of the City and the Representative, may be used by the Underwriters in the public offering and sale thereof. The City Secretary of the City is hereby authorized and directed to include and maintain a copy of the Official Statement and any addenda, supplement or amendment thereto thus approved among the permanent records of this meeting. The use and distribution of the Preliminary Official Statement, and the preliminary public offering of the Bonds by the Underwriters is hereby ratified, approved and confirmed.

(c) All officers of the City are authorized to execute such documents, certificates and receipts as they may deem appropriate in order to consummate the delivery of the Bonds in accordance with the terms of sale therefor. Further, in connection with the submission of the record of proceedings for the Bonds to the Attorney General of the State of Texas for examination and approval of such Bonds, the appropriate officer of the City is hereby authorized and directed to issue a check of the City payable to the Attorney General of the State of Texas as a nonrefundable examination fee in the amount required by Chapter 1202, Texas Government Code (such amount to be the lesser of (i) 1/10th of 1% of the principal amount of the Bonds or (ii) \$9,500).

(d) The obligation of the Underwriters to accept delivery of the Bonds is subject to the Underwriters being furnished with the final, approving opinion of Bond Counsel for the City, which opinions shall be dated and delivered on the Closing Date.

Section 8.02. Control and Delivery of Bonds.

(a) The Mayor is hereby authorized to have control of the Initial Bond and all necessary records and proceedings pertaining thereto pending investigation, examination and approval of the Attorney General of the State of Texas, registration by the Comptroller of Public Accounts of the State of Texas, and registration with, and initial exchange or transfer by, the Paying Agent/Registrar.

(b) After registration by the Comptroller of Public Accounts, delivery of the Bonds shall be made to the Representative under and subject to the general supervision and direction of the Mayor, against receipt by the City of all amounts due to the City under the terms of sale.

(c) In the event the Mayor or City Secretary is absent or otherwise unable to execute any document or take any action authorized herein, the Mayor Pro Tem and the Assistant City Secretary, respectively, shall be authorized to execute such documents and take such actions, and the performance of such duties by the Mayor Pro Tem and the Assistant City Secretary shall for the purposes of this Ordinance have the same force and effect as if such duties were performed by the Mayor and City Secretary, respectively.

Section 8.03. Deposit of Proceeds.

(a) All amounts received on the Closing Date as accrued interest on the Bonds from the Bond Date to the Closing Date shall be deposited to the Bond Fund and applied to the first payment of interest due on the Bonds.

(b) An amount equal to \$_____ shall be deposited to the Reserve Fund.

(c) An amount equal to \$_____ shall be deposited to the Escrow Fund.

(d) The remaining balance received on the Closing Date shall be deposited to a special construction account of the City and shall be used to pay the costs of drainage improvements, including the acquisition, construction, repair of structures, equipment and facilities for the System and the costs of issuing the Bonds.

ARTICLE IX

PARTICULAR REPRESENTATIONS AND COVENANTS

Section 9.01. Payment of Bonds.

While any of the Bonds are Outstanding, the Director of Finance (or other designated financial officer of the City) shall cause to be transferred to the Paying Agent/Registrar, from funds on deposit in the Bond Fund, and, if necessary, in the Reserve Fund, amounts sufficient to fully pay and discharge promptly as each installment of interest and principal of the Bonds

accrues or matures or comes due by reason of redemption prior to maturity; such transfer of funds to be made in such manner as will cause immediately available funds to be deposited with the Paying Agent/Registrar for the Bonds at the close of the last business day next preceding the date of payment for the Bonds.

Section 9.02. Issuance of Additional Parity Bonds.

Subject to the provisions hereinafter appearing as to conditions precedent which must be satisfied, the City reserves the right to issue, from time to time as needed, Additional Bonds for any authorized purpose, including the issuance of refunding bonds. Such Additional Bonds may be issued in such form and manner as now or hereafter authorized by the laws of the State of Texas for the issuance of evidences or instruments, and should new methods or financing techniques be developed that differ from those now available and in normal use, the City reserves the right to employ the same in its financing arrangements provided that the following conditions precedent for the authorization and issuance of the same are satisfied, to wit:

(i) The officer of the City then having the primary responsibility for the financial affairs of the City shall have executed a certificate stating (a) that, to the best of his knowledge and belief, the City is not then in default as to any covenant, obligation or agreement contained in any ordinance or other proceeding relating to any obligations of the City payable from and secured by a lien on and pledge of the Revenues of the System that would materially affect the security or payment of such obligations and (b) either (i) payments into all special Funds maintained for the payment and security of all outstanding obligations payable from and secured by a lien on and pledge of the Revenues of the System have been made and that the amounts on deposit in such special Funds equal or exceed the amounts then required to be on deposit therein or (ii) the application of the proceeds of sale of such obligations then being issued will cure any such deficiency;

(ii) The Additional Bonds shall be scheduled to mature or be payable as to principal on May 15 or November 15 (or both) in each year the same are to be outstanding or during the term thereof; and

(iii) The Reserve Fund shall contain the Required Reserve amount on the date of issuance of the proposed Additional Bonds after giving effect to the issuance thereof.

(iv) The City has secured a certificate or opinion of an Accountant to the effect that, according to the books and records of the City, the Net Revenues for the last completed Fiscal Year, or for 12 consecutive months out of the 18 months immediately preceding the month in which the ordinance authorizing the issuance of the then proposed Additional Bonds is passed, are at least equal to 1.25 times the Average Annual Debt Service for all Outstanding Bonds, Outstanding Previously Issued Bonds and any Outstanding Additional Bonds after giving effect to the issuance of the Additional Bonds then being issued. In making a determination of the Net Revenues, the Accountant may take into consideration a change in the charges for services afforded by the System that became effective at least 60 days prior to the last day of the period for which Net Revenues are determined and, for purposes of satisfying the above Net Revenues test,

make a pro forma determination of the Net Revenues of the System for the period of time covered by his certification or opinion based on such change in charges being in effect for the entire period covered by the certificate or opinion of the Accountant.

Section 9.03. Issuance of Obligations of Inferior Lien and Pledge.

The City hereby reserves the right to issue obligations payable from and secured by a lien on and pledge of the Revenues of the System, junior and subordinate in rank and dignity to the lien and pledge securing the payment of the Bonds and the Previously Issued Bonds, as may be authorized by the laws of the State of Texas.

Section 9.04. Refunding Bonds.

The City reserves the right to issue refunding bonds to refund all or any part of the Bonds and the Previously Issued Bonds (pursuant to any law then available) upon such terms and conditions as the City Council of the City may deem to be in the best interest of the City and its inhabitants, and if less than all of such Bonds and the Previously Issued Bonds then Outstanding are refunded, the conditions precedent prescribed (for the issuance of Additional Bonds) set forth in Section 9.02 hereof shall be satisfied and the certificate or opinion of the Accountant required in Section 9.02 shall give effect to the Debt Service of the proposed refunding bonds (and shall not give effect to the Debt Service on the bonds being refunded following their cancellation or provisions being made for their payment).

Section 9.05. Maintenance and Operation - Insurance.

In regard to the operations and properties of the System, the City agrees to carry and maintain liability and property damage insurance of the kind and in the amounts customarily carried by municipal corporations in Texas on such kind of properties; provided, however, the City, in lieu of and/or in combination with carrying such insurance, may self-insure against all perils and risks by establishing self-insurance reserves. Annually each year, not later than the end of each Fiscal Year, the City shall prepare or cause to be prepared by a person competent and knowledgeable in such matters a written evaluation of the adequacy of such self-insurance and/or insurance coverage and of any recommended changes in regard to the City's insurance/self-insurance policies, practices and procedures.

Section 9.06. Records - Accounts - Accounting Reports.

The City hereby covenants, reaffirms and agrees that so long as any of the Bonds, or any interest thereon, remain outstanding and unpaid, it will keep and maintain a proper and complete system of records and accounts pertaining to the operation of the System separate and apart from all other records and accounts in which complete and correct entries shall be made of all transactions relating to said System, and that the Owner or Owners of any of such Bonds or any duly authorized agent or agents of such Owners shall have the right at all reasonable times to inspect all such records, accounts and data relating thereto, and to inspect the System and all properties comprising same. The City further agrees that within 60 days following the close of each Fiscal Year it will cause an audit of such books and accounts to be made by an independent firm of Accountants, showing the receipts and disbursements for account of the System for the Fiscal Year.

Each such audit, in addition to whatever other matters may be thought proper by the firm of Accountants, shall particularly include the following:

- (a) a detailed statement of the income and expenditures of the System for such Fiscal Year.
- (b) A balance sheet as of the end of such Fiscal Year.
- (c) The Accountants' comments regarding the manner in which the City has carried out the requirements of this Ordinance and his recommendations for any changes or improvements in the operation, records and accounts of the System.
- (d) A list of the insurance policies in force at the end of the Fiscal Year on the System properties, setting out as to each policy the amount thereof, the risk covered, the name of the insurer, and the policy's expiration date.

Expenses incurred in making the audits above referred to are to be regarded as maintenance and operating expenses and paid as such. Copies of the aforesaid annual audit shall be furnished to the original purchasers of the Bonds and any subsequent Owner upon written request. At the close of the first six-month period of each Fiscal Year, the City Secretary of the City is hereby directed to furnish a copy of an operating and income statement in reasonable detail covering such period to any bondholder upon written request therefor, received not more than 30 days after the close of said six-month period. Any Owner shall have the right to discuss with the Accountant making the annual audit the contents thereof and to ask for such additional information as he may reasonably require.

Section 9.07. Sale or Lease of Properties.

The City, to the extent and in the manner authorized by law, may sell or exchange for consideration representing the fair value thereof, as determined by the City Council of the City, any property of the System which is obsolete, damaged or worn out or otherwise unsuitable. The proceeds of any sale of properties of the System shall be deposited in the System Fund.

Section 9.08. Satisfaction of Obligation of City.

The Bonds may be defeased, discharged or refunded in any manner permitted by applicable law.

Section 9.09. Bonds as Negotiable Instruments.

Each of the Bonds shall be deemed and construed to be an "Investment Security" and, as such, a negotiable instrument, within the meaning of Article 8 of the Texas Uniform Commercial Code.

Section 9.10. Special Covenants.

The City further covenants and agrees by and through this Ordinance as follows:

(i) It has the lawful power to pledge the Revenues of the System to the payment of the Bonds to the extent provided herein and has lawfully exercised said power under the Constitution and laws of the State of Texas, including the Act, and that the Bonds issued hereunder, together with the Previously Issued Bonds and any Additional Bonds, shall be ratably secured in such manner that no one bond shall have preference over any other bond of said issues.

(ii) The Revenues of the System have not been in any manner pledged or encumbered to the payment of any debt or obligation of the City or the System, save and except for the Bonds and the Previously Issued Bonds; provided that the City has reserved the right pursuant to Section 9.03 hereof to issue subordinate lien obligations.

(iii) To exercise and pursue with due diligence available remedies provided by law for the collection of delinquent drainage charges, including the power under Section 402.050 of the Act to discontinue all utility services, particularly water and sewer services provided by the City to a user of benefited property who is delinquent in the payment of drainage charges.

Section 9.11. Ordinance a Contract - Amendments.

This Ordinance shall constitute a contract with the Owners from time to time, be binding on the City, and shall not be amended or repealed by the City while any Bond remains Outstanding except as permitted in this Section and Section 11.03(e). The City, may, without the consent of or notice to any Owners, from time to time and at any time, amend this Ordinance in any manner not detrimental to the interests of the Owners, to cure any ambiguity, inconsistency, or formal defect or omission herein and to provide additional security for the payment of the Bonds. In addition, the City may, with the written consent from the owners holding a majority in aggregate principal amount of the Bonds then Outstanding (excluding Bonds acquired by or held for the account of the City) affected thereby, amend, add to, or rescind any of the provisions of this Ordinance; provided that, without the written consent of all Owners of Bonds then Outstanding, no such amendment, addition, or rescission shall (1) extend the time or times of payment of the Bonds, reduce the principal amount thereof, the redemption price therefor, or the rate of interest thereon, or in any other way modify the terms of payment of the principal of or interest on the Bonds, (2) give any preference to any Bond over any other Bond, or (3) reduce the aggregate principal amount of Bonds required to be held for consent to any such amendment, addition, or rescission.

Section 9.12. Provisions Concerning Federal Income Tax Exclusion.

The City intends that the interest on the Bonds shall be excludable from gross income for purposes of federal income taxation pursuant to sections 103 and 141 through 150 of the Code and the applicable regulations promulgated thereunder (the "Regulations"). The City covenants and agrees not to take any action, or knowingly omit to take any action within its control, that if taken or omitted, respectively, would cause the interest on the Bonds to be includable in the gross income, as defined in section 61 of the Code, of the Owners thereof for purposes of federal income taxation. In particular, the City covenants and agrees to comply with each requirement of Sections 9.12 through 9.19, inclusive; provided, however, that the City shall not be required to

comply with any particular requirement of Sections 9.12 through 9.19, inclusive, if the City has received an opinion of nationally recognized bond counsel (“Counsel’s Opinion”) that such noncompliance will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bonds or if the City has received a Counsel’s Opinion to the effect that compliance with some other requirement set forth in Sections 9.12 through 9.19 will satisfy the applicable requirements of the Code, in which case compliance with such other requirement specified in such Counsel’s Opinion shall constitute compliance with the corresponding requirement specified in such Sections.

Section 9.13. No Private Use or Payment and No Private Loan Financing.

The City shall certify, through an authorized officer, employee or agent, that, based upon all facts and estimates known or reasonably expected to be in existence on the date the Bonds are delivered, the proceeds of the Bonds and the Refunded Bonds will not be used in a manner that would cause the Bonds to be “private activity bonds” within the meaning of section 141 of the Code and the Regulations. The City covenants and agrees that it will make such use of the proceeds of the Bonds and the Refunded Bonds, including interest or other investment income derived from Bond proceeds, regulate the use of property financed, directly or indirectly, with such proceeds, and take such other and further action as may be required so that the Bonds will not be “private activity bonds” within the meaning of section 141 of the Code and the Regulations.

Section 9.14. No Federal Guaranty.

The City covenants and agrees not to take any action, or knowingly omit to take any action within its control, that, if taken or omitted, respectively, would cause the Bonds to be “federally guaranteed” within the meaning of section 149(b) of the Code and the Regulations, except as permitted by section 149(b)(3) of the Code and the Regulations.

Section 9.15. Bonds are not Hedge Bonds.

The City covenants and agrees not to take any action, or knowingly omit to take any action, and has not knowingly omitted and will not knowingly omit to take any action, within its control, that, if taken or omitted, respectively, would cause the Bonds to be “hedge bonds” within the meaning of section 149(g) of the Code and the Regulations.

Section 9.16. No Arbitrage Covenant.

The City shall certify, through an authorized officer, employee or agent, that, based upon all facts and estimates known or reasonably expected to be in existence on the date the Bonds are delivered, the City will reasonably expect that the proceeds of the Bonds will not be used in a manner that would cause the Bonds to be “arbitrage bonds” within the meaning of section 148(a) of the Code and the Regulations. Moreover, the City covenants and agrees that it will make such use of the proceeds of the Bonds including interest or other investment income derived from Bond proceeds, regulate investments of proceeds of the Bonds, and take such other and further action as may be required so that the Bonds will not be “arbitrage bonds” within the meaning of section 148(a) of the Code and the Regulations.

Section 9.17. Arbitrage Rebate.

If the City does not qualify for an exception to the requirements of Section 148(f) of the Code, the City will take all necessary steps to comply with the requirement that certain amounts earned by the City on the investment of the “gross proceeds” of the Bonds (within the meaning of section 148(f)(6)(B) of the Code) be rebated to the federal government. Specifically, the City will (i) maintain records regarding the investment of the gross proceeds of the Bonds as may be required to calculate the amount earned on the investment of the gross proceeds of the Bonds separately from records of amounts on deposit in the funds and accounts of the City allocable to other bond issue of the City or moneys which do not represent gross proceeds of any bonds of the City, (ii) calculate at such times as are required by the Regulations, the amount earned from the investment of the gross proceeds of the Bonds which is required to be rebated to the federal government, and (iii) pay, not less often than every fifth anniversary date of the delivery of the Bonds or on such other dates as may be permitted under the Regulations, all amounts required to be rebated to the federal government. Further, the City will not indirectly pay any amount otherwise payable to the federal government pursuant to the foregoing requirements to any person other than the federal government by entering into any investment arrangement with respect to the gross proceeds of the Bonds that might result in a reduction in the amount required to be paid to the federal government because such arrangement results in a smaller profit or a larger loss than would have resulted if the arrangement had been at arm’s length and had the yield on the issue not been relevant to either party.

Section 9.18. Information Reporting.

The City covenants and agrees to file or cause to be filed with the Secretary of the Treasury, not later than the 15th day of the second calendar month after the close of the calendar quarter in which the Bonds are issued, an information statement concerning the Bonds, all under and in accordance with section 149(e) of the Code and the Regulations.

Section 9.19. Continuing Obligation.

Notwithstanding any other provision of this Ordinance, the City’s obligations under the covenants and provisions of Section 9.12 through 9.18, inclusive, shall survive the defeasance and discharge of the Bonds.

ARTICLE X

DEFAULT AND REMEDIES

Section 10.01. Remedies in Event of Default.

In addition to all rights and remedies provided by the laws of the State of Texas, the City covenants and agrees particularly that in the event the City:

(a) defaults in payments to be made to the Bond Fund or the Reserve Fund as required by this Ordinance; or

(b) defaults in the observance or performance of any other of the covenants, conditions or obligations set forth in this Ordinance,

the Owners of any of the Bonds shall be entitled to a writ of mandamus issued by a court of property jurisdiction, compelling and requiring the City and its officers to observe and perform any covenant, condition or obligation prescribed in this Ordinance. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power, or shall be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

The specific remedy herein provided shall be cumulative of all other existing remedies and the specification of such remedy shall not be deemed to be exclusive.

ARTICLE XI

CONTINUING DISCLOSURE UNDERTAKING

Section 11.01. Annual Reports.

(a) The City shall provide annually to the MSRB, within six (6) months after the end of each fiscal year, financial information and operating data with respect to the City of the general type included in the final Official Statement, being the information described in Exhibit A hereto. Any financial statements so to be provided shall be (i) prepared in accordance with the accounting principles described in Exhibit A hereto, and (ii) audited, if the City commissions an audit of such statements and the audit is completed within the period during which they must be provided and (iii) submitted through EMMA, in an electronic format with accompany identifying information, as prescribed by the MSRB. If the audit of such financial statements is not complete within such period, then the City shall provide notice that audited financial statements are not available and shall provide unaudited financial statements for the applicable fiscal year to the MSRB. The City shall provide audited financial statements for the applicable fiscal year to the MSRB, when and if audited financial statements become available.

(b) If the City changes its fiscal year, it will notify the MSRB of the change (and of the date of the new fiscal year end) prior to the next date by which the City otherwise would be required to provide financial information and operating data pursuant to this Section.

(c) The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific referenced to any document (including an official statement or other offering document, if it is available from the MSRB) that theretofore has been provided to the MSRB of filed with the SEC.

Section 11.02. Material Event Notices.

(a) The City shall notify the MSRB, in a timely manner, of any of the following events with respect to the Bonds, if such event is material within the meaning of the federal securities laws:

- (i) principal and interest payment delinquencies;
 - (ii) nonpayment related defaults;
 - (iii) unscheduled draws on debt service reserves reflecting financial difficulties;
 - (iv) unscheduled draws on credit enhancements reflecting financial difficulties;
 - (v) substitution of credit or liquidity providers, or their failure to perform;
 - (vi) adverse tax opinions or events affecting the tax exempt status of the Bonds;
 - (vii) modifications to rights of Owners;
 - (viii) redemption calls;
 - (ix) defeasances;
 - (x) release, substitution, or sale of property securing repayment of the Bonds;
- and
- (xi) rating changes.

The City will provide notice of such events to the MSRB in an electronic format and accompanied by identifying information, as prescribed by the MSRB.

(b) The City shall notify the MSRB, in a timely manner, of any failure by the City to provide financial information or operating data in accordance with Section 11.01 of this Ordinance by the time required by such Section.

Section 11.03. Limitations, Disclaimers and Amendments.

(a) The City shall be obligated to observe and perform the covenants specified in this Article for so long as, but only for so long as, the City remains an “obligated person” with respect to the Bonds within the meaning of the Rule, except that the City in any event will give notice of any Bond calls and any defeasances that cause the City to be no longer an “obligated person.”

(b) The provisions of this Article are for the sole benefit of the Owners and beneficial owners of the Bonds, and nothing in this Article, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The City undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Article and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the City’s financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Article or otherwise, except as expressly provided herein. The City does

not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Bonds at any future date.

UNDER NO CIRCUMSTANCES SHALL THE CITY BE LIABLE TO THE OWNER OR BENEFICIAL OWNER OF ANY BOND OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE CITY, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS ARTICLE, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

(c) No default by the City in observing or performing its obligations under this Article shall constitute a breach of or default under the Ordinance for purposes of any other provisions of this Ordinance.

(d) Nothing in this Article is intended or shall act to disclaim, waive, or otherwise limit the duties of the City under federal and state securities laws.

(e) The provisions of this Article may be amended by the City from time to time to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the City, but only if (i) the provisions of this Article, as so amended, would have permitted an underwriter to purchase or sell Bonds in the primary offering of the Bonds in compliance with the Rule, taking into account any amendments or interpretations of the Rule to the date of such amendment, as well as such changed circumstances, and (ii) either (A) the Owners of a majority in aggregate principal amount (or any greater amount required by any other provisions of this Ordinance that authorizes such an amendment) of the outstanding Bonds consent to such amendment or (B) an entity or individual person that is unaffiliated with the City (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interests of the Owners and beneficial owners of the Bonds. If the City so amends the provisions of this Article, it shall include with any amended financial information or operating data next provided in accordance with Section 11.01 an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in type of financial information or operating data so provided.

ARTICLE XII

REDEMPTION OF REFUNDED BONDS; APPROVAL OF ESCROW AGREEMENT; PURCHASE OF ESCROWED SECURITIES

Section 12.01. Redemption of Refunded Bonds.

(a) The Refunded Bonds are hereby called for redemption on the date, in the principal amounts and at a redemption price equal to the principal amount thereof plus interest accrued thereon to the redemption date all as set forth on Schedule I hereto.

(b) The paying agent/registrant for the Refunded Bonds is hereby authorized and directed to give or cause to be given notice of redemption of the Refunded Bonds at the times and in the manner specified in the ordinance authorizing the issuance of such Refunded Bonds.

(c) The City Secretary of the City is hereby authorized and directed to cause a copy of this Ordinance to be delivered to the paying agent/registrant for the Refunded Bonds, the delivery of which shall constitute notice of redemption and notice of defeasance to such paying agent/registrant.

Section 12.02. Subscription of Federal Securities.

The Mayor and the Director of Finance are each hereby authorized to make necessary arrangements for the purchase of the Federal Securities referenced in the Escrow Agreement, as may be necessary for the Escrow Fund and the application for the acquisition of the Federal Securities is hereby approved and ratified.

Section 12.03. Approval of Escrow Agreement.

The Escrow Agreement, in substantially the form presented at this meeting, and its execution and delivery by the Mayor is hereby authorized and approved. The signature of the Mayor shall be attested by the City Secretary of the City.

Section 12.04. Notice of Deposit and Redemption.

The paying agent/registrant for the Refunded Bonds is hereby authorized and directed to give notice of deposit and redemption with respect to the Refunded Bonds as required under the ordinance pursuant to which the Refunded Bonds were issued.

ARTICLE XIII

ATTORNEY GENERAL MODIFICATION

Section 13.01. Attorney General Modification.

In order to obtain the approval of the Bonds by the Attorney General of the State of Texas, any provision of this Ordinance may be modified, altered or amended after the date of its adoption if required by the Attorney General in connection with the Attorney General's examination as to the legality of the Bonds and approval thereof in accordance with the applicable law. Such changes, if any, shall be provided to the City Secretary of the City and the City Secretary of the City shall insert such changes into this Ordinance as if approved on the date hereof.

FINALLY PASSED, APPROVED AND EFFECTIVE this January 25, 2010.

ATTEST:

Phil Dyer
MAYOR

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Weatherbee, CITY ATTORNEY

SCHEDULE I

SCHEDULE OF REFUNDED BONDS

ISSUE	ORIGINAL ISSUE DATE	MATURITIES TO BE REFUNDED	AMOUNT OUTSTANDING	AMOUNT REFUNDED	REDEMPTION DATE
Municipal Drainage Utility System Revenue Bonds, Series 2001	09/15/2001	2010	\$195,000	\$195,000	original maturity date
		2011	<u>210,000</u>	<u>210,000</u>	
			\$405,000	\$405,000	

ISSUE	ORIGINAL ISSUE DATE	MATURITIES TO BE REFUNDED	AMOUNT OUTSTANDING	AMOUNT REFUNDED	REDEMPTION DATE
Municipal Drainage Utility System Revenue Bonds, Series 2003	05/1/2003	2010	\$150,000	\$150,000	5/15/2013 except maturities 2010- 2012, inclusive, which will be redeemed on their respective original maturity dates
		2011	160,000	160,000	
		2012	165,000	165,000	
		2013	175,000	175,000	
		2014	180,000	180,000	
		2015	190,000	190,000	
		2016	200,000	200,000	
		2017	210,000	210,000	
		2018	220,000	220,000	
		2019	230,000	230,000	
		2020	240,000	240,000	
		2021	250,000	250,000	
		2022	265,000	265,000	
2023	<u>275,000</u>	<u>275,000</u>			
		\$2,910,000	\$2,910,000		

EXHIBIT A

DESCRIPTION OF ANNUAL DISCLOSURE OF FINANCIAL INFORMATION

The following information is referred to in Article XI of this Ordinance.

Annual Financial Statements and Operating Data

The financial information and operating data with respect to the City to be provided annually in accordance with such Article are as specified (and included in the Appendix or other headings of the Official Statement referred to) below:

1. The portions of the financial statements of the City appended to the Official Statement as Appendix A, but for the most recently concluded fiscal year.
2. Statistical and financial data set forth in Tables numbered 1 through 7, inclusive.

Accounting Principles

The accounting principles referred to in such Article are the accounting principles described in the notes to the financial statements referred to in Paragraph 1 above.